

the event that any Owner fails to fully observe and perform the obligations set forth herein, the Association, Owners, NCC and MC shall possess such enforcement rights and benefits as are set forth in the Declaration or are available at law or in equity.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 3.1    Membership.    Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2    Classes of Membership and Voting Rights.  
The Association shall have one class of voting membership which shall be comprised of all Owners who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such co-owners among themselves determine evidenced by a certificate signed by all of the Owners filed with the Association. Such signed certificate shall also be conclusive with respect to voting rights of an Owner in instances where such Owners' voting is referred to in these Restrictions. In no such event shall more than one vote be cast with respect to any Lot either with respect to Association membership or Lot ownership.

Section 3.3    Board of Directors.    The Members shall elect a Board of Directors of the Association as prescribed

by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Declarant and shall manage the affairs of the Association until Developer transfers control of the Association to the Owners as required herein at Section 3.6 herein.

Section 3.4 Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

Section 3.5 Responsibilities of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this

Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable. The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

Section 3.6 Control and Transfer of Control of Association.

During the development and construction stages of the Development and for so much of selling period as described hereinafter, the Association shall be operated and controlled by Declarant. The Board of Directors of the Association shall, during such period, consist of persons appointed by Declarant, and each Owner shall give and shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owner is entitled to vote under this Declaration, any Supplemental Declaration, or under the Articles of Incorporation or the By-Laws of the Association.



The control of the Association shall be transferred to the Owners (which includes Declarant with respect to each unsold Lot) one hundred twenty (120) days after the date on which a total of seventy-five percent (75%) of the Lots platted, to be platted or to be annexed then ascertained in the Development have been conveyed to Owners.

Provided, however, notwithstanding such transfer of control, Declarant shall retain the right to appoint all members of the New Construction Committee (NCC) until the later of: (a) the conveyance of all of the real estate included in the development to purchasers in the normal course of development and sale, or (b) the expiration of the right of Declarant to submit or to annex additional property, both as described in Section 11.2 herein.

The proxy granted to Declarant shall be deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the date of transfer of control of the Association as set forth above.

#### ARTICLE IV

##### MAINTENANCE COMMON AREA

Section 4.1 Maintenance. (a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which responsibility shall be deemed to include the Common Area. The maintenance of the Common Area shall be deemed to include, but not to be limited to, maintenance, repair, and replacement (subject to later reimbursement from the insurance and casualty loss provisions contained



herein), at the Association's sole cost and expense as Common Expense, of all of the following located on the Common Areas: trees, fences, shrubs, grass, signs, leisure trails, Common Area access and parking spaces, if any, walks, pedestrian bridges, Drainage System improvements, (unless contracted otherwise to a public agency), the common area lighting and watering systems and other improvements situated upon the Common Area.

In addition, it is contemplated that the City or another governmental agency will maintain ditches, ravines and other areas requiring remedial maintenance and/or cleaning out. It is contemplated that such governmental agency will use a tractor bulldozer for such purposes. Such tractor bulldozer will be unable to pass under the leisure trail walks and will, accordingly, be required to bypass said pedestrian walks. The Association shall maintain said bypass areas in the event of disruption by said governmental agencies as a result of said maintenance or cleaning of the ditches as described hereinabove.

In addition, the Association shall maintain, replace and keep in good repair the planting, grass and landscape areas to include electrical and watering systems thereon located in and upon the public street cul-de-sac circular areas and the entry way median strips and all parcels designated on the plat or otherwise situated at various Lots in the Development as "Landscape Parcel".

In addition, the Association shall maintain and keep in good repair the street name signs (unless installed

and maintained by the City of Valparaiso) located on public streets in the Development.

In addition, the Association shall pay for any utility consumption costs such as natural gas, electricity and water which serve the Common Area.

(b) In the event that the Board of Directors of the Association determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the construction, maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within three (3) days from the date of such notice; provided, however, that if the same is not capable of completion within the three (3) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonably specified time. If any Owner does not comply with the provisions

hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot as provided in Article X and elsewhere herein.

(c) With respect to Common Areas, the cost of snow removal, landscaping maintenance and road maintenance, if any, in excess of amounts budgeted therefor shall be paid by the Owners (on the same basis as assessments for Common Expenses are allocated by the Owners at Section 10.3) by a Special Assessment pursuant to Section 10.4. In the event the Association enters into contracts for snow removal, landscaping maintenance and road maintenance, if any, while Declarant controls the Association, the Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto in his capacity as Declarant but not in his capacity as Lot Owner. This Section 4.1(c) is included herein in recognition of the fact that the costs of snow removal, landscaping maintenance and road maintenance, if any, for the Development may substantially exceed amounts budgeted therefor by the Association due to inordinate snow fall, an inordinate number of snow falls during any season, general weather conditions, agricultural conditions and amount of use. Nothing contained herein shall be construed to require that the Association provide



snow removal service for the Development. In the event snow removal service is to be provided for the Development an amount therefor shall be included in the annual budget and collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual snow removal costs.

## ARTICLE V

### INSURANCE

Section 5.1 Insurance. (a) The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board shall also obtain a public liability policy covering the Common Area, the Association, and its members for all damage or injury caused by the negligence of the Association of any of its members or agents. The public liability policy shall have at least a Five Hundred Thousand (\$500,000) Dollar single person limit as respects bodily injury and property damage, a One Million (\$1,000,000,000)

Dollar limit per occurrence, and a Two Hundred Fifty Thousand (\$250,000) Dollar minimum property damage limit. Premiums for all insurance on the Common Area shall be common expenses of the Association. The policy may contain a reasonable deductible amount and the deductible amount thereof shall be added to the face amount of the coverage limitations of the policy in determining whether the insurance at least equals the full replacement cost.

(c) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee and shall add the officers and directors from time to time as additional insureds, such insurance as hereinabove described for the respective benefited parties, as further identified elsewhere. Such insurance shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(ii) All policies on the Common Area shall be for the benefit of the Residential Unit Owners and their mortgagees as their interests may appear.

(iii) Exclusive authority to adjust losses under policies in force on the Development obtained by the Association shall be vested in the Association's

Board of Directors; provided, however, no mortgagee, if any, having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(v) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Porter County area.

(vi) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(2) a waiver by the insurance of its rights to repair, and reconstruct, instead of paying cash;



(3) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(4) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) that no policy may be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

(d) In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds with respect to directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Board's best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of

all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 5.2    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 individual Owner shall carry all-risk casualty insurance on such Owner's residence in an amount of full replacement cost, general liability coverage for a minimum of \$300,000.00 per occurrence, and \$2,000.00 medical payment coverage per person. Each Owner shall provide the Association with a certificate evidencing such liability coverage when taking title to said Lot. Each Owner shall provide a certificate of insurance evidencing such casualty insurance immediately prior to initiation of construction by said Owner on said Lot. Such certificates shall be furnished upon each renewal date to the Association to provide continuous evidence of adequate insurance coverage.

Each individual Owner further covenants and agrees that in the event of partial loss, damage or destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild

or to reconstruct, the individual 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. The Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 5.3      Disbursement of Proceeds.      Proceeds of insurance policies on Common Area Improvements shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made shall be retained by and for the benefit of the Association and placed in a capital improvements account.

(b) If it is determined that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 5.3(a).



Section 5.4    Damage and Destruction.

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

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association shall 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 information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Development shall be restored to their natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 5.5    Repair and Reconstruction.    If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment as permitted in Section 10.4.

#### ARTICLE VI

#### NO PARTITION

Section 6.1    No Partition.    Except as is permitted in this Declaration, or any Supplemental Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the applicable portions of the Development have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board