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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE OVERLOOK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "Declaration") is made this 15TH day of SEPTEMBER, 2003, by Hancock Land Co., LLC, an Indiana limited liability company (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in Hancock County, Indiana, and more particularly described in "Exhibit A", attached hereto and incorporated herein by reference (the "Property"), and Developer desires to subject such property to the provisions of this Declaration and to have constructed on the property a residential planned unit development to be known as "The Overlook" (hereinafter the "Community"), and to provide a flexible and reasonable method for the administration and maintenance of such property; and

WHEREAS, in contemplation of the sale and conveyance of the residential lots situated within the platted areas of the Community, Developer desires to subject and impose upon all the platted areas within the Community mutual and beneficial restrictions, covenants, conditions and charges under a general plan or scheme of improvement for the benefit of the lots, common areas, and lands within the Community and the future owners thereof; and

NOW, THEREFORE, Developer hereby declares that all of the lots, whether platted or unplatted, and lands located within the Community are held and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the easements, restrictions, covenants, charges, liens, and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the property in the Community and which shall touch and concern and run with the title to the property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration, unless the context shall prohibit or otherwise require, shall have all the following meanings. All definitions shall be applicable to the singular and plural forms of such terms:

Section 1.1. "Architectural Standards Committee" shall mean and refer to the committee which shall be appointed by the Association's Board of Directors to approve

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exterior and structural improvements, additions, and changes within the Community as provided in Article IX hereof.

Section 1.2. "Area of Common Responsibility" shall mean and refer to the Common Areas, together with those areas and properties, if any, which by the terms of this Declaration, become the responsibility of the Association. Such areas may include, but are not limited to, the office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way adjacent to the Property.

Section 1.3. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of The Overlook Homeowners Association, Inc., as filed with the Secretary of State of the State of Indiana.

Section 1.4. "Association" shall mean and refer to The Overlook Homeowners Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated.

Section 1.5. "Base Assessment" shall mean and refer to assessments levied by the Association against each Lot in the Property to fund Common Expenses in the manner herein provided.

Section 1.6. "Board of Directors" or "Board" shall mean and refer to the board of directors of the Association.

Section 1.7. "By-Laws" shall mean and refer to the By-Laws of The Overlook Homeowners Association, Inc., attached hereto as "Exhibit B" and incorporated herein by reference, and including any amendments thereto.

Section 1.8. "Class B Control Period" shall mean and refer to the period of time during which the Class B Member is entitled to appoint the members of the Board of Directors as provided in Section 4.2(b) hereof.

Section 1.9. "Common Areas" shall mean the Open Common Areas and Restricted Common Areas as defined herein.

Ownership of any Common Areas shall be conveyed in fee simple title to the Association as soon as practicable after their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association upon the recording of a deed conveying such areas to the Association.

Section 1.10. "Common Expenses" shall mean the actual and estimated expenses incurred for maintenance of Common Areas by the Association for the general benefit of the Community, including any reasonable reserve, all as may be found to be necessary and

appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association. Common Expenses shall also include any other expenses denominated as such by these Declarations and shall include the costs of maintaining any intangible or tangible property (such as sewer lines, lighting and landscaping) which may not be located in a Common Area but the maintenance of which is in the best interest of the Community as determined by the Developer or the Board in its sole and absolute discretion.

Section 1.11. "Community" shall mean the property subject to these Declarations and therefore comprising the The Overlook Residential Community from time to time.

Section 1.12. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board and the New Construction Committee or the Architectural Standards Committee.

Section 1.13. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for The Overlook and all amendments thereof filed for record in the public records of Hancock County, Indiana.

Section 1.14. "Developer" shall mean and refer to Hancock Land Co., LLC, an Indiana corporation, and any successors or assigns who take title to any portion of the property described on "Exhibit A" for the purpose of development and sale, and who is designated as the Developer hereunder in a recorded instrument executed by the immediately preceding Developer.

Section 1.15. "Dwelling Unit" shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Community, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

Section 1.16. "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

Section 1.17. "Landscape Area" shall mean and refer to those areas identified as such on any recorded Plat of the Property. Landscape Areas shall also include any other type of landscape easement areas created by Developer on the recorded Plat for any portion of the Property, including, but not limited to, areas for common signage. Landscape Areas may also include areas for common signage if so designated on a Plat.

Section 1.18. "Lot" shall mean and refer to each plot of land included in the Property and identified as a lot on any recorded plat of the Property which is intended for use as a building site for one (1) Dwelling Unit.

Section 1.19. "Member" shall mean and refer to a Person holding membership in the Association as provided in Article IV below.

Section 1.20. "Mortgage" shall mean and refer to any mortgage or other security instrument by which a Lot or any structure thereon is encumbered.

Section 1.21. "Mortgagee" shall mean and refer to a beneficiary or holder of a Mortgage.

Section 1.22. "New Construction Committee" shall mean and refer to the committee which shall be appointed to approve all original construction on any portion of the Property as provided in Article IX hereof.

Section 1.23. "Open Common Areas" shall mean areas identified as such on any recorded Plat of the Property, including non-dedicated streets. Open Common Areas are owned by the Association (and not by Owners) and are usable and accessible by all Owners.

Section 1.24. "Owner" shall mean and refer to the record owner, whether one or more Persons, with fee simple title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" shall include Developer so long as Developer shall own any Lot. If a Lot is sold under a contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board the lessee (rather than the fee owner) will be considered the Owner.

