



**CROSS-REFERENCE:** The Secondary Plat of Logan's Pointe, recorded September 29, 2010, as Instrument No. 2010-048366 in the Office of the Recorder of Hamilton County, Indiana; as corrected by that certain Certificate of Correction recorded January 11, 2011, as Instrument No. 2011-003810 in the Office of the Recorder of Hamilton County, Indiana.

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
LOGAN'S POINTE  
OF NOBLESVILLE**

*THIS DECLARATION*, made on the 14<sup>th</sup> day of December, 2010, by **BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership**, ("Declarant"),

**WITNESSETH:**

*WHEREAS*, Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Real Estate") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

*WHEREAS*, the real estate more commonly described in what is attached hereto and incorporated herein by reference as Exhibit "B" shall hereafter be referred to as the "Additional Real Estate";

*WHEREAS*, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

*WHEREAS*, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at anytime subject to this Declaration.

*NOW, THEREFORE*, the Declarant hereby declares that all of the Lots (as defined in Article II below) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its respective successors entitled to the Property or any part or parts thereof.

As of the date of execution hereof, the Property consists solely of the Real Estate. The Owner of any Lots 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 Declarant or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy

such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns covenants and agrees and consents to and with Declarant, the Association, and the Owners of each of the Lots hereby affected to keep, observe, and comply with the terms and conditions hereof.

Declarant shall have, and hereby reserves the right, at any time, and from time to time, at any time prior to the expiration of the Development Period, to add to the Property and subject to this declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this declaration and all rights, obligations, and privileges herein, when Declarant places of record in of the County in which the Property is located, an instrument so declaring the same to be part of the Property, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments applicable to the Additional Real Estate and/or the Dwelling Units constructed thereon as may be necessary to reflect the different character, if any, of the added Dwelling Units or Additional Real Estate.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or to any portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

## ARTICLE I

### *Name*

The subdivision of the Property created by this Declaration shall be known and designated as Logan's Pointe (hereafter "Subdivision").

## ARTICLE II

### *Definitions*

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of state of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the *LOGAN'S POINTE HOMEOWNERS ASSOCIATION, INC.*, a non-profit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 2.5 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", "C.A.", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Declarant" means the *BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership*, and its successors and assigns.

Section 2.8 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. If the Development Period has lapsed, the Development Period shall recommence at such time as the Declarant subjects any part (or all) of the Additional Real Estate to this Declaration as set forth herein.

Section 2.9 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.10 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.11 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed one (1) single detached Dwelling Unit. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.12 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant. For purposes of the calculation of any approval or consent requiring a percentage of Owners of Lots herein, including, but not

limited to, the percentage of Owners required to approve any amendment under Section 10.4, an Owner shall (i) include Declarant; and (ii) be entitled to one (1) vote for each Lot owned at the time of the calculation (i.e., if there are one hundred (100) Lots and Declarant owns seventy-five (75) Lots then Declarant's approval of any matter would be counted as seventy-five percent (75%) of the Owners of Lots for purposes of such calculation).

Section 2.13 "Plat" means the subdivision plats of the Property which are recorded with the Recorder of the County in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.

### ARTICLE III

#### *Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- (b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) if any assessment remains unpaid for more than six (6) months, and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;
- (d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;
- (e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;
- (f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;
- (g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association; and
- (h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant to erect any signs (i) advertising the sale of the Property or any Lot and/or (ii) identifying the Subdivision;

(j) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement. The following rights and easements reserved in this Section 3.4 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 3.4 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself, and unto any public or private utility, a general easement ("General Drainage, Utility, and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This General Drainage, Utility, and Sewer Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder the County in which the Property is located.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents of the Subdivision.

Section 3.7 Designated Drainage, Utilities, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, and detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements except by Declarant and its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected within the area of any such easements located adjacent to any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant,

the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.11 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.12 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

#### ARTICLE IV

##### *Association Membership, Voting Rights, Board of Directors and Professional Management*

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; provided, however, that if the Class B Membership has previously lapsed, the Class B Membership shall recommence in the event that the Declarant subsequently subjects any or all of the Additional Real Estate to this Declaration and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to or greater than the total number of votes that would be outstanding in the Class B Membership; or



- (ii) The date on which the Class B Member agrees in writing to the cessation and conversion of the Class B membership.

Section 4.3 Board of Directors. The Board of Directors of the Association shall be appointed and/or elected as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. The Association may, in its sole and subjective discretion, engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 4.5 Fulfillment of Commitments. Notwithstanding the cessation of the Class B membership and the turnover of the Association, and notwithstanding the conveyance of any Common Area by the Declarant to the Association, the Declarant reserves the right to enter upon any Lots and/or Common Areas for the purpose of complying with any written or unwritten commitments extended to any municipality or zoning jurisdiction in connection with any zoning approvals, plat approvals, variance approvals, special use or exception approvals, and/or any other approvals granted by such municipality or zoning jurisdiction.

