

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
EMERALD CROSSING, UNIT 1A  
RECORDED IN PLAT BOOK 102, PAGE 94  
LAKE COUNTY, INDIANA, AND  
EMERALD CROSSING, UNIT 1B  
RECORDED IN PLAT BOOK 102, PAGE 95  
LAKE COUNTY, INDIANA AND  
EMERALD CROSSING, UNIT 1C  
RECORDED IN PLAT BOOK 102, PAGE 96  
LAKE COUNTY, INDIANA**

**THIS DECLARATION**, made this 25th day of August, 2008, by **THE BUILDER GROUP, LLC**, a limited liability company (hereinafter referred to as the "Developer").

**WITNESSETH:**

**WHEREAS**, the Developer is the owner of the real estate legally described herein and commonly known as Emerald Crossing in unincorporated Lake County, Indiana; and

**WHEREAS**, the Developer is the owner of the real estate legally described herein and commonly known as Emerald Crossing, Units 1A, 1B and 1C, a Subdivision in unincorporated Lake County, Indiana; and

**WHEREAS**, the Developer desires Emerald Crossing located in unincorporated Lake County, Indiana to develop as a residential and commercial subdivision; and

**WHEREAS**, the Developer desires to promote the orderly development of the subdivision subjecting the real estate owned by the Developer to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the Subdivision described herein and real estate comprising the development of both; and

**WHEREAS**, the Developer deems it desirable to subject the real estate to the said covenants, restrictions, conditions, reservations, easements, charges and liens for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the Subdivision.

**NOW THEREFORE**, the Developer hereby declares that the single-family platted lots located in Unit 1A and known as Lots 126 through 152, Lots 209 through 230 and Lots 252 through 254, the cottage homes platted lots located in Unit 1B and known as Lots 87 through 91 and Lots 113 through 118, and the paired villas platted lots located in Unit 1C and known as Lots 1 through 6 and Lots 32 and 33, and Lots 46 through 48, shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements,

charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said lots in the subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the subdivision together as a whole and of each of the said lots situated in each of the developments described herein.

## ARTICLE I

### DEFINITIONS

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

**Section 1.01.** “**Added Parcels**” shall mean the Parcels comprising the Added Property submitted to the provisions of this Declaration by a supplemental amendment in accordance with Article XVIII hereof.

**Section 1.02.** “**Added Property**” shall mean any portion of the Development Area submitted to the provisions of this Declaration in accordance with Article XVIII hereof.

**Section 1.03.** “**Assessments**” shall mean Assessments for Common Expenses provided for herein or by any Supplemental Amendment or by any other amendment hereof pursuant to Article X hereof which shall be used for the purposes of promoting the health, safety, welfare, common benefit and enjoyment of the Subdivision all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

**Section 1.04.** “**Association**” shall mean and refer to the Emerald Crossing Property Owners Association, Inc., an Indiana corporation, and its successors and assigns. The “Board of Directors” or “Board” shall be the elected body having its normal meaning under Indiana law. The Association shall be organized and governed in accordance with the Articles of Incorporation attached hereto as Exhibit “C”.

**Section 1.05.** “**Common Area**” shall mean (i) the detention ponds and outlots shown on the recorded plats and the improvements therein, (ii) entrance signage easement with associated landscaping features, identifying Emerald Crossing, if installed by Developer or the Association, (iii) all personal property owned or controlled by the Association and available for the common benefit and/or use of Owners, and (iv) all other improvements located on or within the Submitted Parcel owned or controlled by the Association and available for the common benefit and/or use of the Owners or for the maintenance or management of any part of the Development Area.

**Section 1.06.** “**Common Expenses**” shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as

may be found to be appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

**Section 1.07.** “**Community-Wide Standard**” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Development Area. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

**Section 1.08.** “**Developer**” shall mean Builders Group, LLC, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of Emerald Crossing Subdivision from the Developer for the purpose of development.