Section 1.25. "Person" means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

Section 1.26. "Plat" shall mean any Plat executed by Developer (or any other owner of such property) recorded in the public records of Hancock County, Indiana, pursuant to which additional parcels of property are subjected to this Declaration as a part of the The Overlook Community.

Section 1.27. "Property" shall mean and refer to those tracts or parcels of real estate described on "Exhibit A", together with all improvements thereon.

Section 1.28. "Restricted Common Areas" shall mean any areas identified as such on any recorded Plat of the Property. Restricted Common Areas are owned by the Association (and not by Owners) and are not generally accessible to Owners. Such areas shall be accessible only by officers, employees or agents of the Association or by any Owner whose Lot is adjacent to such Restricted Common Area and is permitted access to such area by express references in the Plat or with the approval of the Board.

Section 1.29. "Special Assessment" shall mean and refer to assessments levied in accordance with Article VIII, Section 8.4 of this Declaration.

Section 1.30. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration or a Plat executed by or consented to by Developer, or by the Association pursuant to this Declaration and recorded in the public records of Hancock County, Indiana.

A Supplemental Declaration may also remove Property from the control and provisions of this Declaration.

Section 1.31. "Total Vote" shall mean the total number of Class A and Class B votes as designated to and among the Owners and the Developer at any given time as so provided in Section 4.2 of this Declaration and the By-Laws.

ARTICLE II DEVELOPMENT

Section 2.1. Development of Property. Except as otherwise set forth in Section 10.25, all Lots within the Community shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in these Declarations. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot to maintain and make improvements, repairs, and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots owned by Developer or of the Common Areas, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, (iv) installation of security and/or refuse facilities, and (v) additions or changes in the boundaries of any Common Areas or Landscape Areas.

Section 2.2. Subdivision Plat. Developer reserves the right, in its sole discretion, to record from time to time a Plat of the subdivided parcels of the Property setting forth such information as Developer may deem necessary with regard to the Community, including, without limitation, the locations and dimensions of the Lots, Common Areas, dedicated and/or non-dedicated streets, utility systems, drainage systems, landscape easements, utility easements, drainage easements, access easements, set-back line restrictions and various other restrictions and limitations.

Section 2.3. Consent of Developer. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Developer for so long as Developer owns any portion of the Property.

ARTICLE III PROPERTY RIGHTS

Section 3.1. General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Open Common Areas as established hereunder and membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot, and upon such transfer, such former owner shall simultaneously transfer and endorse to his successor-in-title any certificates or other evidences of his membership in the Association. Lots shall not be subdivided by Owners and the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the approval of the Board and of Developer so long as Developer owns any Lot. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two or more Lots into a larger parcel in order to create a dwelling site larger than one Lot, and the owner of said larger parcel shall pay an increased Base Assessment accordingly on a pro rata basis.

Section 3.2. Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Open Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

- (a) The right of the Association to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas.
- (b) The easements reserved elsewhere in this Declaration or in any Plat of all or any part of the Property, and the right of the Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Association or the grantee of such easement.

- (c) The right of the Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to Hancock County, Indiana, or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of the Total Vote cast by the Members as provided in the By-Laws, and by Developer (for so long as Developer owns any Lot).
- (d) The rights of the Association and Developer reserved elsewhere in this Declaration or as provided in any Plat of all or any part of the Property.
- (e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3. Easements for Developer. During the period that Developer owns any Lot, Developer shall have an easement for access to Common Areas for the purpose of constructing structures and other improvements in and to the Lots and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Areas) as are contemplated by this Declaration or as Developer desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Developer at that time retains ownership of a Lot, Developer shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Developer deems appropriate, provided that Developer shall not exercise such right so as to unreasonably interfere with the rights of owners in the Community.

Section 3.4. Utility and Public Service Easements.

- (a) There is hereby reserved for the benefit of Developer, the Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept easements to and from Hancock County, Indiana, or any other public authority or agency, public service district, public or private utility or other person, upon, over, under, and across (i) all of the Common Areas; and (ii) those areas described on the Plat as are reasonably necessary for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Community or any portion thereof, and electrical, gas, telephone, water, and sewer lines,

provided that such easements shall not unreasonably affect the use, developability, marketability, or value of any such Lot. To the extent possible, all utility lines and facilities serving the Community and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Community so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

- (b) Developer hereby grants to Hancock County, Indiana, or such other governmental authority or agency as shall from time to time have jurisdiction over the Community with respect to law enforcement, school buses and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in the Community as shall be required or appropriate from time to time by such governmental authorities under applicable law.
- (c) There shall be created sanitary sewer easements and water easements in those areas designated on the Plat which easements shall run in favor of Developer and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for the sanitary sewer or water system.

Section 3.5. Drainage Easements. There is hereby reserved an easement for the benefit of Developer, the Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Property; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Developer and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the Board; provided, however, that Developer, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.6. Landscape Areas. Landscape Areas, as designated on a Plat of all or any part of the Property, are hereby created and reserved for the use of Developer and the Association for access to and installation, maintenance, repair, and replacement of trees, foliage, landscaping, and other improvements. Except as installed by Developer or the Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon said Landscape Areas without the written consent of the Board.