## ARTICLE V

### *Covenant for Maintenance Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses);

(b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration; and

(c) One Time Assessment for purposes specified below.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the

Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be \$500.00 per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership. In addition, upon the employment and engagement by the Association of a professional manager or management company to assist the Board of Directors in the management and administration of the Association, there shall immediately and automatically, without notice or vote of membership, be added to the regular annual assessment the cost of such professional management.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 One-time Assessment. Upon the closing of the initial conveyance of each Lot by Declarant, the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of five hundred Dollars (\$500.00), which payment shall be non-refundable 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 Declarant for advances made to pay, expenses of the Association for its early period of operation of the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board of Directors.

Section 5.6 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the total number of votes entitled to be cast (Class A and Class B votes combined) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent

meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.7 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots; provided, however, that the foregoing notwithstanding, (i) with respect to any vacant or unimproved Lots, no assessments shall be due or accrue, and (ii) with respect to any Lots held by Builder or Declarant, no assessments shall be due until such time as a Dwelling Unit is fully constructed on such Lot and is actually sold to a third party consumer.

Section 5.8 Date of Commencement of Yearly Assessments; Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.9 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.10 Subordination of the Lien to Mortgages; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

## ARTICLE VI

### *Use, Restrictions, and Architectural Control*

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish larger than 18 inches, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Control Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefore as above provided. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Every Owner, by the purchase of a Lot, shall be conclusively presumed to have consented to the exercise of discretion by the Declarant, the Board of Directors, and/or the Architectural Control Committee. In any judicial proceeding challenging a determination by the Declarant, Board of Directors, and/or Architectural Control Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Declarant, Board of Directors, and/or Architectural Control Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Declarant, Board of Directors, and/or Architectural Control Committee, could only conclude that such determination constituted an abuse of discretion.

The Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee, may in its discretion inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations. All improvements must be constructed as approved and, therefore, must be constructed per the approved plans and in the approved location. If construction of an improvement is not completed within thirty (30) days after approval, then the Declarant, during the Development Period, and thereafter the Board of Directors or the Architectural Control Committee may, in its discretion, withdraw and revoke the approval.

Under no circumstances shall the Declarant, the Board of Directors, and/or the Architectural Control Committee be liable in any way for costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it. Under no circumstances shall the

Declarant, the Board of Directors, and/or the Architectural Control Committee be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Declarant, the Board of Directors, and/or the Architectural Control Committee make no comment, representation or warranty as (i) to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used and/or (ii) the compliance of any intended improvements with applicable laws, statutes, zoning ordinances, and/or municipal regulations. All parties should seek professional advice, engineering, and inspections on each lot prior to proposing construction.

Section 6.3 Leasing. Any Lot may be leased by its Owner.

Section 6.4 Animals. No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property.

Section 6.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Board of Directors and/or Architectural Control Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one-half (2-½) stories or thirty-five (35) feet in height.

Section 6.14 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.15 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.16 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or 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 sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.17 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.18 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.19 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed

upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Shoreline plantings have been installed around the Lake/Lake Area for the express purpose of: (1) providing an aesthetically pleasing and seasonally changing landscaped edge; (2) Providing containment of waterfowl to the water surface; (3) Buffering wave action to eliminate shoreline erosion; (4) Improving water quality by filtering surface water runoff; and (3) Reducing mosquito populations by increasing mosquito predator habitat. Mowing, spraying, trimming, or other growth inhibiting activities in or around the shoreline plantings are expressly prohibited.

Section 6.20 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.21 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.22 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Above ground swimming pools are prohibited on the Property.

Section 6.23 Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors and/or the Architectural Control Committee.

Section 6.24 Notice of Amendments to Zoning Ordinances. Notice is hereby given that certain amendments to the zoning ordinance were made in connection with the zoning of all or part of the Property as set forth in Ordinance 77-9-06, recorded on October 12, 2006, as Instrument No. 200600061517 in the Recorder's Office, Hamilton County, Indiana.

Section 6.25 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- (a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- (c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- (d) No commodity can be sold from the Lot or Dwelling Unit located thereon.
- (e) No person can be employed other than a member of the immediate family residing in the Dwelling Unit;
- (f) No manufacturer or assembly operations can be conducted; and
- (g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following activities be conducted: child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 6.26 Fences. No fencing, landscape screening, or walls may be constructed or installed until after architectural approval is obtained from the Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Control Committee. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Non-professionally installed fences may be inspected by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. In general, fences shall be located on the property line, one foot within the property line, or three feet within the property line; provided, however, that no fence shall be located any closer to the front of a residence than six feet behind the line of the face of the residence nearest the front line, not counting patios, terraces, entryways, or steps.