**Section 1.09.** “**Development Area**” shall mean the real estate described on Exhibit A hereto with all improvements thereon and any additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration and described in Section XVIII of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Common Area of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association.

**Section 1.10.** “**Lot**” shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a structure could be constructed, whether or not one has been constructed.

**Section 1.11.** “**Maintenance**” shall mean the exercise of reasonable care, including buildings, water detention or retention easements, landscaping and other related improvements and fixtures in a condition comparable to their original condition.

**Section 1.12.** “**Member**” shall mean and refer to a person or entity entitled to Membership in the Association, as provided herein.

**Section 1.13.** “**Mortgage**” shall include a deed of trust, as well as a mortgage.

**Section 1.14.** “**Mortgagee**” shall include a beneficiary or holder of a deed or trust, as well as a mortgagee.

**Section 1.15.** “**Mortgagor**” shall include the trustor of a deed of trust, as well as a mortgagor.

**Section 1.16.** “**Occupant**” shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by leave, license, contract or any other means, whether or not lawful, and shall include, without limitation, Owners, tenants, subtenants, and their guests and invitees.

**Section 1.17.** “**Owner**” shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including the Developer, and including contract sellers, but not including contract Purchasers.

**Section 1.18.** “**Parcel**” shall mean a part of a Lot, fee simple title to which shall be conveyed by deed of the Declarant to each Owner, upon which an attached, single-family paired villa is located or to be located.

**Section 1.19.** “**Person**” means a natural person, a corporation, a partnership, trustee or other legal entity.

**Section 1.20.** “**Residential Unit**” shall mean one of the Parcels and the single-family paired villa located thereon, which is a part of the Submitted Parcel intended for independent ownership for use and occupancy as a single-family residence. The boundaries of Residential Units shall be the boundary lines of the Parcels of the Submitted Parcel conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of Lake County, Indiana, or other local governmental entity

**Section 1.21.** “**Structure**” shall mean any building, pool, driveway, breezeway, accessory building or fixture that is permanent.

**Section 1.22.** “**Subdivision**” shall mean and refer to the property hereinafter described and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section 1.

**Section 1.23.** “**Submitted Parcel**” shall mean that portion of the Development Area which is described on Exhibit A attached hereto, as Exhibit A may be amended from time to time, together with all rights appurtenant thereto.

**Section 1.24.** “**Supplemental Amendment**” shall mean a supplement to this Declaration to submit Added Property to this Declaration in accordance with Article XVIII hereof. Such Supplemental Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the Added Property submitted by that Supplemental Amendment to the provisions of this Declaration.

**Section 1.25.** **“Turnover Date”** shall mean the date on which the right of Declarant to select and designate all of the members of the Board of Directors is terminated pursuant to Section 16.01 hereof.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO, DELETIONS THEREFROM**

**Section 2.01.** **Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Lake County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

See attached Exhibit “A”.

**Section 2.02.** **Subdivision Restrictions.** Developer shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file Subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

**Section 2.03.** **Retractable Real Estate.** At the sole election of the Developer, all of the real estate specifically described in Section I of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions thereof at different times; provided, however that no real estate may be withdrawn which has been developed. All Owners and mortgagees are hereby deemed to consent to the vacation, and waive all right to remonstrate thereto, of any portion of the plat of the Subdivision not developed in which the Developer has withdrawn from this Declaration.

**Section 2.04.** **Easements.** There are platted on the plat of the Subdivision plat certain easements which shall be and are hereby reserved for the installation, construction, maintenance, repair or replacement of any and all public utilities and drainage and their poles, ducts, wires, pipelines, lines, conduit, sewers, manholes or other related utility or drainage facility. No permanent structure shall be erected or allowed to be maintained on any easement. No Owner shall grant an easement, license or permit others to use any Lot, or portion thereof, in the Subdivision for access to any property or real estate not located within the Subdivision. Developer also reserves for itself the non-exclusive right and power to grant, modify or expand such specific easements as may be necessary, in Developer’s sole discretion, in connection with the orderly development of the Subdivision. The Owner of any property to be burdened by any easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

## ARTICLE III

### USE RESTRICTIONS

**Section 3.01. Residential Restrictions.** The Residential Units shall be used only for residential, personal recreational and related purposes as may be more particularly set forth in this Declaration and amendments thereto. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions contained in any such declaration as if such provision were a regulation of the Association.