Any area designated by Plat as a Landscape Area shall be maintained by the Owner of the adjoining Lot wherein such Limited Landscape Area is located. The maintenance obligation of the Owner shall include the obligation to repair, replace and maintain such easement area in a manner comparable to Owner's adjoining lot. If the Owner fails to undertake his maintenance responsibilities as set forth herein, the Association may undertake such maintenance and charge the cost thereof to the Owner as set forth in Section 5.1. Except for the maintenance of a Limited Landscape Easement area as set forth above, an Owner may not alter the landscaping features located within a Landscape Area without the prior written approval of the Board.

Section 3.7. Maintenance Easement. There is hereby reserved and created for the use of Developer, the Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a Community-Wide Standard of health, fire safety, and appearance within the Community, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions.

Section 3.8. Sanitary Sewer Provisions. The following rules and restrictions shall apply with respect to the maintenance of the sanitary sewer system in the Community:

- (a) No pavement or concrete, including driveways and sidewalks, shall be constructed on or within one foot horizontal distance of any sanitary sewer manhole or clean-out casting.
- (b) All Owners of Dwelling Units are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.
- (c) The discharge of clean water sources (e.g. foundation drains, sump pumps, roof drains) to the sanitary sewers is prohibited.
- (d) Any grade changes of a material nature across sanitary sewer facilities must be approved in writing by Gem Utilities, Inc.

- (e) The drip line of all trees must be located a minimum of five (5) feet from the center of sanitary sewers and manholes and no trees shall be planted directly over sewer laterals. Owners placing landscaping, mounding, lighting, fencing, signage, walls, or irrigation lines within sanitary sewer easements do so subject to the rights of Gem Utilities, Inc.

Section 3.09. Easement for Emergency Service. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles, including but not limited to fire trucks, public cars, ambulances, emergency personnel, public and private, over and upon the Common Areas.

Section 3.10. Non-Dedicated Streets. All the non-dedicated streets constructed within the Community are reserved and granted for the common use of Owners, their families, guests and invitees, by commercial vehicles authorized to make pick ups and deliveries, by public and private utilities' personnel, trucks and equipment, by school buses, by postal authorities and mail carriers, by emergency personnel and vehicles such as police, fire and ambulance, and by such other persons or classes or persons authorized by the Board, as a means of ingress and egress, and for such other uses as may be authorized from time to time by the Board. Such non-dedicated streets may also include mains, sewers or other facilities to transmit and carry storm water drainage. Except as provided by this Declaration, no acts shall be taken or things done by an Owner or the Association which are inconsistent with the reservation and grant of use and enjoyment hereinabove provided.

The Association, at the cost and expense of the Association, shall provide snow removal from, maintenance to and resurfacing or reconstruction of any non-dedicated streets or any storm water drainage facilities included as a part thereof or installed thereunder, as it deems necessary or appropriate from time to time within its sole discretion.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 4.1. Membership. Every Owner, as defined in Article I, shall be deemed to be a Member and have a membership in the Association.

Except as provided herein with respect to the Class B Member, no Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Lot owned by a corporation, partnership, trust or limited liability company shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association, subject to the provision of this Declaration and the By-Laws.

Section 4.2. Voting. The Association shall have two (2) classes of membership, Class A and Class B, as follows:

- (a) **Class A.** Class A membership shall be all Owners with the exception of the Class B Member.

Class A Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section 4.1 hereof. There shall be only one (1) vote per Lot. Unless otherwise specified in this Declaration or the By-Laws, the vote for each Lot shall be exercised by the Member in the manner set forth in the By-Laws.

In any situation where a Member is entitled personally to exercise the vote for his Lot and more than one (1) person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it.

- (b) **Class B.** The Class B Member shall be the Developer and any successor or assignee designated as Developer. The rights of the Class B Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified in the Declaration and the By-Laws. Each Class B Member shall be entitled to four (4) votes for each Lot it owns or, in the case of unplatted land, four (4) votes per the maximum number of Lots allowed for such a parcel of land by the applicable zoning ordinance, on all matters requiring a vote of the Members of the Association. The Class B Member shall be entitled to appoint the members of the Board during the Class B Control Period as hereinafter defined. The Class B Control Period shall begin as of the date of this Declaration and extend to the earlier of: (i) the date on which seventy-five percent (75%) of the Lots have been sold or conveyed to Persons other than Developer or builders holding title solely for purposes of development or sale. (In making such calculation, the numerator shall be the total Lots sold and the denominator shall be the total Lots anticipated for eventual sale and ownership in the Community as determined by Developer in its sole discretion); (ii) December 31, 2012; or (iii) the date on which Developer determines that the Class B Control Period shall end and notice of such termination is filed by means of an instrument recorded with the Recorder of Hancock County, Indiana. The Class B Membership shall terminate and become converted to Class A Membership upon the termination of the Class B Control Period whereupon Developer shall be entitled to one (1) vote for each Lot it

owns with the number of Lots calculated in the same manner as for the Class B memberships as set forth above.

**ARTICLE V
MAINTENANCE, REPAIRS AND REPLACEMENTS**

Section 5.1. By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot and adjoining Landscape Area. Each Owner shall promptly perform all maintenance and repair of his Lot and adjoining Landscape Area and Dwelling Unit that, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association.