Fences are to be wrought iron, cedar, or vinyl. Further, all wooden fences are to be dog-eared, flattop shadow box style with 1" x 6" vertical boards, and are to remain unpainted. No fence shall be constructed until its materials, design, and location are first approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. Walls above grade must be constructed of natural stone, masonry or shadow box fencing. All approvals of landscape screening materials, design, and location shall be on an



individual basis. Fences in all other yards shall be no taller than six (6) feet in height. Fences shall be measured from the topmost point thereof to the ground adjacent to the fence; provided, however, that decorative caps or spires which extend above the highest horizontal member of a fence shall not be included in the measurement of height. No fence shall be constructed within a drainage easement so as to obstruct the flow of water therein. No fences or structures shall be constructed within any common areas for the Peripheral Yard except as depicted on the Preliminary Development Plan.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Declarant, during the Development Period, and thereafter to the Board of Directors and/or the Architectural Control Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

Section 6.27 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are to be connected to the Dwelling Unit cannot be constructed until after they are approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee.

Section 6.28 Mini Barns and Outbuildings. No mini barn, outbuilding, or other structure which is detached from a Dwelling Unit shall be constructed on any lot within Logan's Pointe.

Section 6.29 Playground/Recreational Equipment. No playground or recreational equipment shall be placed or constructed upon a Lot until after it is approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. All such playground or recreational equipment shall be constructed of wood and not metal.

## ARTICLE VII

### *Maintenance, Repairs and Replacements*

Section 7.1 By Owners. Except as specifically provided in this Declaration or in any Supplementary Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. Except as may be specified in any Supplementary Declaration, all fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of any entry signs, permanent subdivision identification sign, landscaping, mounding, fences, trails, pedestrian paths, multi-purpose fields, swimming pools, wading pools, bath houses, playground equipment, and/or any other improvements installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

(iii) The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and,

(iv) The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

## ARTICLE VIII

### *Insurance*

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Associations, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the

management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. 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 the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. Except as provided in any Supplementary Declaration, the same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds 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, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

## ARTICLE IX

### *Mortgages*

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge maybe made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

## ARTICLE X

## *General Provisions*

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 Assignment. Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant with the Recorder of the County in which the Property is located. After such assignment is recorded with the Recorder of the County in which the Property is located, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

Section 10.4 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the County in which the Property is located, approved and signed by at least seventy-five percent (75%) of the Owners of Lots. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited in the paragraph immediately below, the Declarant reserves the right and power to amend this Declaration without the approval of the Owners: (i) to correct or clarify the legal description of the Property or the Additional Real Estate; (ii) to correct clerical or typographical errors; (iii) to make nominal changes in the Declaration, including without limitation, to amend ambiguous terms and to provide further explanatory language; (iv) to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency); or (v) to the extent necessary to enable the Declarant to meet any other reasonable need or requirement, including those associated with the completion of the development of the Property and to facilitate the making or marketing of first mortgages upon any lots. Notwithstanding anything herein to the contrary, the Declarant may unilaterally record any Supplementary Declaration. Any amendment must be recorded.

Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements and minor conveyances for public utilities or other public

purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

(c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 10.5 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

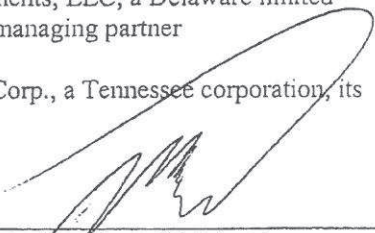
[SIGNATURE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership, has caused this Declaration to be executed as of the date first written above.

BEAZER HOMES INDIANA LLP, an Indiana limited liability partnership

By: Beazer Homes Investments, LLC, a Delaware limited liability company, its managing partner

By: Beazer Homes Corp., a Tennessee corporation, its sole member

By:   
Bruce Craig, President, Divisional - Indianapolis

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Bruce Craig, as President, Divisional – Indianapolis, of Beazer Homes Corp., the sole member of Beazer Homes Investments, LLC, the managing member of Beazer Homes Indiana LLP, an Indiana limited liability partnership, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Logan's Pointe of Nashville.

Witness my hand and Notarial Seal this 15 day of December, 2010.

My Commission Expires: 7/30/17

Notary Public Treva Bailey

Residing in Ham. Hamilton County



Treva Bailey  
County of Residence: Hamilton Printed Name Treva Bailey

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Tara H. Lord

This instrument was prepared by and, after recording, return to: Tara H. Lord, Attorney-at-Law, Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204.

## EXHIBIT A

A part of the Southwest Quarter of Section 10, Township 18 North, Range 5 East of the Second Principal Meridian, Wayne Township, Hamilton County, Indiana, being described as follows:

Commencing at the Southwest corner of the Southwest Quarter of Section 10, Township 18 North, Range 5 East; thence North 89 degrees 04 minutes 28 seconds East (assumed bearing) along the South line thereof a distance of 226.88 feet to the POINT OF BEGINNING of this description; thence North 00 degrees 10 minutes 40 seconds West parallel with the West line of said Southwest Quarter a distance of 1059.30 feet; thence North 89 degrees 05 minutes 01 seconds East 1094.18 feet to the East line said Half-Quarter Section; thence South 00 degrees 10 minutes 03 seconds East along said East line a distance of 1059.13 feet to the Southeast corner of said Half-Quarter Section; thence South 89 degrees 04 minutes 28 seconds West along the South line of said Southwest Quarter Section a distance of 1094.00 feet to the place of beginning, containing 26.602 acres more or less.



