

(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

of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## ARTICLE VII

### CONDEMNATION

Section 7.1 Condemnation. (a) Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by an authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

(b) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five (75%) per cent of the members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V, Section 5.3 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve

any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

#### ARTICLE VIII

##### ANNEXATION OF ADDITIONAL PROPERTY

###### Section 8.1 Annexation without Approval of Owners.

(a) As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until December 31, 2013, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of any real property adjacent thereto or to the Development as the same exists from time to time whether in fee simple or leasehold, by filing in the Recorder's Office of Porter County, Indiana, an amendment or Supplemental Declaration annexing such property. Such Supplemental Declaration or amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless other<sup>wise</sup> provided therein. SEE SUPPL 2.113.50

(b) Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option



to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.

(c) The rights reserved unto Declarant to subject additional land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any covenants and restrictions similar to those contained herein upon such additional land, nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 8.2 Acquisition of Additional Common Area.

Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association as a Common Expense for the benefit of all Owners.

Section 8.3 Amendment. This Article shall not be



amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit A attached hereto or as added by this Article.

#### ARTICLE IX

##### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 9.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the By-Laws of the Association.

Section 9.2 Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration. The Association may, but shall not be required to, arrange

as an Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security lawn and landscaping service and other common services to each Lot. The Association shall provide the services required of it by the Supplemental Declarations, if any.

Section 9.3    Personal Property and Real Property for Common Use.    The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit A attached hereto or hereafter annexed into the Development and conveyed to it by the Declarant.

Section 9.4    Implied Rights.    The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, or the By-Laws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 9.5    Self-Help.    In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any construction,

erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner five (5) days' written notice of its intent to exercise Association remedial activity (self-help). All costs of such Association remedial activity (self-help), including attorney's fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments. No liability shall be assumed by the Association's exercise of such remedial activity.

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Section 9.6   Right of Entry.   The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into Residential Units for emergency, security, or safety purposes, which right may be exercised by the association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant of the Residential Unit. No liability is assumed by any of such parties by the exercise of such right of entry.



ARTICLE X  
ASSESSMENTS

Section 10.1    Purpose of Assessment.    The assessments for Common Areas and Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 10.2    Creation of Assessments.    (a) There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. General Assessments shall be allocated among all Owners within the Association as described in Section 10.3 hereof and shall be for capital improvements and expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law shall be a charge on the land and shall be a continuing lien upon

the Lot against which each assessment is made.

(b) Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person or persons who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for total unpaid assessments as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title by such lender. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessments for delinquents. Unless the Board otherwise provides, all assessments shall be paid annually within thirty (30) days after the date of the billing.

Section 10.3      Computation of Assessment.

(a) It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribu-

tion establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list Common Expenses. Common Expenses shall be allocated among Owners in the Development on an equal per lot basis. Where contiguous Lots are combined and approved as one building site, the allocated value is "one" Lot. Each Owner of any Lot or approved combined Lot building site (including any Residential Unit) in the Development hereby covenants and agrees to pay to the Association a Proportionate Share (as hereinafter defined) of the annual Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Proportionate Share of each Owner in the Development shall be the percentage obtained by dividing "one" by the total number of Lots (and/or building sites if contiguous Lots are combined) shown on the Plats of the Development as the same may be recorded from time to time and owned by Owners (including Declarant). The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting addressing Common Expenses by a vote of at least a two-thirds ( $\frac{2}{3}$ ) Majority (present or by proxy) of the total Lot Owners.

(b) Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or



the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

(c) In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become the first item comprising the next year's budget as an additional basis for assessments for the following fiscal year, except that so long as the Declarant controls the Association, and subject to Declarant's rights to impose Special Assessments as described in Section 4.1(c) hereof, Declarant shall be responsible for such deficit; provided, however, that Declarant shall be reimbursed by the Association for such deficits, together with interest at eight percent (8%) per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any

fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessment(s) due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid, with interest, as required above before such excess shall be so credited to Owners.

(d) In each year thereafter, the total assessments per Lot per month for Common Expenses shall not be increased by more than the ten percent (10%) over the prior year, until such time as the Declarant relinquishes control of the Association.

Section 10.4    Special Assessments            In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed \$50.00 in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a two-thirds (2/3) majority of the Owners, present in person or by proxy. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is

imposed. This Section 10.4 shall not apply to assessments levied pursuant to Section 4.1(c) hereof.

Section 10.5    Lien for Assessments    (a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be recorded by the Association with the Porter County Recorder. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Porter County, Indiana, and all amounts advanced pursuant to such respective Mortgage or Mortgages and secured thereby in accordance with the terms of such instrument.

(b) All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 10.6    Effect of Nonpayment of Assessments:  
Remedies of the Association. (a) Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice



of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days from the due date, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, or all persons or parties in title, jointly and severally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property (ie: mechanics and materialmen's liens). The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire and to hold, lease, mortgage, or convey the Lot. No Owner

may waive, purge himself, or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

(b) Priority of Application of Payment. All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Section 10.7      Capital Budget and Contribution.  
The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replacement costs for the Common Area. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect to both amount and timing of need for funds by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and be included within the budget and assessment for Common Expenses as provided in Section 10.3. A copy of the capital budget shall be distributed to each member in the same manner as

the operating budget.

Section 10.8 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve such Lot from lien obligations for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses shall be deemed to be Common Expenses collectible from all the Lots, including such acquirer, his or her successors and assigns. Such procedure shall not discharge the former owner from personal liability for such unpaid assessment.

Section 10.9 Capitalization of Association. Upon acquisition of record title to a Lot from Declarant, each



Owner shall contribute to the capital of the Association an amount equal to a pro-rated portion of the annual general assessment for Common Expenses for that Lot as determined by the Board. Such pro-ration shall be based upon the remaining portion of the assessment year during which the Owner acquired title.

Section 10.10      Date of Commencement of Annual Assessments.

The annual assessments provided for herein shall commence as to all Lots subject to assessment under this Declaration on the first day of the month following the conveyance of the first Lot by the Declarant to an Owner and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to an Owner.

Section 10.11.      Assessments by Declarant.      (a)

After the commencement of assessments on any Lot, Declarant covenants and shall be liable for and agrees to pay the full amount of the annual assessment for each Lot it owns.

(b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called in-kind contribution). The amount by which monetary assessments

shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

## ARTICLE XI

### ARCHITECTURAL STANDARDS

#### Section 11.1 Architectural Standards Jurisdiction.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Committees established in Sections 11.2 and 11.3.

No construction, as defined herein, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the