Section 5.2. Common Areas 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 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, including snow removal from, and maintenance, resurfacing or reconstruction of any non-dedicated streets, or any storm water drainage facilities included as a part thereof or installed thereunder;
 - (ii) Maintenance of the entry signs, walls, guardhouse, gates, permanent subdivision identification sign, and landscaping installed by the Developer in any Common Area;
 - (iii) The maintenance of any street lights or other improvements which are installed by Developer and which are not located upon any Lot;
 - (iv) The maintenance of any brick surface or stone shaped concrete installed by Developer on any internal private street or entryway; and
 - (v) Sole authority and responsibility to contract for a refuse, trash, garbage and recycling removal contractor, which such contractor shall be the only permitted, regular contractor for such services for the Subdivision and for all

Lots therein, unless otherwise approved by the Association.

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 so long as same do not conflict with this Declaration.

- (b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area or Landscape Area owned by this Association (or any items deemed Common Area or Landscape 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 or Landscape Area owned by the Association (of 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 Base Assessment to which such Owner's Lot is subject.

ARTICLE VI INSURANCE AND CASUALTY LOSSES

Section 6.1. Insurance. The Association, Board, or its duly authorized agent, shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance as it deems necessary or advisable. The Association shall be required to use reasonable efforts to secure insurance policies that will provide the following:

- (a) A waiver of subrogation by the insurer as to any claims against the Association, the Association's Board and the Developer;
- (b) A statement that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification or non-renewal; and

- (c) All liability insurance shall not exclude coverage for claims made by Owners or Members and shall also name the Developer as an additional insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of the Association. All insurance coverage obtained by the Board shall be written in the name of the Association.

In addition to other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; directors' and officers' liability coverage, if reasonably available; a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available; and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment.

Section 6.2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. The Board may require all Owners to furnish copies or certificates thereof to the Association. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration and all applicable zoning, building and other governmental regulations. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat, safe, and attractive condition consistent with the Community-Wide Standard.

Section 6.3. Damage and Destruction.

- (a) Immediately after damage or destruction by fire or other casualty to all or any part of a Common Area covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance or obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Area. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Area to substantially the same condition in which it existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

- (b) Subject to the provisions in section 3.08 of the By-Laws, any damage or destruction to a Common Area shall be repaired or reconstructed unless the Members representing at least two-thirds (2/3) of the Total Vote decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to a Common Area shall be repaired or reconstructed. If there is no reconstruction then any insurance proceeds shall revert to the Association.
- (c) In the event that it should be determined in the manner described above that the damage or destruction to a Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then the affected portion of the Area shall be restored to its natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

Section 6.4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed for payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 6.5. Repair and Reconstruction. If the damage or destruction to a Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for Special Assessments in accordance with Article VIII. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE VII RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 7.1. Common Areas. The Association, subject to the rights of the Developer and to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and other improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep them in a good, clean, attractive, and sanitary condition,

order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. Except to the extent otherwise required by the provisions of the Indiana Code relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the power herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further action on the part of Owners.

Section 7.2. Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the Indiana Code relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those rights and privileges reasonably implied to effect the purposes of the Association. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such power of the Association shall include, but shall not be limited to, the power to purchase one or more Lots and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public and private utilities, or others, as a Common Expense or by billing directly to Lots to furnish trash and recycling collections, water, sewer, and/or security service for the Common Areas and or the Lots. The Association shall have the right to own (as a Common Area) any drainage system, piping, sewer equipment or materials, or any other utility equipment which Developer or the Association deems to be in the best interests of the Community. The Association shall not, without the affirmative vote or written consent of Members of their alternates representing at least two-thirds (2/3) of the Total Vote, mortgage or hypothecate all or any portion of the Common Areas.

Section 7.3. Agreements. Subject to the prior approval of Developer for so long as Developer owns any Lot, all agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community; and in performing its responsibilities hereunder, the Association, through its Board, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and in no Limitation thereof, the Association shall obtain and pay for the services of a professional management company to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of such manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other

legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board may hire or contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

The Association, through its Board, shall have the right to designate one (1) trash removal and recycling service for the Community and the cost of such service shall be allocated to and paid for by Owners of Dwelling Units within the Community.

Section 7.4. Personal Property and Real Property for Common Use. The Association, acting through its Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The share of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot also transfers the membership in the Association which is an appurtenance to such Lot.

Section 7.5. Rules and Regulations. The Association, as provided in Articles IX and X hereof, through its Board, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include suspension of the right to vote and the right to use any recreational facilities or Common Areas. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce city and county ordinances and to permit Hancock County or any municipality having jurisdiction over the Property to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 7.6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 7.7. Governmental Interests. The Association shall permit the Developer reasonable authority to designate sites within the Property for fire, emergency, police, water, and sewer facilities, parks, and other public facilities.

ARTICLE VIII ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation of Assessments. Developer, 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 Base Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.

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 8.2 Purpose of Regular Base Assessments and Reserve Budget for Capital Improvements. The Regular Base 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. The Board shall annually prepare a reserve budget to take into account the number and nature of replaceable assets (including non-dedicated streets), the expected life of each asset, and the expected repair or replacement cost. A portion of the Regular Yearly Base 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 8.3 Maximum Regular Base Assessments.

- (a) Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Base Assessment on any Lot shall be two (2) installments of Four Hundred Fifty Dollars (\$450.00) per Lot per year.