EXHIBIT B

NONE – NOT APPLICABLE

**CODE OF BY-LAWS  
OF  
LOGAN'S POINTE HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I  
DEFINITIONS**

The definitions and terms as defined and used in the Articles of Incorporation shall have the same meaning in these By-Laws and reference is specifically made to Article 9 thereof containing definition of terms.

**ARTICLE II  
MEETINGS OF MEMBERS**

**Section 2.01 Place of Meetings.** All meetings of the Members shall be held at such place in Hamilton County, Indiana as may be designated by the Board of Directors and specified in the respective notices or waivers of notice thereof.

**Section 2.02 Annual Meeting.** Prior to the expiration of the Development Period, an annual meeting of the Members shall be held between April 1 and June 30 of each year.

**Section 2.03 Special Meetings.** Special meetings of the Members may be called by the President, by a majority of the Board of Directors, or by written petition signed by not less than one-tenth (1/10) of all of the Members.

Upon a request in writing delivered to the President or the Secretary by a Person or Persons entitled to call a special meeting, it shall be the duty of the President or the Secretary to give notice to the Members of such meeting, and, if such request is refused, the Person or Persons making such request may call a meeting by giving notice in the manner hereinafter provided.

Business transacted at all special meetings shall be limited to the subjects stated in the call or waiver of notice, and matters germane thereto.

**Section 2.04 Notice of Meetings.** A written or printed notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, shall be delivered or mailed by the Secretary or by the officer or Person calling the meeting to each Member at such address as appears on the records of the Corporation at least ten (10) days before the date of the meeting or, if notice is mailed by other than first class or registered mail, sixty (60) days before the date of the meeting. Notice of any meeting may be waived in writing filed with the Secretary by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting shall constitute a waiver of notice of that meeting.

**Section 2.05 Voting Lists.** After fixing a record date for a notice of a meeting, the Secretary shall prepare a complete list of Members entitled to notice of a meeting of Members, containing the address and number of votes each Member is entitled to cast at the meeting. The Secretary shall prepare on a current basis through the time of the membership meeting a list of Members, if any, who are entitled to vote at the meeting, but are not entitled to notice of the meeting. Such lists may be inspected by any Member, for any proper purpose, at any reasonable time.

**Section 2.06 Quorum.** At any meeting of the Members fifty percent (50%) of the Members entitled to vote at such meeting, present in person or by proxy executed in writing, shall constitute a quorum for the transaction of business, except as otherwise provided by law. In the absence of a quorum, the Members present in person or by proxy, by a majority vote and without notice, may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted for which notice was originally given. The Members present at a duly organized meeting may continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Section 2.07 Voting Rights.** The voting rights of the Members shall be as prescribed in the Articles. In any election of Directors, no Member shall have the right to multiply the number of votes to which such Member may be entitled by the number of Directors to be elected. A majority of the votes cast at a meeting of the Members, duly called and at which a quorum is present, shall be sufficient to take or authorize action upon any matter that may properly come before the meeting unless more than a majority of votes cast is required by law, the Declaration, the Articles or these By-Laws.

**Section 2.08 Multiple Owner.** Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one (1) voting representative entitled to cast the vote allocated to that Lot. Those persons constituting such Owner or the partners shall determine among themselves who shall be the voting representative for such Lot. In the event agreement is not reached the vote attributable to such Lot shall not be cast.

**Section 2.09 Voting by Corporation or Trust.** Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

**Section 2.10 Proxies.** A Member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall designate his attorney-in-fact in writing, delivered to an officer of the Corporation prior to the commencement of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided in the proxy.

**Section 2.11 Action Without a Meeting.** Any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if, prior to the action, a consent in writing setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Members. Such consent shall have the same effect as a unanimous vote of the Members.

**Section 2.12 Meeting by Telephone, etc.** Any or all of the Members may participate in a meeting by or through the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting. Participation in a meeting using these means constitutes presence in person at the meeting.

### **ARTICLE III** **BOARD OF DIRECTORS**

**Section 3.01 Functions.** The business, property and affairs of the Corporation shall be managed and controlled by a Board of Directors as from time to time constituted (herein collectively called "**Board**" or "**Directors**" and individually called "**Director**").

