

(185)

**DECLARATION OF COVENANTS & RESTRICTIONS**  
**for**  
**THE POINTE**

**FILED**  
JUL 12 2006  
FRANKLIN TOWNSHIP  
ASSESSOR

THIS DECLARATION, made this 29 day of JUNE, 2006, by  
WEL II DEVELOPMENT LLC. (hereinafter referred to as the "Developer").

**WITNESSETH:**

**WHEREAS**, the following facts are true:

A. Developer is the owner of all the land contained in the area shown on Exhibit "A," attached hereto and made a part hereof, which lands have been subdivided into two subdivisions known as "DIAMOND RIDGE AT THE POINTE" and "EMERALD RIDGE AT THE POINTE (hereinafter together referred to as "The Development"); and

B. Developer is about to sell and convey the residential Lots situated within the platted areas of The Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of The Development mutual and beneficial restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit of the Lots and lands in The Development and the future owners thereof; and

C. Developer desires to provide for the preservation and enhancement of the property values, amenities and opportunities in The Development and for the maintenance of The Development and the improvements thereon, and to this end desires to subject The Development to the covenants, restrictions, easements, and charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in The Development and the future owner thereof; and

D. Developer deems it desirable, for the efficient preservation of the values and amenities in the Development, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, promoting the recreation, health, safety and welfare of the Owners of Lots in The Development performing the duties and obligations required under this Declaration; and

E. Developer shall incorporate under the laws of the State of Indiana a non-profit corporation known as The Pointe Property Owners Association, Inc., for the purpose of exercising such functions.

**NOW, THEREFORE**, the Developer hereby declares that all of the platted Lots and lands located within The Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved, subject to

*Plat Note #*  
*2006-0105071*

the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in The Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of The Development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the real property in The Development or to any part or parts thereof, and shall inure to the benefit of the Developer and every one of the Developer's successors in title to any real property in The Development.

1. **DEFINITIONS.** The following are the definitions of terms used in this Declaration:

"ACC" shall mean the The Pointe Architectural Control Committee established pursuant to this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Association.

"Assessments" means all sums lawfully assessed against the Members of the Association or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws of the Association.

"Association" shall mean the The Pointe Property Owners Association, Inc., a not-for-profit corporation.

"Board of Directors" means the governing body of the Association elected by the Members in accordance with the By-Laws.

"By-Laws" means the Code of By-Laws of the Association, as amended from time to time.

"Common Area(s)" means (i) the Drainage System, (ii) the area designated on the Plat as Common Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through The Development, (v) any areas of land that are devoted to the use of enjoyment of some, but not necessarily all of the Owners of Lots, (vi) street lights and street signs, if any installed by Developer, and (vii) Private Streets.

"Developer" means WEL II Development, LLC., its successors and assigns to its interest in The Development other than Owners purchasing Lots or Residences by deed from Developer (unless the conveyance indicated an intent that the grantee assume the rights and obligations of the Developer).

"The Development" means the land described in Exhibit A.

***“Diamond Ridge”*** means the northern section of The Development, which will be identified on the recorded plat as **“Diamond Ridge at the Pointe.”**

***“Drainage Board”*** means the Marion county Drainage Board

***“Drainage System”*** means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities located in The Development and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across The Development including but not limited to those shown or referred to on a plat, all or part of which may be established as legal drains subject to the jurisdiction of Marion County.

***“Entry Way”*** means the structures constructed as an entrance to The Pointe or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles) and the traffic islands depicted on the Plat(s).

***“Emerald Ridge”*** means the southern section of The Development, which will be identified on the recorded plat as **“Emerald Ridge at the Pointe.”**

***“Facilities”*** means the Common Area and all improvements, thereto including the entry way and landscaping and the fencing and posts along Five Points Rd.

***“Landscape Easement”*** means a portion of a Lot or Common Area denoted on a plat as an area to be landscaped and maintained by the Association.

***“Lot”*** shall mean a platted lot as shown on a plat of The Development, which is recorded in the office of the Recorder of Marion County, Indiana.

***“Lot Development Plan”*** means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the ACC may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

***“Maintenance Costs”*** means all of the costs necessary to keep the Facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility, and all expenses related to the performance of the duties of the Association under this Declaration.

*"Member"* Means a Class A or Class B member of the Association and *"Members"* means Class A and Class B members of the Association.

*"Mortgagee"* means the holder of a first mortgage on a Residence.

*"Non-Access Easement"* means the area designated on a Plat over which vehicular ingress and egress is prohibited.

*"Owner"* shall mean a person, partnership, trust or corporation who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation

*"Person"* means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

*"Plat"* means the final plat(s) of The Development recorded in the Office of the Recorder of Marion County.

*"Register of Regulations"* means the document containing rules, regulations policies, and procedures adopted by the Board of Directors or the ACC, as the same may from time to time be amended.

*"Reserve for Replacements"* means a fund established and maintained by the Association to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area.

*"Residence"* means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational Facilities usual and incidental to the use of a single family residential Lot.

*"Restrictions"* means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

*"Supplemental Declaration"* means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration and contains such complementary or supplementary provisions as are required or permitted by this Declaration.

2. **DECLARATION.** Developer hereby expressly declares that The Development shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot shall accept such deed and execute such contract subject to each restriction

and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Developer and of the Association with respect to these Restrictions to keep, observe, comply with and perform such Restrictions.