- (b) From and after January 1st of such year, the maximum Regular Base Assessment may be increased each calendar year not more than twenty percent (20%) above the maximum Regular Base Assessment for the previous year, without a vote of the membership.
- (c) From and after January 1st of such year, the maximum Regular Base Assessment may be increased each calendar year by more than twenty percent (20%) above the maximum Regular Base Assessment for the previous year, by a vote of seventy-five percent (75%) 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 Base Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 8.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Base 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 sixty-six and two thirds percent (66-2/3%) 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 8.5 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 (1/2) 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 8.6 Uniform Rate of Assessment. Regular Base Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Developer and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Base Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Developer or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

Section 8.7 Date of Commencement of Base Assessments; Due Dates. The Regular Base 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 base assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Base 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 initial assessments shall be as stated in the By-Laws; the due dates for all subsequent 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 8.8 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 8.9 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 IX ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 9.1. Purpose. In order to preserve the natural setting and beauty of the Community, to establish and preserve a harmonious and aesthetically pleasing design for the Community, and to protect and promote the value of the Property, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in Articles IX and X. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Declaration including Articles IX and X.

Nothing shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 9.2 and 9.3 below. The Board may establish reasonable fees to be charged by the committees on behalf of the Association for reviewing of applications hereunder and may require such fees to be paid in full prior to review of any application.

This Article shall not apply to the activities of the Developer, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Association.

The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 9.2 and 9.3 of this Article IX. This Article may not be amended without the Developer's written consent so long as the Developer owns any land subject to this Declaration or subject to annexation to this Declaration.

The committees established in Sections 9.2 and 9.3 of this Article IX may be merged into one committee by Developer, in its sole discretion, during the Class B Control Period.

Section 9.2. New Construction Committee. The New Construction Committee (NCC) shall consist of at least three (3), but no more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred percent (100%) of the Property has been developed and conveyed to purchasers in the normal course of development and sale, the Developer retains the right to appoint all members of the NCC, who shall serve at the discretion of the Developer. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Developer. Upon the expiration of such right, the Board shall appoint the members of the

NCC who shall serve and may be removed at the discretion of the Board. The members of the NCC may include persons who are not Members of the Association. Members of the NCC may, or may not, be members of the Board and, if not members of the Board, may be compensated for serving as an NCC member and such costs shall be classified as a Common Expense.

The NCC shall prepare and, on behalf of the Board, shall promulgate design and development guidelines, variance rules and regulations, and application and review procedures. Copies of such guidelines, rules and regulations, and guidelines shall be available from the NCC for review.

The guidelines and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Property and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. In the event that the NCC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within thirty (30) days after submission of completed plans and any additional information having been requested by the NCC, the plans shall be deemed approved.

The NCC shall be disbanded at the time that Dwelling Units have been constructed on all of the Lots in the Community, and the duties of the NCC shall thereafter be performed by the ASC.

Section 9.3. Architectural Standards Committee. The Board may establish an Architectural Standards Committee (ASC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the ASC may include persons who are not Members of the Association. Members of the ASC may or may not be members of the Board.

The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The ASC shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice Chairman, shall be presiding officer at its meetings. The ASC shall meet at least once in each calendar month, as well as upon call of the chairman; and all meetings shall be held at such places as may be designated by the chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the ASC shall constitute the action of the ASC on any matter before it. The ASC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ASC in performing its functions set forth herein. Such costs associated with the

use of consultants shall be considered a Common Expense. Each member of the ASC may be paid a stipend or honorarium as from time to time determined by the Board.

The ASC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto. Notwithstanding the above, the ASC shall not take any action or approve any plans inconsistent with the guidelines promulgated by the NCC while the NCC is in existence. The ASC shall promulgate detailed standards or procedures governing its areas of responsibility and practice, consistent with those of NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the ASC for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. All Dwelling Units shall also conform to the minimum living space requirements of Section 9.16 and residential use and construction requirements of Section 9.17 hereof. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Dwelling Unit visible from outside the Dwelling Unit shall be subject to approval hereunder. In the event that the ASC fails to approve or to disapprove such plans or to request additional information within twenty-one (21) days after submission of completed plans, proposals, specifications or drawings and any additional information having been requested by the ASC, the plans shall be deemed approved.

Section 9.4. No Waiver of Future Approvals. The approval of either the NCC or ASC of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 9.5. Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations set forth by the NCC. Such variance may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration or a recorded plat, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9.6. Compliance with Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of

the guidelines and procedures promulgated by the NCC or ASC may be excluded by the Board from the Property without liability to any Person.

Section 9.7. Construction of Improvements. Dwelling Units may not be temporarily or permanently occupied until the exteriors thereof have been completed and a certificate of occupancy for such Dwelling Unit has been issued. No shack, tent, barn, or other outbuildings, shall be permitted on any Lot at any time, except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board, nor shall any stable, poultry house or yard, rabbit hut, dog run (as hereby defined as any fenced or secured area where dogs are kept) or other similar yard structure be constructed or allowed to remain on any Lot.

Section 9.8. Responsibilities During Construction.