**Section 3.02 Eligibility.** No person shall be a Director who is not a Member or a designee of Declarant.

**Section 3.03 Number.** The number of Directors comprising the Board shall be three (3), which number may from time to time be increased by resolution adopted by not less than a majority of the Board of Directors. In no event shall the number of Directors prior to the expiration of the Development Period be less than three (3) nor more than seven (7) and no reduction in the number of Directors shall have the effect of removing a Director from office prior to the expiration of his term. In the event the number of Directors is increased prior to the expiration of the Development Period, the additional Director or Directors shall be appointed by Declarant as provided in Section 5.03 of the Articles. In the event the number of Directors is increased subsequent to the expiration of the Development Period as provided herein, the election of the additional Director or Directors shall be by a vote of the Members entitled to elect such additional Director or Directors according to a procedure established by the Board by resolution.

**Section 3.04 Appointment.** Prior to the expiration of the Development Period, Directors shall be appointed by Declarant as provided in Section 5.03 of the Articles.

**Section 3.05 Nomination.** Candidates for the first Board of Directors to be elected following the expiration of the Development Period may declare their candidacy at the first annual meeting following the expiration of the Development Period. A ballot of all persons declaring their candidacy at such meeting shall be prepared and voted on at such meeting. All candidates for all future elections of the Board of Directors will be required to file a petition for candidacy, signed by not less than three (3) Members, with the Elections Committee at least three (3) weeks prior to the annual meeting. The Elections Committee shall provide all Members with a ballot containing the names of all bona fide candidates not less than ten (10) days before the annual meeting.

**Section 3.06 Election.** Subsequent to the expiration of the Development Period, Directors shall be elected at the annual meeting provided in **Article II**. The Board may, by resolution, establish such election procedures as it deems appropriate.

Voting for the Board of Directors shall be by secret written ballot. The ballot shall be prepared by the Elections Committee and shall contain the name of each person nominated for election. Those persons receiving the highest number of votes shall be elected.

**Section 3.07 Term.** Each Director, other than a Director appointed by Declarant, shall serve for a term of one (1) year or until his successor is elected and qualified or until he has resigned or been removed. Incumbent Directors shall be eligible for re-election and the number of years a person may serve as a Director is not limited. A Director appointed by Declarant, including the initial Directors identified in Section 5.02 of the Articles, shall serve until such Director dies, resigns or is removed by Declarant.

**Section 3.08 Resignation.** Any Director may resign at any time by giving written notice of such resignation to the President or the Secretary of the Corporation. Such resignation shall take effect when the notice is effective unless the notice specifies a later effective date. The acceptance of a resignation shall not be necessary to make it effective.

**Section 3.09 Removal.** Subsequent to the expiration of the Development Period, any Director may be removed, with or without cause, in accordance with the provisions of the Act. Prior to the expiration of the Development Period, any Director may be removed by Declarant for any reason.

**Section 3.10 Vacancies.** Any vacancy occurring on the Board of Directors caused by death, resignation, removal or otherwise, shall (a) prior to the expiration of the Development Period be filled by Declarant and (b) subsequent to the expiration of the Development Period be filled until the next annual meeting through a vote of a majority of the remaining members of the Board. If, subsequent to the expiration of the Development Period, a majority of the remaining members of the Board cannot agree on a Person to fill any such vacancy, a special meeting of the Members shall be called to elect a Person to fill such vacancy. A Director elected to fill a vacancy shall hold office until the expiration of the term of the Director causing the vacancy or until his successor has been elected and qualified.

**Section 3.11 Meetings.** The Board of Directors shall meet each year immediately after the annual meeting of the Members, at the place where such meeting of the Members has been held, for the purpose of organization, election of officers, and consideration of any other business which may properly be brought before the meeting. No notice shall be necessary for the holding of this annual meeting. If such meeting is not held as above provided, the election of officers may be held at any subsequent meeting of the Board specifically called in the manner provided in **Section 3.12**. The Board of Directors may provide by resolution the time and the place, either within or without the State of Indiana, for the holding of additional regular meetings of the Board without other notice than such resolution. Special meetings of the Board may be called by the President and shall be called by order thereof upon the written request of not less than two (2) Directors, which request shall set forth the business to be conducted at such meeting.

**Section 3.12 Notice of Meetings.** Notice of all meetings of the Board of Directors, except as herein otherwise provided, shall be given by mailing, telephoning, telegraphing or delivering personally the same at least two (2) days before the meeting to the usual business or residence address of the Director as shown upon the records of the Corporation. Notice of any meeting of the Board may be waived in a document filed with the Secretary by any Director if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting of the Board shall constitute a waiver of notice of that meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any meeting of the Board may adjourn from time to time to reconvene at the same place or some other place. No notice need be given of any such adjourned meeting.

**Section 3.13 Quorum.** A quorum of the Board of Directors at any annual or special meeting of the Board shall be a majority of the duly qualified members of the Board then occupying office, but in no event less than two (2) Directors, except that, subsequent to the expiration of the Development Period, in filling vacancies a majority of the remaining Directors (but not less than two (2) Directors) shall constitute a quorum. The act of a majority of the Directors present at a meeting, who constitute a quorum, shall be the act of the Board unless otherwise provided by the Act, the Declaration, any Supplemental Declaration, the Articles, or these By-Laws. In the absence of a quorum, the Directors present may, by majority vote, adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting for which notice was originally given.