3. **DRAINAGE SYSTEM.** The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to The Development. The Association shall maintain the Drainage System to the extent not maintained by Marion County and the Maintenance Costs thereof shall be assessed against all Lots. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

4. **MAINTENANCE OF ENTRY WAYS AND LANDSCAPE EASEMENTS.** Except as otherwise provided herein, the Association shall maintain the Entry Ways, the Landscaping along Five Points Rd., landscape easements within The Development and the Common Area and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment equally against all Lots in The Development. Grass, trees, shrubs and other plantings located on the Entry Way, a Landscape Easement or within the Common Area shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to The Development or a part thereof or a planting area within The Development. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. The Developer and the Association shall, at the written request of the Marion County Department of Development ("Department"), remove any landscaping or signage deemed by the Department to encroach on or impede sight distance for public safety reasons.

5. **CHARACTER OF THE DEVELOPMENT.**

5.1. **In General.** Every numbered Lot platted as part of The Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential Lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of The Development. All tracts of land located within The Development shall be used in a manner generally consistent with the zoning and use designed in the plan filed by the Developer in a rezoning proceeding before the Metropolitan Development Commission of Marion County, Indiana, under Docket No. 2005-ZON-808 and shall be subject to the commitments in the STATEMENT OF COMMITMENTS recorded as Instrument No. 2005-0112741, a copy of which is attached hereto as "Exhibit A." However, the Developer reserves unto itself the right to change the character of such designated use at any time in the future by applying to the Metropolitan Development Commission and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, re-zoning or variance of use needed to accommodate the Developer's planned use.

5.2. **Prohibited Improvements.** Except as approved by the ACC, and except as otherwise provided herein, no carriage houses, sheds, awnings, statues, outbuildings,

above ground pools, antennae, dog runs, lawn ornaments, artificial vegetation, fountains, flags, fences, retaining walls, clothes lines and similar items shall be erected or placed on any Lot.

5.3. **Occupancy or Residential Use of Partially Completed Dwelling House Prohibited.** No dwelling house constructed on any of the residential Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed.

5.4. **Fencing / shrub planting.** All fences shall be subject to the prior approval of the ACC. All hedge or shrub planting may be no higher than 18 inches between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge." No common area planting installed by the Developer may be removed without the prior written consent of the ACC.

5.5. **Animals.** No animal, live stock, or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. There may be no more than two dogs per Lot.

5.6. **Antennas and Receivers.** No satellite receiver, down-link, or exterior antenna shall be permitted on any Lot without the prior written consent of the ACC. One satellite dish no greater than one meter (39.37 inches) in diameter will be permitted on each Lot so long as it is located in the side or rear of a Dwelling and screened from street view.

5.7. **Exterior Lights.** No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot. Each Owner or his builder shall install and maintain a light in operable condition on his Lot in the front yard at a location, having a height and of a type, style and manufacturer approved by the ACC prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the ACC to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each dal.

5.8. **Garage Doors.** All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

5.9. **Signs.** No signs of any sort may be on a Lot except to declare the house or Lot for sale. One "For Sale" sign per Lot shall be permitted to advertise the re-sale of a home or Lot in the Development. These "For Sale" signs shall be approved by the ACC and shall be specifically designed for Diamond Ridge and Emerald Ridge and shall be

uniform in content, size and the location placed on the Lot. The signs shall contain the name and telephone number of the homeowner/Lot owner or real estate agent. The above restriction shall not apply to the sale of Lots by the Developer, or to the first sale of a spec home by its builder.

5.10. **Driveways.** All driveways shall be constructed of concrete or such other material as shall be approved by the ACC, and shall be maintained free of debris. No motor homes, boats, commercial trucks, motorcycles, or other vehicles other than personal vehicles may be left on a driveway or in front of a home over night.

5.11. **Storage Tanks.** No fuel, gas or oil storage tanks shall be located on The Development.

5.12. **Construction and Landscaping.**

- (A) All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the ACC. All landscaping specified on the landscaping plan approved by the ACC shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the ACC agrees to alter the landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, the owner of any Lot which on the date of purchase from Developer is not improved with a Residence shall commence construction of a Residence upon the Lot within 180 days from the date the owner acquired title thereto and shall complete construction of such Residence within 270 days after the date of commencement of the building process. Upon failure of the foregoing to occur, Developer may:
- (1) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Marion County the lesser of (i) the same net dollar amount as was received by the Developer from such Owner as consideration for the conveyance of the Lot to the Owner or (ii) the then fair market value of the Lot as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Marion County Circuit or Superior Court; or
  - (2) obtain injunctive relief to force the Owner to proceed with construction of any Residence, according to a Lot Development Plan which has been approved by the ACC upon application by such Owner; or
  - (3) pursue other remedies at law or in equity as may be available to Developer.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the ACC of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the lot within the

time periods specified herein. For the purposes of this subparagraph construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, down-spouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

- (B) Each home in Emerald Ridge is required to have minimum requirements of:

Planting Requirements for Front and Side Yard

2 Deciduous shade trees	At least 2 1/4" caliper
1 Flowering tree	1-1 1/2" caliper
3 Conifer trees	8-10' height
6 Shrubs	At least 3-4' height
10 Shrubs	18-24" spread

Two "Aristocrat" pear trees 2 1/4 to 3 inches in diameter along each street front which trees shall be planted between the sidewalk and the street. For a corner lot, there will be four trees with two on each street front.