**Section 3.02. Exterior Post Lights.** Each Owner of a Parcel or Lot shall cause an exterior post light to be installed and maintained, at such Owner's expense. Exterior post lights shall be illuminated from dusk to dawn, be located five (5) feet from the driveway and five (5) feet from the public sidewalk toward the middle of the Lot and contain the illumination at a minimum of a 60-watt bulb.

**Section 3.03. No Temporary Building.** No structure of a temporary character, such as a trailer, tent, shack, garage, barn, or other building shall be used on any Parcel or Lot at any time as a residence, either temporarily or permanently.

**Section 3.04. Antennae.** No exposed radio or television antennae or solar heat panels shall be allowed on any residence or on any Parcel or Lot which are visible from outside such residence. Satellite dish antennae, the dish for which does not exceed eighteen (18) inches in diameter, shall be permitted.

**Section 3.05. Boats and Motor Vehicles.** No recreational vehicles, motor homes, boats, boat trailers, recreational equipment and trailers or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Parcel or Lot for more than forty-eight (48) hours, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Parcel or Lot, except within a fully enclosed building and totally isolated from public view.

**Section 3.06. Plants, Plant Material.** The planting materials are to be located on a Parcel or Lot and shall be reasonably maintained at the Owner's expense so as to present a healthy, neat and orderly appearance, free from refuse and debris. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of the Lot unless approved by the Developer or Architectural Review Committee.

**Section 3.07. Clothes Drying Area.** No portion of any Lot or Parcel shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a Lot or Parcel.

**Section 3.08. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or Parcel. However, dogs, cats and other common household pets may be kept on Lot or Parcels so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time and no dog be allowed to continuously bark, yelp, whine or howl by the Owner of any Parcel or Lot in the Subdivision.

**Section 3.09. Rubbish, Trash, Garbage and Nuisance.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Parcel or Lot and all trash shall be kept in sanitary containers and shall be stored inside the garage. No firewood, scrap wood, limbs, branches, compost, composters, paper, bottles, tires or similar substances, filth, rubbish trash or noxious substance shall be collected or remain on any Parcel or Lot or any part thereof which causes damage, prejudice or discomfort to others or the public or creates a breeding ground for insects or vermin.

**Section 3.10. Fences.** In order to preserve the quality and aesthetic appearance of the existing geographical areas within the Subdivision, any fence must be approved by the Developer or Architectural Review Committee as to size, location, height and composition before it may be installed.

**Section 3.11. Nuisances.** Nothing shall be done or maintained on any Parcel or Lot which may be or become a nuisance to the Subdivision.

**Section 3.12. Signs.** Except as hereinafter provided for Developer, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any Parcel or Lot subject to this Declaration. An Owner may place one professional sign on any Parcel or Lot advertising the Parcel or Lot for sale.

**Section 3.13. Building Method.** All dwellings constructed on Parcels in the Subdivision shall be subject to these covenants. No dwelling previously constructed elsewhere shall be moved to a Parcel in the Subdivision. Unless approved by the Developer, manufactured homes, modular homes, mobile homes or other similar building methods are prohibited. For purposes of this paragraph, a "manufactured home" shall mean a structure that (i) is assembled in a factory, (ii) bears a seal certifying that it was built in compliance with the federal manufactured housing construction and safety standards law, (iii) is designed to be transported from the factory to another site in one (1) or more unites, (iv) is suitable for use as a dwelling in any season, and (v) is more than thirty-five (35) feet long.