**Section 3.14 Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if the action is taken by all members of the Board of Directors or such committee. The action must be evidenced by at least one (1) written consent describing the action taken signed by each member of the Board of Directors or of such committee, and included in the minutes or filed with the corporate records reflecting the action taken.

**Section 3.15 Meeting by Telephone, etc.** Any or all of the members of the Board or of any committee designated by the Board may participate in a meeting by or through the use of any means of communication by which all persons participating may simultaneously hear each other during the meeting. Participation in a meeting using these means constitutes presence in person at the meeting.

**Section 3.16 Committees.** The Board of Directors, by resolution adopted by a majority of the Board, may designate one or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board in the management of the Corporation. Other committees not having and exercising the authority of the Board in the management of the Corporation may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law. Subsequent to the expiration of the Development Period, the Board shall annually establish an Elections Committee which shall be responsible for the conduct of the election of the Board of Directors pursuant to **Section 3.05** and **Section 3.06**.

**Section 3.17 Powers.** All of the corporate powers, except as otherwise provided herein or by law, shall be vested in and shall be exercised by the Board of Directors. Said powers shall include, but not be limited to:

- (a) The power to adopt, publish, and enforce rules and regulations governing the use of the Common Area;
- (b) The power to lease or purchase for the benefit of the Members such property, equipment, materials, labor and services as may be necessary in the judgment of the Board;
- (c) The power to exercise the powers and perform the duties of the Corporation granted, imposed, authorized or permitted by the Declaration, the exercise of which is not reserved or committed to the membership by the Articles or By-Laws;
- (d) The power to make and collect Assessments and charges, establish and collect membership dues, and levy and collect fines for the violation of rules and regulations governing the use of the Common Area;
- (e) The power to employ legal counsel, architects, contractors, accountants, consultants, managers, independent contractors and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the maintenance, repair, replacement, restoration, and operation of the Common Area and the business and affairs of the Corporation.

**Section 3.18 Duties.** It shall be the duty of the Board of Directors to:

- (a) cause the Common Area to be maintained in good, clean, attractive and sanitary condition, order and repair;
- (b) adopt and publish rules and regulations, including fees, if any, governing the use of the Common Area, and the personal conduct of the Members, their tenants and guests;
- (c) cause to be kept a complete record of all its corporate affairs, making such records available for inspection by any Member or his authorized agent, and present an annual report thereof to the Members;

- (d) supervise all officers, agents and employees of the Corporation and see that their duties are properly performed;
- (e) issue upon demand by any Member a certificate setting forth whether or not any Assessment has been paid and giving evidence thereof for which a reasonable charge may be made;
- (f) designate depositories for the funds of the Corporation, designate those officers, agents and/or employees who shall have authority to withdraw funds from such accounts on behalf of the Corporation, and cause such persons to be bonded, as it may deem appropriate;
- (g) approve the annual budget;
- (h) fix annual General Assessments at amounts sufficient to meet the obligations imposed by the Declaration and all Supplemental Declarations;
- (i) annually set the date(s) Assessments are due and decide what, if any, interest rate is to be applied to Assessments which remain unpaid thirty (30) days after they become due;
- (j) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date of the Assessment or first installment thereof;
- (k) cause the lien against any property for which Assessments are not paid within thirty (30) days after due date to be foreclosed or cause an action at law to be brought against the Owner personally obligated to pay the same;
- (l) procure and maintain adequate insurance to protect the Corporation, its employees and its personal and real properties;
- (m) enter into mortgage agreements and obtain capital debt financing subject to the provisions of the Declaration;
- (n) appoint such committees as are prescribed in **Section 3.16**;
- (o) faithfully observe and perform each duty imposed on the Corporation by the terms of the Declaration and exercise such discretion granted to the Board thereunder in the best interests of the Members; and
- (p) exercise their powers and duties in good faith, with a view to the interests of the Corporation.

**Section 3.19 Non-Liability of Directors.** No Director shall be liable to any Person for any error or mistake of judgment exercised in carrying out his duties and responsibilities as a Director, unless (a) the Director has breached or failed to perform the duties of his office in compliance with the Act and (b) the breach or failure to perform constitutes willful misconduct or recklessness. The Members shall indemnify and hold harmless each of the Directors against any and all liability to any Person arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or is contrary to the provisions of the Act, the Articles or these By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Members and as their agent. The liability of any Member arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the

total liability or obligation thereunder as is equal to a fraction, the numerator of which is the number of Lots owned by him and the denominator of which is the total number of Lots in the Tract.

**Section 3.20 Indemnity of Officers and Directors.** To the extent not inconsistent with the laws of the State of Indiana, every Person (and the heirs, assigns and legal representatives of such Person) who is or was a Director or an officer of the Corporation shall be indemnified by the Corporation as provided in the Act. To the extent the assets of the Corporation are insufficient to satisfy its indemnification obligations hereunder, the Board of Directors may levy a Special Assessment in the manner specified in the Declaration to obtain such funds as may be required to satisfy such obligation.