- (C) Each home in Diamond Ridge is required to have minimum requirements of:

Planting requirements for Front and Side Yard

4 Deciduous shade trees	At least 2 1/4" caliper
2 Flowering tree	1-1 1/2" caliper
6 Conifer trees	8-10' height
10 Shrubs	At least 3-4' height
20 Shrubs	18-24" spread

Two "Aristocrat" pear trees 2 1/4 to 3 inches in diameter along each street front which trees shall be planted between the sidewalk and the street. For a corner lot, there will be four trees with two on each street front.

Each Lot shall be equipped with a functioning irrigation system that provides adequate water to keep all yard areas green in the spring, summer and fall and all plants alive in a manner such that the water coverage does not include the streets, sidewalks or driveways adjacent to the Lot and neighboring Lots.

- (D) All yard areas are to be sodded or hydro-seeded as the minimum requirement.



- 5.13. **Garages Required.** All residential dwellings in The Development shall include a minimum enclosed, two (2) car garage.
- 5.14. **Sidewalks Required.** Each lot shall have a sidewalk parallel to the street, or streets in the case of corner lots, on which the lot fronts. The sidewalk shall meet Indianapolis Department of Transportation Standards 14-03. Sidewalks must be completed by the Owner of a lot at the time the driveway on the lot is constructed, but in no case later than eighteen (18) months after the lot is first conveyed by Developer.
- 5.15. **Prohibition of Used Structures.** All structures constructed or placed on any lot in The Development shall be constructed with substantially all new materials, and except for the two houses moved by Developer, no used structures shall be relocated or placed on any such lot.
- 5.16. **Mailboxes and Address Blocks.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacturer approved by the ACC. Such mail boxes shall be installed upon posts approved as to type, size, and location by the ACC. No attachments of any kind shall be permitted to the mailbox or post. All homes in The Development shall have a permanently affixed street address number affixed to the front of the home in a prominent place, utilizing numbers at least three (3) inches in height and approved by the ACC.
- 5.17. **Solar Panel Installation.** Solar panel installation shall be allowed only when the location, type, and size have been approved by the ACC.
- 5.18. **Sight Line Obstructions at Street Intersections.** No fence, wall, hedge, shrub planting or other object which obstructs sight lines at elevations between two (2) and nine (9) feet above the street shall be placed or be permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such instances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.
- 5.19. **Water Systems.** No private or semi-private water supply system may be located upon any lot. Each Owner shall connect to the City water main to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.
- 5.20. **Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of

water is provided on the Plat. To the extent not maintained by the Drainage Board, the "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within The Development may be included in a legal drain established by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lots. The elevation of the grade of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

- 5.21. **Clotheslines, Garbage Cans, etc., and Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers approved by the ACC and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary. Outside clotheslines will not be permitted.
- 5.22. **Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot.
- 5.23. **Electric Bug Killers.** Electric bug killers, "zappers" and other similar devices shall not be installed upon any Lot without the prior written consent of the ACC.
- 5.24. **Garage Doors.** All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.
- 5.25. **In General.** No noxious or offensive activities shall be permitted on any lot in The Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any owner of another Lot in The Development.
- 5.26. **Model Homes.** No owner of any Lot in The Development shall build or permit the building upon said Lot any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.
- 5.27. **"4-Wheelers" / Off road vehicles.** No "4-wheelers" or other motorized or unmotorized "bikes" or vehicles shall be operated off of the streets within The Development.
- 5.28. **Air Cooling/ Air exchange Units.** Air cooling units or other like utilities that are outside of the residential structure must be located at the side or rear of the home and except as may be permitted by the ACC. No window air conditioning units may be installed on any Lot.

- 5.29 **Business Use.** No garage sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant of a Lot may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent to detection by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Development; (c) the business activity does not involve persons coming onto the Lot who do not reside in the Unit on the Lot or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board.
- 5.30 **Sales Office.** To the extent deemed necessary or desirable by Developer, Developer shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold Lot or on any Common Area in the subdivision until 180 days following the sale, closing and deed transfer to a Lot Owner other than Developer of the last Lot in the Development.
- 5.31 **Swimming Pools.** Swimming pools must have the approval of the ACC before any work is undertaken. No above-ground pools shall be allowed, provided nothing herein shall preclude installation and use of hot tubs, spas, jacuzzis or similar apparatus with prior approval of the ACC. Permanent backyard pools will be approved by the ACC only after careful consideration of the potential effect of such a pool on neighboring Lots. An application for the construction of a swimming pool will not be considered unless the application is accompanied by an application for acceptable fence or other safety protection and landscape design approval. The design of such fence shall conform to county or municipal regulations for such fencing. Use of plantings in the vicinity of the proposed pool may be required to soften the effect of sound and required pool fencing, on adjacent Lots.
- 5.32 **Tennis courts, Paddle Ball Courts, Basketball Goals, Etc.** Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities will be approved by the ACC only after thorough consideration of the potential effect of such a structure or use on neighboring Lots. The ACC will not approve non-baffled lighted courts or facilities. An application for the construction of any such facility will not be considered unless the application is accompanied by an application for an acceptable fence and landscape design approval. It is recommended by the ACC that any such fencing be of an open composition in order to blend in with the surrounding Lots and soften the effect on adjacent Lots.

All basketball backboards or any other fixed games and play structures shall be located behind the rear foundation line of the main structure and within Lot set-back lines unless

otherwise approved by the ACC. The ACC must approve the location and type of basketball goals. All basketball backboards must be made of a transparent material.