**Section 3.14. Residential Setback Requirements.** All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Parcels or Lot in the Subdivision so as to comply with the setback lines as established in the plat or plats of the various portions of the Subdivision and the

local zoning codes and ordinances without variance or deviation unless approved by the applicable Board of Zoning Appeals and the Developer.

**Section 3.15. Accessory Buildings.** In order to preserve the quality and aesthetic appearance of the existing geographical areas within the Subdivision, any accessory buildings must be approved by the Developer and/or the Architectural Review Committee.

**Section 3.16. Owner's Obligation to Maintain Single-Family Parcels or Lots.** Each Owner of an improved Parcel or Lot which is subject to these Covenants shall at all times maintain the Parcel or Lot and the improvements in such a manner as to prevent the Parcel or Lot and improvements from becoming unsightly, and specifically such Owner shall (a) mow and otherwise tend to the landscaping on the Parcel or Lot as such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds six (6) inches or more in height; (b) cut down and remove dead trees; (c) remove all debris and rubbish and prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Parcel or Lot; and (d) keep the exterior of the improvements in such a state of repair or maintenance as to avoid the improvements from becoming unsightly.

**Section 3.17. Well and Septic Tanks.** No water wells shall be drilled on any Parcel or Lot in the Subdivision without the approval of the Developer or Architectural Review Committee. No septic tanks shall be installed on any Lot or Parcel.

**Section 3.18. Destruction of Dwelling.** No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than four (4) months from time of such destruction or damage.

**Section 3.19. Prohibition of Used Structures.** All structures constructed or placed on any Parcel or Lot in the Subdivision shall be constructed with substantially all new material, and no used structures shall be relocated or placed on any such Parcel.

**Section 3.20. Immoral, Improper, Offensive and Unlawful Uses.** No immoral, improper, offensive or unlawful use shall be made of any Structure nor any part thereof.

**Section 3.21. Uses Affecting Insurance Rates.** An Owner shall not permit or suffer anything to be done or kept in a Structure which will increase the insurance rates on any adjacent Structure.

**Section 3.22. Preservation of Natural Features and Amenities.** The Builder shall plant two (2) trees on each Lot, (one (1) tree per Parcel) within the Lot and outside the road right of way except where there are sufficient existing trees present and preserved as determined by the Architectural Review Committee. The type of trees shall be

determined by the Architectural Review Committee, except that it must not be on the list of "*Prohibited Trees for Street Planting*" (see Exhibit E). Newly planted trees shall have at least a one and one-half inch (1 ½") caliper, measured one foot (1') from the ground. This section in its entirety shall be null and void if a waiver is obtained by the Developer from the Lake County Plan Commission.

## ARTICLE IV

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

**Section 4.01. Membership and Meetings.** Every Owner shall be deemed to have a membership in the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Parcel in the case of single-family paired villas and one membership per Lot in all other cases. In the event the Owner of a Parcel or Lot is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each for each Parcel in the case of single-family paired villas and one (1) vote for each Lot in all other cases.

The first annual meeting of the Association shall not be held until such time as the rights of the Declarant has elected to terminate its sole control by delivery of written notice of such election to the owner's of record or at such earlier time or times as may be determined by Declarant. The next annual meeting shall be set by the Board of Directors so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board of Directors. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board of Directors. Subject to the foregoing, the Members shall, at each annual meeting, elect the Board of Directors of the Association in accordance with the provisions of the By-Laws and transact such other business as may properly come before the meeting.

**Section 4.02. Voting.** The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Parcel in the case of single-family paired villas and one (1) vote for each Lot in all other cases in which they hold an interest required for membership by Section 4.01 hereof. When more than one (1) person or entity holds such interest in any Parcel or Lot as the case may be, the vote for such Parcel or Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Parcel's or Lot's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

The voting rights of Members shall be subject to the Declarant's rights pursuant to the provisions of Article XVI, Article XVII and Article XVIII hereof.