**Section 3.21 Transactions Involving Affiliates.** No contract or other transaction between the Corporation and one or more of its Directors, or between the Corporation and any Person (including the Declarant) in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or otherwise interested, shall be void or voidable because such Director or Directors are present at the meeting of the Board or any committee thereof which authorizes, approves or ratifies the contract or transaction, or because his or their votes are counted for such purpose if:

- (a) the fact of the relationship or interest is disclosed or known to the Board or committee, and the Board or committee authorizes, approves, or ratifies such contract or transaction by a vote or consent sufficient for the purpose without counting the vote or consents of the interested Director(s); or
- (b) the fact of the relationship or interest is disclosed or known to the Members, and they authorize, approve or ratify the contract or transaction by a vote or written consent; or
- (c) the contract or transaction is fair and reasonable to the Corporation.

Affiliated or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board or committee thereof which authorizes, approves or ratifies any contract or transaction.

**Section 3.22 Insurance.** The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all of the structures located in the Common Area, whether owned or leased by the Corporation, against loss or damage by fire or other hazards commonly insured against in similar properties in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insured hazard, and shall also obtain a broad form public liability policy covering all damage or injury caused by the negligence of the Corporation or any of its agents. All such insurance policies shall contain a provision that all Members shall, in appropriate circumstances, be able to recover damages as claimants under such insurance. Premiums for all such insurance shall be included in the Assessments.

**Section 3.23 Insured Loss, Damage or Destruction.** In the event of loss, damage or destruction by fire or other peril, the Board of Directors shall (unless otherwise agreed by two-thirds (2/3) of the Directors then serving), upon receipt of the insurance proceeds, contract to rebuild or repair damaged or destroyed portions of the insured property to its condition before such damage. All such insurance proceeds (if the amount of such proceeds exceeds \$5,000.00) shall be deposited in a bank or other financial institution, the accounts of which are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signatures of at least one-third (1/3) of the members of the Board of Directors, or by their duly authorized agent. In such event, the Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed structure or structures. In the event that the



insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as previously existed, the Board of Directors may levy a Special Assessment in the manner specified in the Declaration to make up any deficiency. Excess insurance proceeds, if any, shall become a part of the Corporation's reserve for replacements.

**Section 3.24 Uninsured Loss, Damage or Destruction.** In the event of loss, damage or destruction to the Property caused by perils not covered by standard insurance described in Section 2.04(d) of the Articles, the Board of Directors may levy a Special Assessment in the manner specified in the Declaration to make up any deficiency created by such uninsured loss.

**Section 3.25 Compensation.** No Director shall receive any compensation for any service he may render to the Corporation. He may, however, be reimbursed for his actual expenses incurred in the performance of his duties.

#### **ARTICLE IV** **THE OFFICERS OF THE CORPORATION**

**Section 4.01 Officers and Agents.** The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may, by resolution, designate from time to time. Any two or more offices may be held by the same person. The Board of Directors may, by resolution, create, appoint and define the duties and fix the compensation of such officers and/or agents as, in its discretion, is deemed necessary, convenient or expedient for carrying out the purposes for which the Corporation is formed; but such officers and agents shall be compensated only for actual services performed on behalf of the Corporation.

**Section 4.02 Election, Term of Office and Qualifications.** The officers shall be chosen annually by the Board of Directors. Each officer shall hold office (unless he resigns, is removed or dies) until the next annual meeting of the Board of Directors or until his successor is chosen and qualified.

**Section 4.03 Vacancies.** In the event an office of the Corporation becomes vacant by death, resignation, retirement, disqualification or any other cause, the Board of Directors shall elect a person to fill such vacancy, and the person so elected shall hold office and serve (unless he resigns, is removed or dies) until the next annual meeting of the Board or until the election and qualification of his successor.

**Section 4.04 President.** The President, who shall be chosen from among the membership of the Board of Directors, shall preside at all meetings of the Board, if present; shall appoint the chairman and members of all standing and temporary committees, subject to the review of the Board of Directors; shall be the executive officer of the Corporation; shall have and exercise general charge and supervision of the affairs of the Corporation; and shall do and perform such other duties as these By-Laws provide or as may be assigned to him by the Board of Directors.

**Section 4.05 Vice President.** Any Vice President may perform all duties incumbent upon the President during the absence or disability of the President and shall perform other duties as these By-Laws may require or as may be assigned to him by the President or the Board of Directors.

**Section 4.06 Secretary.** The Secretary shall have the custody and care of the corporate records and the minute book of the Corporation. He shall attend all of the meetings of the Board of Directors and the Members, and shall keep, or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings, and shall perform a like duty for all standing committees of the Board of Directors when required. He shall attend to the giving and serving of all notices of the Corporation, shall file and take care of all papers and documents belonging to the

Corporation, shall authenticate records of the Corporation, as necessary, and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors or the President.