- 5.33 **Construction Trash.** All builders will be required to utilize a thirty (30) cubic yard trash receptacle for each home during periods of construction in order to properly dispose of debris and to preserve the overall appearance of the community while under construction.
- 5.34 **Water Wells.** One water well per lot may be permitted at the discretion of the ACC to be used only for irrigation purposes.
- 5.35 **Retaining Walls.** Retaining walls must be architecturally compatible with the exterior of the home (i.e., stone, brick, or milled timber). Railroad tie retaining walls will not be approved.
- 5.36 **Erosion Control and Tree Protection Measures.** The Owner of a Lot shall be responsible for the performance of all requirements of these Covenants and Restrictions by builders and contractors employed or engaged by or through such Owner. During periods of construction of a home or improvements on a Lot, the Owner shall provide adequate physical barriers, such as straw bales or snow fencing, in order to protect trees from damage by construction equipment and related activities. In addition, Owners and builders shall be required to exercise erosion control measures in compliance with "Rule 5" and to prevent silt transportation to main drainage ways. The Owner of a Lot shall provide appropriate temporary seeding of disturbed earth areas and temporary wood, straw bale or other approved dams to restrict silt sediment transportation. In the event that Developer is fined by the City of Indianapolis as a result of Owner's violation of Rule 5, Owner shall indemnify Developer for the amount of such fine and attorney's fees and costs incurred by Developer as a result of such violation.

6. **UTILITY AND DRAINAGE EASEMENTS.** There are areas of ground on the plat of the Developer marked "Drainage Easements" and "Utility Easements" (D. & U.E.), and Sanitary Sewer Easements (S.S.E.) either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies) and governmental agencies for access to and installation, maintenance, repair or removal of poles, mains, ducts, sanitary sewers, storm sewers, drainage swales, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services.

The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the development of The Development for access to and for the installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for The Development and adjoining property and (ii) for the Department of Public Works of the City of Indianapolis for access to maintenance, repair and replacement of such drainage system, provided, however, that the owner of any Lot in The Development subject to a Drainage

Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.

The delineation of the Drainage Easement and Utility Easement areas on the plat(s) shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph. No permanent structures or fences shall be erected or maintained upon said easements. The owners of Lots in The Development shall take and hold title to the Lots subject to the Drainage Easements and Utility Easements herein created and reserved.

It shall be the responsibility of the owner of any Lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the Department of Public Works of the City of Indianapolis and requirements of all drainage permits for this plat issued by said Department.

It shall be the responsibility of every Owner of every Lot in The Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair.

7. **DEDICATION OF STREETS.** The rights-of-way of the entry way streets and streets in the Emerald Ridge section as shown on the plat(s), if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way, subject, however, to a reservation of ingress-egress for the maintenance of medians, if any, in any entry ways to The Development. The streets in Diamond Ridge from the entry way gates into Diamond Ridge shall be and remain private to the Owners of Lots in Diamond Ridge.

8. **OWNERSHIP, USE AND ENJOYMENT OF COMMON AREAS.** Common Areas, if any, depicted on the recorded plat of The Development, shall remain private, and neither the Developer's execution or recording of the plat nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the Common Areas. Ownership of the Common Areas shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion as provided in the Declaration of Covenants, Conditions and Restrictions of The Pointe. Such conveyance shall be subject to easements and restrictions of record, and such other conditions, as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Areas to the Association. Developer hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas subject to all of the Restrictions of this declaration, and such easement shall be an easement running with and appurtenant to each Lot.

9. **REAL ESTATE TAXES, UTILITIES**

- 9.1 **Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvement on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.
- 9.2 **Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit including utilities (if any) to community identification signage shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

10. **ARCHITECTURAL STANDARDS** Nothing, including any fence, deck, retaining walls, recreational equipment (including basketball goals, or any structure, storage shed, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Declaration until the requirements below have been fully met, and until the approval of the ACC has been obtained pursuant to this Section.

**THIS SECTION SHALL NOT APPLY TO THE ACTIVITIES OF THE DEVELOPER, OR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON AREAS BY OR ON BEHALF OF THE ASSOCIATION.**

**THIS SECTION MAY NOT BE AMENDED WITHOUT THE DEVELOPER'S WRITTEN CONSENT SO LONG AS THE DEVELOPER OWNS ANY LAND SUBJECT TO THIS DECLARATION.**

10.1. **Architectural Control Committee.** There shall be, and hereby is, created and established the "The Pointe Architectural Control Committee" ("ACC") which shall have exclusive jurisdiction over all construction on any portion of the Properties. **UNTIL 100% OF THE LOTS HAVE BEEN CONVEYED TO PURCHASERS** in the normal course of development and sale, the **DEVELOPER**, or not more than five, nor less than three, persons designated by it, **SHALL CONSTITUTE THE ACC AND SHALL SERVE AT THE DISCRETION OF THE DEVELOPER.** THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DEVELOPER. After the sale of 100% of the Properties, the ACC shall be a standing committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the ACC, then the Board shall be and constitute the ACC.

- 10.2. **Approval Process.** The ACC has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Developer (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the ACC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners and builders shall conduct their operations strictly in accordance therewith. The ACC, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the ACC must be obtained after written application has been made to the ACC by the Owner of the Lot requesting authorization from the ACC. Such written application shall be made in the manner and form prescribed from time to time by the ACC in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the ACC.

- 10.3. **Power of Disapproval.** The ACC may refuse to grant permission to construct, place or make the requested improvement, when:

- (A) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the ACC;
- (B) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the ACC;
- (C) the proposed improvement, or any part thereof, would, in the sole opinion of the ACC, be contrary to the interest, welfare or rights of all or part of other Owners; or

- 10.4. **Duties of ACC.** The ACC shall approve or disapprove proposed improvements within fifteen (15) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. In the event that the ACC fails to provide written notice of approval or to request written notice for additional information within 45 days after submission of all required or requested information, the plans shall be deemed and presumed denied.