- (a) Construction of a Dwelling Unit on a Lot must be commenced within eighteen (18) months of purchase of a Lot and completed within twelve (12) months from the date construction is commenced.
- (b) When a basement and/or a foundation of a residence is constructed, stone shall be installed over the path of the driveway and shall be level with curb at the lot line to avoid curb breakup.
- (c) No track vehicles or heavy equipment vehicles shall be operated or unloaded on any street.
- (d) During the construction period, the Lot shall be maintained in a clean and orderly manner at all times. All loose shingles, lumber, bricks, blocks, drywall, insulation, or other building material which can blow onto adjacent Lots shall not be left lying around. Construction trash shall be contained in a trash fence and shall be removed from the Lot once per week or contained in a dump site provided by a trash disposal service which will empty the container as needed.
- (e) The Lot Owner shall be responsible for removal of dirt, mud or debris or other foreign material of any kind which may be deposited upon the road or easements from construction on the Lot. If such deposits occur, then the Lot Owner shall make provisions to remove such deposits prior to the end of that same day or the committee may remove such deposits and charge the Lot Owner. The Lot Owner shall comply with its obligations under drainage and stormwater regulations and any soil erosion control plan in effect or as otherwise required by law.
- (f) No outside toilets shall be permitted on any lot during construction without prior approval of the NCC.

- (g) All utility services to the Lot, including, but not limited to, water, power, sanitary sewers, telephone or cable, shall be shown on the plot plan and said services shall not undermine the curbs or alter the subsurface or surface drainage system.
- (h) Upon completion of construction, each Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot on which such construction has been completed.

Section 9.9. Architectural Approval. To preserve the architectural and aesthetical appearance of the Community, no construction of improvements of any nature whatsoever shall be commenced or maintained by an Owner, other than Developer, with respect to the construction or affecting the exterior appearance of any Dwelling Unit or with respect to any other portion of the Property, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, guest or servants quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the NCC or ASC, as the case may be, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the NCC or ASC as the case may be, as to the compliance of such plans and specifications with such standards as may be published by the respective committees from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the respective committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved". Notwithstanding the above, the Owner shall submit the color of any proposed changes outlined above fifteen (15) days prior to painting.

Following approval of any plans and specifications by a committee, representatives of the committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event a committee shall determine that such plans and specification have not been approved or are not being complied with, the committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications.

Section 9.10. Landscaping Approval and Minimum Requirements. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of

any nature whatsoever with respect to the initial landscaping of a Lot shall be implemented and installed by an Owner other than Developer, unless and until the plans therefore have been submitted to and approved in writing by the appropriate committee. The landscape plan of the residence shall include all street exposures which shall be landscaped in such a manner to be harmonious with the exterior residence design and shall include three (3) trees in the front yard which may be either shade trees of mixed variety (i.e., hard maples or ash) which shall be a minimum of two and one-half (2 ½) inch in caliper, ornamental which shall be a minimum of two (2) inch in caliper or approved pines which shall be a minimum of seven (7) feet high. The landscape design shall also include at least twenty (20) shrubs with a mixture of flowering and evergreen and with an eighteen (18) inch spread or height in the front yard. All front yards shall be sodded or hydroseeded prior to receiving a certificate of occupancy. Front yards shall be defined by extending the front of the residence which is furthest from the front lot line to each side lot line. The portion of the common area adjacent to the lot between the sidewalk and the curb shall also be sodded or hydroseeded at this time. The landscape plan shall include an irrigation design for all front yards which shall be installed in conjunction with the remainder of the landscape design. The approved landscape plan shall be installed by the homeowner within six (6) months after the certificate of occupancy has been issued for the residence. Once installed, the landscaping shall be maintained as designed unless changes are approved by either the NCC or the ASC. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. The landscaping plan for each Lot must be carried out and completed within six (6) months after the certificate of occupancy has been issued.

Section 9.11. Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Developer, the Association, nor the NCC or ASC shall be responsible or liable for: (i) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article IX; (ii) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (iii) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (iv) any defects in construction undertaken pursuant to such plans and specifications.

Section 9.12. Building Restrictions. All Dwelling Units and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, including, without limitation, the filing of a site plan with Hancock County, Indiana, (or any other governmental authority

having jurisdiction) and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the appropriate committee (NCC or ASC).

Section 9.13. Parkway Trees. There are street trees required in the front of each lot which are to be provided by the developer after the completion of the landscaping for said lot. Once the street trees are in place, the developer shall be responsible for the maintenance of that tree for a one (1) year period following placement of the tree. Upon expiration of the one (1) year maintenance period by the developer, the homeowners association shall be responsible for the maintenance thereafter.

Section 9.14. Yard Light. Each Owner of a Lot shall install and maintain a uniform dusk-to-dawn light in the front yard of the Lot. The design, type and location of the yard light shall be designated by Developer or the Association from time to time for purposes of maintaining uniformity of appearance throughout different areas of Community. Unless otherwise specified by the Association, the yard light shall be located approximately six (6) feet from the driveway and no further than six (6) feet from the right-of-way.

Section 9.15. Mailboxes. The Developer will provide the first (1st) mailbox for each Owner of a Lot, and thereafter each Owner shall install and maintain a mailbox which shall be in accordance with the same design, type, color and location of a mailbox as that originally provided by the Developer or subsequently required by Developer or the Association from time-to-time so as to maintain uniformity of appearance throughout different areas of the Community.