**Section 4.07 Treasurer.** The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some federally-registered bank or other depository to be designated by the Board of Directors, and shall keep such bank account in the name of the Corporation. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors or the President.

**Section 4.08 Assistant Officers.** The Board of Directors may from time to time designate assistant officers who shall exercise and perform such powers and duties as the officers whom they are elected to assist shall specify and delegate to them, and such other powers and duties as may be prescribed by the Code of By-Laws, the Board of Directors or the President.

**Section 4.09 Removal.** Any officer of the Corporation may be removed from office, with or without cause, by the affirmative vote of two-thirds (2/3) of all the Directors at any regular or special meeting of the Board of Directors called for the purpose. Any officer whose removal is proposed shall be entitled to at least ten (10) days' notice in writing by mail of the meeting of the Board of Directors at which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Directors at such meeting.

**Section 4.10 Resignation.** Any officer or member of a committee may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the President or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective.

## **ARTICLE V** **ARCHITECTURAL REVIEW BOARD**

**Section 5.01 Composition.** The Architectural Review Board shall be comprised of three (3) members elected by the Board of Directors by a vote of a majority of the Directors then serving. A member of the Architectural Review Board may simultaneously serve as a member of the Board of Directors.

**Section 5.02 Term.** Prior to the expiration of the Development Period, the members of the Architectural Review Board shall serve until the earlier of (a) the date such member dies, resigns or is removed or (b) the expiration of the Development Period. Subsequent to the expiration of the Development Period, the members of the Architectural Review Board shall serve for a term of one (1) year. Members shall be eligible for re-election.

**Section 5.03 Removal; Vacancies.** The Board of Directors may remove a member of the Architectural Review Board at any time, with or without cause, by a vote of two-thirds (2/3) of the Directors then serving. In the event of a vacancy on the Architectural Review Board, the Board of Directors shall, by a vote of a majority of the Directors then serving, elect a successor to serve the unexpired term.

**Section 5.04 Organization.** The Architectural Review Board shall elect from among its membership a chairman, secretary and such other officers as it deems appropriate.

**Section 5.05 Quorum.** A quorum for action by the Architectural Review Board shall be a majority of its members, but in no event less than two (2) members.

**Section 5.06 Duties.** It shall be the duty of the Architectural Review Board to regulate the external design, appearance, location and maintenance of the Tract and of improvements thereon and to regulate such uses of property, all as provided in the Declaration and the Supplemental Declarations.

**Section 5.07 Procedures.** The Architectural Review Board shall formulate general guidelines, procedures and regulations and submit them for approval to the Board of Directors. Such guidelines, procedures and regulations shall be considered adopted policy of the Board of Directors unless rejected by a two-thirds (2/3) vote of the Board of Directors within thirty (30) days after the date of submission. The adopted guidelines, procedures and regulations shall be maintained by the Architectural Review Board and the Architectural Review Board shall act in accordance therewith.

## **ARTICLE VI** **LOANS TO OFFICERS AND DIRECTORS**

The Corporation shall not lend money to or guarantee the obligations of any officer or Director of the Corporation.

## **ARTICLE VII** **CORPORATE BOOKS**

The Corporation shall maintain all records required by the Act and shall permit the Members to inspect and copy such records to the extent and on the conditions specified in the Act.

## **ARTICLE VIII** **FINANCIAL AFFAIRS**

**Section 8.01 Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit or render it liable pecuniarily for any purpose or to any amount.

**Section 8.02 Checks, Etc.** All checks, drafts, notes, bonds, bills of exchange, and orders for the payment of money and other evidence of indebtedness in excess of One Thousand Dollars (\$1,000.00), shall, unless otherwise directed by the Board of Directors or required by law, be signed by any two of the following officers, who are different persons: President, a Vice President, Secretary or Treasurer. Any such obligation equal to or less than One Thousand Dollars (\$1,000.00) may be signed by any one (1) of such preceding officers. Notwithstanding the foregoing, the Board of Directors may, however, by resolution, designate officers or employees of the Corporation or any management company to execute drafts, checks and orders for the payment of money in the name of the Corporation in any amount.

**Section 8.03** **Investments.** The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors.

**Section 8.04** **Reserve for Replacements.** The Board of Directors shall establish and maintain a reserve fund for replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Property. In determining the amount, the Board shall take into consideration the expected useful life of the Property, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of the Declarant, managing agent or any consultants the Board may employ. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

**Section 8.05** **Fiscal Year.** The fiscal year of the Corporation shall commence on January 1 in each year.

**Section 8.06** **Assessment Year.** The assessment year of the Corporation shall be the same as the fiscal year established in **Section 8.05**.

**Section 8.07** **Auditing.** If requested by any Member or the holder of a first mortgage on any Lot, the books and accounts of the Corporation shall at the close of each fiscal year be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards. A copy of such report shall be distributed to each Member or mortgagee who requests a copy thereof.