- 10.5. **No Waiver of Future Approvals.** The approval of the ACC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.
- 10.6. **Variance.** The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the ACC shall not be considered hardships warranting a variance.
- 10.7. **Compliance with Guidelines.** Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ACC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by Developer or the Association.
- 10.8. **Non-Liability of Developer, and ACC.** Neither the Developer nor the ACC shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the ACC or the Developer does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.
- 10.9. **Inspection.** The ACC and the Developer may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the ACC; nor any Member thereof, nor the Developer, nor any agent or contractor employed or engaged by the ACC or the Developer, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or



on behalf of the ACC or the Developer shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

10.10. **No Compensation.** Neither the ACC nor any of its Members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

10.11. **Rules Governing Building on Several Contiguous Lots Having One Owner.** Whenever two or more contiguous Lots shall be owned by the same Person, and such owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the ACC for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit; provided however, that any dues, fees or other charges shall be assessed against each Lot individually.

## 11. **MAINTENANCE OF COMMON AREAS/LOTS/ DWELLING UNITS.**

11.1 **Maintenance of Common Area.** Maintenance of the Common Area shall be provided by the Association, however, this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system.

11.2 **Maintenance by Association and Owners Relative to Lots/Dwelling Units.**

**Re: Maintenance of Lawns and plants.** The Owners shall maintain the lawns, trees and plants on their Lot(s) including fertilizing (a minimum of 2 times per year) and mowing of the grass when necessary. The Association may provide snow removal (but no ice removal) if funding exists for the removal of snow from driveway and sidewalks or the Dwelling Units within the Lot if in the Board's sole determination the accumulation of snow justifies such removal. Any plantings made by Owners in and around sidewalk and driveway areas on which snow removal or de-icing are performed by the Association are planted at the Owner's sole risk with no liability to the Association.

11.3 **Maintenance of Individual Lots.** Except as otherwise noted above, each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition, with an appearance which is complementary to The Development. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition with an exterior appearance up to the general standards of The Development, the Association may perform any work necessary and charge the Owner thereof for such cost which shall be immediately due, and shall be secured by the Association's lien on the Owner's property in like manner to liens created for Assessments hereunder. Each Owner, by his

acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

- 11.4 **Damage to or Abuse of Common Area or Areas to be Maintained by the Association Under Section 11.1 hereof.** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, or invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations and some maintenance or repairs are required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien in like manner to the lien under Assessments may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Association.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items, including, but not limited to, access to any easements reserved, granted or created by any Development subdivision plat or of any portion of the Real Estate for such purposes including the easement for a possible stub street at the west property line of the Real Estate.

- 11.5 **Maintenance Of Private and Common Utilities and the Private Streets and Gating Systems.** Maintenance of any private and common utilities, the private streets in Diamond Ridge, snow removal in Diamond Ridge beyond the entry way gates/columns into Diamond Ridge and the entry way gates into Diamond Ridge shall be provided by the Association. The cost of this maintenance and snow removal, however, shall be born entirely by the Owners of Lots in Diamond Ridge.

Maintenance of any private and common utilities, the private streets in Emerald Ridge, if any, snow removal in Emerald Ridge beyond the entry way gates/columns into Emerald Ridge and the entry way gates into Emerald Ridge shall be provided by the Association. The cost of this maintenance and snow removal, however, shall be born entirely by the Owners of Lots in Emerald Ridge.

The cost of maintaining the remainder of the Common Areas, including the entry way and all of the Five Points Road frontage including, but not limited to any fountains, signs, lighting, plants, trees, waterfalls, ponds and any fountains therein will be shared equally by each Lot Owner in the Development.

The Assessments against Diamond Ridge Lots will consequently be larger than Emerald Ridge Assessments.

## 12. ASSESSMENTS

- 12.1. **Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- 12.2. **Proposed Annual Budgets.** Annually, on or before the date of the annual or special meeting of the Association at which the budgets are to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budgets for the next ensuing fiscal year for both Diamond Ridge and Emerald Ridge. These proposed budgets shall estimate the total amount of the Common Expenses for such next ensuing fiscal year for both diamond Ridge and Emerald Ridge and shall furnish a copy of such proposed budgets to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budgets shall be submitted to the Owners at the annual or special meeting of the Association for adoption. Any expenses for maintaining private streets and utilities shall be approved only by the Owners of the section involved. All other expenses shall be approved by the Owners of all Lots. The approved budgets shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budgets may be approved in whole or in part or may be amended in whole or in part by a majority vote of the eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until the proposed annual budgets or the proposed annual budgets as amended are approved and adopted. The annual budgets, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budgets and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of replacement reserve fund for capital expenditures and replacement and repair of private streets and utilities and the Common Areas, which replacement reserve funds shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve funds for capital expenditures and replacement repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks: or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare proposed annual budgets and to furnish copies thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Association at which the budgets are to be acted upon, there are no annual budgets approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budgets or, at the option of the Board,

based upon one hundred ten percent (110 %) of such last approved budgets, as a temporary budget.