Section 9.16. Residential Use and Construction. Lots may be used only for residential purposes and only for one single-family dwelling with an attached two or three car garage or additional detached garage or pool house which may be allowed if approved by the appropriate committee (NCC or ASC). All dwellings shall be provided with hard-surface driveways, with a width not less than the width of the garage door associated therewith, which shall be installed by the builder concurrently with the original construction of the dwelling, and which shall be available for use no later than the date of the initial occupancy of such dwelling. All dwellings shall have elevation exteriors consisting only of natural materials (brick, masonry, EFIS, stucco, wood and stone). Aluminum overhangs (soffits) are permitted. No roof shall be installed on any dwelling having a roof pitch of less than 7/12 unless a lesser pitch is specifically approved by the NCC or ASC. All roof shingles shall be dimensional in type. All chimneys shall be total masonry or EFIS. Direct vent fireplaces if used must be placed other than on front elevation and must be all masonry or EFIS.

Section 9.17. Minimum Living Space Requirement. The minimum square footage of living space of Dwelling Units shall be, exclusive of porches, garages, terraces, carports, accessory buildings, basements below ground level, and finished living area above garages which would otherwise be considered attic space, as follows:

- (a) on Lots numbered 45-77, not less than 2,200 square feet of ground floor living area for a one-story structure, and 1,200 square feet of ground floor living area if more than one-story, provided that more than one-story structures shall have a minimum of 2,350 square feet of total floor living area; and
- (b) on Lots numbered 1-44, not less than 2,400 square feet of ground floor living area for a one-story structure, and 1,400 square feet of ground floor living area if more than one-story, provided that more than one-story structures shall have a minimum of 2,600 square feet of total floor living area.

Section 9.18. Sidewalks. Each Owner shall be responsible for constructing a four foot wide concrete sidewalk of 4,000 strength plain cement 4 inches thick, sloped $\frac{1}{4}$ inch per foot toward the street with expansion joints each 48 feet, along the entire street frontage of their respective lot. The sidewalk shall be constructed prior to completing finish lot grading. The sidewalk shall be located one foot inside the street right-of-way line, (not on the Lot) and parallel to the street right-of-way line. The Owner is responsible for the repair and maintenance of the sidewalk for the initial one year from completion of residence. Thereafter, the Homeowners Association shall be responsible for maintenance and upkeep of the sidewalk except for any damage done by the adjoining lot owner. All public sidewalks shall comply with all Americans with Disabilities Act (A.D.A.), as amended, requirements and in the situation of a conflict between A.D.A. rules, covenants or other regulations, the A.D.A. shall govern.

ARTICLE X USE RESTRICTIONS

The Association, acting through its Board, shall have authority to make and to enforce standards and restrictions governing the use of the Property, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Members, representing a majority of the Total Vote and upon the consent of the Class B Member so long as such membership shall exist.

Section 10.1. Use of Lots. Except as permitted by Section 10.25 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried therein. Model homes shall be a permitted use on a lot ONLY where the builder has been approved by the appropriate committee (NCC or ASC).

Section 10.2. Exterior Appearance. No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any

window-mounted heating or air conditioning units be permitted. Collapsible or retractable clothes lines, not to exceed fifteen feet in length will be allowed with proper NCC or ASC approval. Permanent clothes lines will not be approved. While not in use, the clothes lines must always be kept collapsed or retracted. Clothing, rugs, or other items shall not be hung on any railing, fence, hedge, or wall. When not in use, all garage doors shall be kept closed.

Section 10.3. Signs. No signs of any kind shall be erected within the Community, or permitted within any windows, without the written consent of the Board, except standard real estate "for sale" signs, entry and directional signs installed by Developer and such signs as may be required by legal proceedings. No business signs, flags, banners or similar items advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs within the Community, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate.

Section 10.4. Parking and Prohibited Vehicles.

- (a) **Parking.** In order to facilitate the free movement of vehicles, no vehicles belonging to Owners shall be parked on the paved portions of any driveway or street, public or private, except during bona fide temporary emergencies. Garages shall be used for parking of vehicles and no other use or modification thereof shall be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed. The Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

No Owners or other occupants of any portion of the Community shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

- (b) **Prohibited Vehicles.** Commercial vehicles primarily used or designed for commercial purposes and that display company names, logos or advertising, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-quarters of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be

parked in the Property during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas, and boats, boat trailers, campers and motor homes may be parked for a maximum of 48 hours at one time for the purpose of preparation or loading. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed.

Section 10.5. **Animals and Pets.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any portion of the Property, except that dogs, cats or other usual and common household pets may be permitted on a Lot, subject to rules and regulations adopted by the Association through its Board. However, those pets which are permitted by any Owner or occupant to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the Owner of any portion of the Community, shall be removed from the Community upon request of the Board; if the Owner fails to honor such request, the Board, in its discretion, may have the pet removed. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside the Owner's Lot be confined on a leash held by a responsible person. No pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same.

Section 10.6. **Quiet Enjoyment.** No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No electric insect killers may be used. The Developer or the Association may order the relocation of any wood piles which are unsightly.