- 12.3. **Regular Assessments.** The annual budgets as adopted by the Owners shall be based on the estimated cash requirement for the fiscal year covered thereby as set forth in said budgets and contain a proposed assessment against each Lot. Except as otherwise provided herein, the Common Expenses shall be assessed equally against each lot and immediately following the adoption of the annual budgets, each Owner shall be given notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budgets by the Owners, to reflect the assessment against each Lot based upon such annual budgets as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budgets, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full or proratably in quarterly installments payable in advance based on the date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance other than in quarterly installments commencing on the first day of the first month of each fiscal year. Payment of the Regular Assessment, whether in one payment or in any other manner, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

- (A) if the Regular Assessment based upon the final annual budgets adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (B) if the Regular Assessment based upon the temporary budgets exceeds the Regular Assessment based upon the final annual budgets adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budgets finally adopted by the Owners.

The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budgets and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfer his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 12.2 hereof prior to the final determination and adoption of the annual budgets and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budgets and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

The initial Regular Assessment (not including the start up fund provided by paragraph 12.7 hereof) for Lots in each section is as follows:

Emerald Ridge at The Pointe - \$450.00 per Lot annually.  
Diamond Ridge at The Pointe - \$600.00 per Lot annually.

This assessment is payable in advance as of the date the deed to a Lot is transferred from the Developer to the Owner as an annual assessment based on a calendar year and is consequently proratable based on the unexpired days left in the calendar year measured from the date of said deed.

(C) NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONCERNING DEVELOPER NOT BEING OBLIGATED FOR REGULAR ASSESSMENT, THE DEVELOPER AFTER THE APPLICABLE DATE WILL CONTRIBUTE TWENTY FIVE PERCENT (25%) OF THE REGULAR ASSESSMENT FOR UNIMPROVED LOTS OR FOR IMPROVED LOTS NOT YET READY FOR OCCUPANCY IN DEVELOPER'S NAME, BUT ONLY IF THE APPLICABLE DATE IS NOT EARLIER THAN WHEN DEVELOPER HAS CONVEYED EIGHTY PERCENT (80%) OF THE LOTS ON EXHIBIT B TO OTHERS OR TEN (10) YEARS AFTER THE DATE THIS DECLARATION HAS BEEN RECORDED, WHICHEVER FIRST OCCURS.

12.4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the

approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, but not on Lots owned by Developer, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration. **THE DEVELOPER SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DEVELOPER SPECIFICALLY AGREES OTHERWISE IN WRITING.**

**12.5. Failure of Owner to Pay Assessments.**

- (A) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Maintenance Expense Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and special assessments should constitute a lien against the Lots and Dwelling Units thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mechanic's lien on real property and enforced in like manner as mechanic liens. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by Bank One or its successors (or if said Bank is no longer in existence, then such rate

charged by another national bank in Marion County, Indiana selected by the Board) plus 4% but in no event more than the maximum rate allowable under applicable usury laws.

(B) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

(C) In addition to the remedies above stated for failure to pay assessments, the Association may disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessment are delinquent in addition to charging a late fee of \$25.00 per month of delinquency to among other things, cover the administrative expense of addressing the delinquency and also deny such Member the use of the Common Areas for a period not exceeding 60 days for each separate non-payment.

12.5. **Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budgets and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Developer by each Owner pursuant to Section 21.2 hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budgets and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by Developer with respect to any Lot or other portion of the Real Estate owned by Developer while the same is owned by Developer, nor shall any such Assessments or Charges become a lien on any such Lot or other portion of the Real Estate owned by Developer, except as specifically detailed in subsection 3(c) herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Developer to another Person, and a prorated portion of the Regular Assessment for the balance of the

fiscal year of the Association against each Lot so conveyed by Developer shall be paid by each purchaser upon such conveyance.

12.6 **Initial Working Capital and Start-Up fund.** Upon the closing of the initial conveyance of each Lot by Developer to another Person, the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Regular Assessment against such Lot, which payment shall be nonrefundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Developer for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

### 13. **MORTGAGES**

- 13.1. **Notice to Association.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record or in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon written request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

- 13.2. **Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth



in such statement except, as such assessments may be adjusted upon adoption of the final annual budgets, as referred to in Section 12.3 hereof.

## 14. INSURANCE

### Preface

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION (INSURANCE), THE ASSOCIATION WILL SEEK TO OBTAIN THE COVERAGES INDICATED SUBJECT HOWEVER TO THE LIMITATION OF WHAT'S AVAILABLE FROM INSURANCE CARRIERS FOR THE DEVELOPMENT WITH CONSIDERATION AS TO EXCEPTIONS AND EXCLUSIONS. OF COVERAGE, AND DEDUCTABLES TO MAINTAIN CONTROL OF THIS ITEM OF COMMON EXPENSE.

THE ASSOCIATION WELCOMES THE OWNERS' INPUT REGARDING THE BEST COVERAGE FOR THE BEST PRICE AND WILL SUPPLY OWNERS WITH A SUMMARY FROM THE ASSOCIATION'S INSURANCE PROFESSIONAL WHICH WE URGE OWNERS TO SHARE AND CHALLENGE THEIR OWN INSURANCE PROFESSIONAL FOR RECOMMENDATIONS AS TO THEIR REQUIRED INSURANCE AND ANY ADVISABLE ADDITIONAL COVERAGE (GAP OR OTHERWISE) FOR DIRECT PURCHASE BY OWNERS.

- 14.1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not

less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty on the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

14.2. **Public Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Association, the Board of Directors, Officers, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Developer and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

14.3. **Other Insurance.** The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

14.4. **General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the Members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

14.5 **Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

## 15. **CASUALTY AND RESTORATION**

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of these areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing these areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas and/or maintenance expense areas (if any) to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

## 16. AMENDMENT OF DECLARATION.

16.1. **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (A) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (B) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (C) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.
- (D) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70% in the aggregate of the votes of all Owners). In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (E) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Section 14 of this Declaration

with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Section 15 of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the ACC and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the Declaration.

(F) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

16.2. **Amendments by Developer Only.** Notwithstanding the foregoing or anything else contained herein, the Developer shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if Developer records the modification in the Office of the Recorder of Marion County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future Perform) function similar to those performed by such agencies or entities, to subject additional property to these restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any Owner under any covenant, condition, term or provision without such Owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Developer to vote in favor of, make, or consent to any amendments described in this Section 2 or behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this Section 2 shall

terminate at such time as the Developer no longer holds or controls title to any part or portion of the Real Estate.

17. **ACCEPTANCE and RATIFICATION**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the ACC, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended, or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

18. **NEGLIGENCE**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

19. **BENEFIT AND ENFORCEMENT**

- 19.1 **Covenants Appurtenant to Land.** These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then Owners of the Lots in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that

an instrument to that effect signed by the Lot Owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

- 19.2 **Prosecution of Violations.** It shall be lawful for the Association, the ACC (as to matters for which it has responsibility) or any other person owning any real property situated in this subdivision to prosecute any proceedings at law or in equity against the person or persons violating, or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the Lot Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then Owners of the Lots in this subdivision.

The Association may as respects an Owner who violates these restrictions and/or Rules and Regulations, after written notice to the Owner detailing the nature of the violation with a time period established by the Association to cure or conform, disqualify the voting rights and right to hold office while the violation continues and may further in the Board's sole discretion, impose a fine, in whole or in part, with each day after the cure period being a separate violation at a chargeable rate of up to one hundred dollars (\$100.00) per violation per day. This fine, if not paid when required, will be processed in the same manner as assessments.

## 20. **ASSOCIATION; MEMBERSHIP; VOTING; FUNCTIONS**

- 20.1 **Membership in Association.** Developer and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association.

- 20.2 **Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

- (A) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine and as amplified in the By Laws if such determination is unavailable, but in no event shall more than one (1) vote be cast with respect to any such Lot. Otherwise, in the absence of a determination of multiple Owners, the vote shall be equally split between the multiple Owners. Attendance at properly called Association meetings by one Member of a jointly titled Lot shall vest in such sole attending Member the entire one (1) vote.
- (B) Class B. Class B Members shall be Developer and all successors and assigns of Developer designated by Developer as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner on the recorded subdivision plat of the Real Estate (which is one and the same as the Lot configuration on the conceptual plan [Exhibit C]) on all matters requiring a vote of the Members of the Association. THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE FIRST TO OCCUR OF:
- (i) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION, OR
- (ii) THIRTY (30) DAYS AFTER THE DATE WHEN NINETY PERCENT (90%) OF THE LOTS HAVE BEEN CONVEYED BY DEED FROM DEVELOPER TO BUILDERS OR OTHER LOT PURCHASERS.
- (iii) TEN (10) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

THE DATE APPLICABLE TO THE ABOVE IS HEREINAFTER REFERRED TO AS THE APPLICABLE DATE.

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B Member shall be entitled to one, (1) Class A membership for each Lot owned.

- 20.3. Functions. The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration and operation of The Development, including the following:



- (A) a storm drainage system for the Real Estate, which includes a Retention Pond/Detention Area, inlet pipes, open ditches, swales, pipes and other structures and drainage courses; and
- (B) the Common Areas and/or designated easements of The Development identification signage and landscaping at the single entranceway off of and to Five Points Rd and water and electric service to accommodate same;

and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

## 21. **BOARD OF DIRECTORS**

21.1 **Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a Member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by Developer as provided in Section 21.2.

21.2 **Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: James K. Wheeler, Margaret Litz and Johnathan Eaton (herein referred to as the "Initial Board"), who has been or shall be appointed by Developer. Notwithstanding anything to the contrary contained in, or any other provision. of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the Members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a Member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Developer as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Developer determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Developer as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original Member thereof or as a Member thereof appointed by Developer to fill a vacancy, shall be deemed a Special Member of the Association and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other

purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

- 21.3 **Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

21.4 **Term of Office, Vacancy and Number of Directors After the Applicable Date.**

- (A) **Term.** Subject to the provisions of Section 21.2, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the Members occurring on or after the Applicable Date provided herein. After the Applicable Date, each Member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.
- (B) **Number of Directors After Applicable Date.** The number of Directors to serve on the Board after the Applicable Date shall be five (5) with representation thereon assured to each of the separately named sections of The Pointe as follows:

Diamond Ridge at The Pointe – 2 Directors  
Emerald Ridge at The Pointe – 2 Directors.  
And 1 Director elected at large by all Lot Owners

The voting for Directors from each of these separately named sections will solely be determined by the Owners from within the separately named section.

- (C) **Vacancies.** Subject to the provisions of Section 21.2 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with Section 21.5. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

21.5 **Removal of Directors.** A Director or Directors, except the Members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.