Section 10.7. **Unsightly or Unkept Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkept condition on his or her Lot. The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken on any part of the Property. Nothing which could cause embarrassment, discomfort, annoyance or nuisance to the occupants of other portions of the Community or which result in a cancellation of any insurance for any portion of the Community, or which would be in violation of any law or governmental code or regulation shall be permitted in the Community. Without limiting the generality of the foregoing

provisions, no horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Community. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Community shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 10.8. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus larger than two feet in diameter and intended for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot. Any such antennas, aerials, satellite dishes or other such apparatus that do not exceed two feet in diameter shall be permitted on a Lot only if such will be aesthetically concealed by landscaping or otherwise and shall be installed so as not to constitute a nuisance or offensive effect on other Lot Owners. Under no circumstances shall any such antennas, aerials, satellite dishes, or other such apparatus be installed without the approval of the Board, or if such decision is delegated to it, the Architectural Standards Committee. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Community, provided however that the Developer and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Property, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 10.9. Garbage Cans, Tanks, Etc. All mechanical equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located adjacent to the Lot. No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except for such temporary storage necessary for immediate pick up of the trash and, in that event, trash shall be stored in appropriate containers.

Section 10.10. Subdivision of Lot and Time Sharing. Except for changes made by Developer with respect to Lots it owns, no Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 10.11. Firearms and Fireworks. The discharge of firearms or fireworks, which include any and all kinds of fireworks, within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this section.

Section 10.12. Pools. No above ground swimming pools shall be erected, constructed or installed on any Lot; provided, nothing herein shall preclude installation and use of hot tubs, spas or in ground pools with prior approval pursuant to Article IX of this Declaration, and which shall be located behind the Dwelling Unit.

Section 10.13. Tents, Trailers and Temporary Structures. Except as may be permitted by the Developer or the NCC during initial construction within the Property, no tent, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Board or the Developer and childrens overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

Section 10.14. Drainage, Water Wells and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves for itself and the Association a perpetual easement across the Property for the purpose of altering drainage and water flow. No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot, except for wells maintained solely for irrigation purposes. All such irrigation wells must receive the prior written approval of the ASC or NCC.

Section 10.15. Tree Removal. No trees shall be removed except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article IX of this Declaration. In the event of an intentional or unintentional violation of this section, the violator may be required by the committee having jurisdiction to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion.

Section 10.16. Traffic Regulation and Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Community shall be subject to the provisions of the laws of the State of Indiana, Hancock County, concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Community. The Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Indiana, Hancock County, and such rules and regulations promulgated by the Association, the rules and regulations of the Association shall govern. Only drivers licensed to operate motor vehicles by

the State of Indiana or by any other state in the United States may operate any type of motor vehicle within the Community. All vehicles of any kind and nature which are operated on the streets in the Community shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Community.

Section 10.17. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 10.18. Air Conditioning Units. Except as may be permitted by the Board, no window air conditioning units may be installed in any Lot.

Section 10.19. Lighting. Except for seasonal Christmas decorative lights, which may be displayed between December 1st and January 10th only, all exterior lights must be approved in accordance with Article IX of this Declaration; provided, however, each Owner must continually maintain at its own expense a yard light of a design established by the Developer or the Association pursuant to Section 9.14.

Section 10.20. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article IX hereof.

Section 10.21. Artificial Vegetation and Exterior Sculpture. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculptures, fountains, flags, yard ornaments and similar items must be approved in accordance with Article IX of this Declaration.

Section 10.22. Driveways. All driveways must be constructed of concrete or brick and shall thereafter be maintained solely as concrete or brick driveways unless otherwise approved by the Board.

Section 10.23. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Property, if any, shall be aesthetic amenities only, and no other use thereof including without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Property. No docks, piers, or other structures shall be constructed on or over any body of water within the Property, except such as may be constructed by the Developer or the Association.

Section 10.24. Fences. No walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as herein stated. Underground invisible fences used for the containment of household pets are permitted. Wrought iron ornamental fencing surrounding or

enclosing pools which are no higher than six (6) feet in height may be permitted. Developer reserves the right to use fencing in Common Areas as part of the landscape plan.

Section 10.25. Business Uses. No garage sale, moving sale, rummage sale or similar activity shall be conducted by an Owner within the Community without the approval of the Association. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Community; and (d) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Community nor shall it apply to any activity conducted by the Developer or a builder approved by the Developer with respect to its development and sale of the Property or its use of any Lots or Dwelling Units which it owns within the Property.

Section 10.26. Basketball Goals, Playground Equipment, Etc. With the exception of attachments to rear-load garages, no basketball goals shall be attached to any Dwelling Unit and backboards shall be made only of transparent materials (or other material approved by the Board) and the location of any basketball goal shall be subject to the approval of the ASC. No playground equipment, tree houses, or similar structures shall be erected on any Lot except in accordance with Rules and Regulations established by the Board from time to time or as otherwise approved by the Board.

Section 10.27. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 10.28. Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 10.29. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Developer and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots and Dwelling Units, Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by Developer from time to time, provided that the location of any construction trailers of any assignees of Developer's rights under this Section 10.29 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences, and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

Section 10.30. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

ARTICLE XI RULEMAKING

Section 11.1. Rules and Regulations. Subject to the provisions hereof the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Members prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by a majority of the Total Vote cast by the Members on behalf of the Members as set forth in the By-Laws, provided that in the event of such vote, such action must also be approved by Developer for so long as Developer owns any Lot.

Section 11.2. Authority and Enforcement.

- (a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power, after fifteen (15) days written notice to Owner or occupant of said violation, and failure by said Owner or occupant to cure the violation:
- (i) to cause the Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or occupant who is guilty of such violation;
 - (ii) to suspend an Owner's right to vote in the Association;
and
 - (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

- (b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by Developer, the Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule; or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Developer, the Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be