- 21.6 **Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:
- (A) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);
  - (B) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
  - (C) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
  - (D) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budgets for the current year;
  - (E) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours by reasonable pre-arrangement;
  - (F) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
  - (G) protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
  - (H) paying any other necessary expenses and costs in connection with the Common Areas; and

- (I) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws or the Act.
- 21.7 **Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (A) to employ a Managing Agent to assist the Board in performing its duties;
  - (B) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
  - (C) to employ legal counsel, architects, Contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
  - (D) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;
  - (E) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
  - (F) to open and maintain a bank account or accounts in the name of the Association;
  - (G) to promulgate, adopt, revise, amend and alter from time to time such additional Rules and Regulations with respect to use, occupancy, operating and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) including but not limited to charging uniform fees for the use of the Common Areas and to set and charge fees for late payment of assessments and fines for violations of Restrictions and Covenants and Rules and Regulations of the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners;
  - (H) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, and Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and services, provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded;

- (I) shall have the right to convey title of Common Area to Lot Owners to correct any overlaps or encroachments;
  - (J) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.
- 21.8 **Limitation on Board Action.** After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00 per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:
- (A) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
  - (B) proposed contracts and proposed expenditures expressly set forth in the proposed annual budgets as approved by the Owners at the annual meeting; and
  - (C) expenditures necessary to deal with emergency situations in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- 21.9 **Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- 21.10 **Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.
- 21.11 **Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the

reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof, nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

- 21.12 **Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

21.13 **Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. Developer may, at its option, engage a Managing Agent with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation for its services.

22. **RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.** Whenever two or more contiguous Lots in The Development shall be owned by the same person, and such owner shall desire to use two or more of said Lots as a site for a single-dwelling house, he shall apply in writing to the ACC for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single-dwelling house.

23. **RULES GOVERNING USE OF LAKES ON THE DEVELOPMENT.**

- 23.1 **Rights To Use Lakes.** Subject to the easement rights with respect to the Lakes described in the recorded plats applicable to The Development, all Owners of Lots

surrounding a Lake together with guests in their presence, shall have the rights to use and enjoyment of such Lake provided they access such Lake only via common areas and not through Lots owned by others and provided further that they not interfere with the drainage system of The Development and comply with the limitations on the use thereof and Rules and Regulations adopted relative thereto.

- 23.2 **Limitations on Use of Lakes.** No person shall do or permit to be done any action or activity which could result in pollution of the Lakes, diversion of water, elevation of Lake levels, earth disturbance resulting in silting or any conduct which could result in an adverse affect upon water quality, drainage of the subdivision or proper Lake management.

The Lakes are and will be an integral part of the storm water drainage system serving The Development and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of any of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system.

The Lakes shall be kept free and clean of rubbish, debris and other unsightly materials. No structure of any kind shall be placed in the Lakes or on the Lake property without the prior written consent of the ACC , including but not limited to docks, wharves, etc..

No boating, swimming, diving, skiing ice skating or robot controlled vehicles or devices shall be permitted in or on said Lakes, except as permitted by the board of Directors under written and promulgated Rules and Regulations. Fishing from the Lakes shoreline or from approved docks and wharves is permissible within limits as stated in such Rules and Regulations, and subject to compliance with all applicable fishing and game laws, ordinances, Rules and Regulations.

No sewage, garbage, refuse or other solid, liquid, gaseous or other materials or items (other than normal storm and surface water drainage) shall be put into said Lakes, except the Board of Directors may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same.

## 24. **MISCELLANEOUS**

- 24.1 **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

- 24.2 **Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.
- 24.3 **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law.
- 24.4 **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.
- 24.5 **Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.
- 24.6 **Delegation of Use of the Common Areas.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Areas to members of his family, his tenants or contract purchasers who reside on any Lot
- 24.7 **The Plat.** The Final Plat of The Development,, has been recorded as Instrument # \_\_\_\_\_ in the Office of the Recorder of Marion County, Indiana.

IN TESTIMONY WHEREOF, witness the signature of the Developer this 29<sup>th</sup> day of June, 2006.



WEL II DEVELOPMENT, LLC.

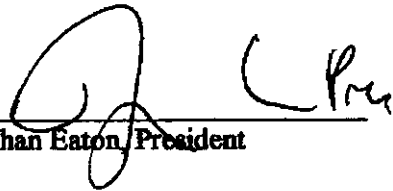
By: \_\_\_\_\_

Johnathan Eaton, Member

Johnathan Eaton

J & R Eaton Homes, Inc., owner of Lot # 37  
by Instrument No. 2005-\_\_\_\_\_.



By:   
Johnathan Eaton, President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public, in and for said County and State, personally appeared JAMES K. WHEELER, as Member of WEL II Development LLC who, having first been duly sworn, stated that he has read the foregoing and that the facts and representations contained therein are true.

WITNESS my hand and Notarial Seal this 29<sup>th</sup> day of June, 2006.

  
Notary Public

Anna Bayless  
Printed

Johnson  
County of Residence



My Commission Expires:

1/3/2010

STATE OF INDIANA        )  
                                  ) SS  
COUNTY OF MARION     )

Before me, a Notary Public, in and for said County and State, personally appeared JOHNATHAN EATON, President of J & R Eaton Homes, Inc., who, having first been duly sworn, stated that he has read the foregoing and that the facts and representations contained therein are true and agrees that the real estate described as lot No. 37 in the recorded plat of The Development shall also be bound by the above stated Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this 29<sup>th</sup> day of June, 2006.

Anna Bayless  
Notary Public

Anna Bayless  
Printed

Johnson  
County of Residence

My Commission Expires:

1/3/2010

*Prepared By Gibson Surveying Group, Inc*

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law."

  
MIKE GIBSON, PRES.

DECLARATION OF COVENANTS & RESTRICTIONSforTHE POINTE(5-28-06).wpd

**FILED**  
JUL 12 2006  
FRANKLIN TOWNSHIP  
ASSESSOR