**Section 4.03. Number Terms and Selection of Board of Directors.** The initial Board of Directors shall consist of three (3) directors appointed by the Declarant who may but need not be Owners or Members of the Association, and who shall serve those terms of office as established by the By-Laws. The Declarant shall have the right to select and designate all of the directors, and accordingly therefore the right to operate and control the Association, until the Turnover Date. Thereafter, directors shall be elected as otherwise required by the Articles of Incorporation and By-Laws of the Association and must be Members of the Association.

Notwithstanding any other provision of this Declaration, the Articles of Incorporation, or the By-Laws, from and after the date of the recording of the Declaration until the Turnover Date, the Association shall be governed by the Board of Directors appointed from time to time by Declarant. Such Board of Directors so appointed shall exclusively hold all rights and powers which a Board of Directors or the Association would have under this Declaration, the Articles of Incorporation, or the By-Laws, except as specifically limited herein. Such Board of Directors may appoint from time to time from among the Owners of Parcels, one or more committees to advise and assist it in the performance of its functions. The rights and powers of such Board of Directors shall be limited as follows:

- (i) All assessments shall be made in accordance with this Declaration.
- (ii) Such Board shall have no power to reallocate the voting power among the Members in any manner contrary to this Declaration.
- (iii) Such Board shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meeting and annual accounting provided for in this Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, a meeting of the Association will be called, at which time the rights and powers of the Declarant appointed Board of Directors shall terminate and the Association shall thereafter be governed in accordance with the other provisions of this Declaration, the Articles of Incorporation and the By-Laws. Each Member shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which such Member is entitled to vote under this Declaration, or under the Articles of Incorporation or the By-Laws of the Association. The proxy hereby granted to Declarant shall be deemed to be coupled with an interest and irrevocable. Such proxy shall terminate as of the Turnover Date as set forth above.

**ARTICLE V**

**MAINTENANCE**

**Section 5.01. Association's Responsibility.**

A. Unless otherwise provided by an amendment to the By-Laws of the Association by a vote of two-thirds (2/3) of the Members (not two-thirds (2/3) of a quorum), and subject to the Association's responsibility for maintenance of the Submitted Parcel (except for services provided by Lake County, Indiana, shall be limited to:

(i) maintenance, repair, and replacement of the Common Areas including but not limited to Outlots A, B, C, F, G, H, H-1, H-2 and J and all the retention/detention ponds and any other outlots hereinafter deeded to the Association and located in recorded plats or the added property.

**Section 5.02. Retention and Detention Ponds.** The Declarant has or will convey to Emerald Crossing Property Owner's Association, Inc., an Indiana corporation, the detention ponds located on the property, the legal descriptions of said ponds is as follows:

Outlot "A," Emerald Crossing, Unit 1C, as per plat thereof, recorded in Plat Book 102, Page 96 in the Office of the Recorder of Lake County, Indiana.

and

Outlot "B," Emerald Crossing, Unit 1B, as per plat thereof, recorded in Plat Book 102, Page 95 in the Office of the Recorder of Lake County, Indiana.

and

Outlot "D:" Part of the West Half of the Northeast Quarter (W. 1/2, NE. 1/4) of Fractional Section 1, Township 34 North, Range 10 West, of the Second Principal Meridian more particularly described as follows: Commencing at the Southeast Corner of said W.1/2, NE.1/4; thence S.89°42'47"W., along the South line of said NE.1/4, a distance of 672.15 feet to the true point of beginning; thence continuing S.89°42'47"W., along said South line, a distance of 327.95 feet; thence N.0°33'09"E. a distance of 422.72 feet; thence N.89°28'31"E. a distance of 320.00 feet; thence S.0°31'29"E. a distance 424.01 feet to the point of beginning.

and

Outlot "F," Emerald Crossing, Unit 1A, as per plat thereof, recorded in Plat Book 102, Page 94 in the Office of the Recorder of Lake County, Indiana.

and

Outlot "J," Emerald Crossing, Unit 1A, as per plat thereof, recorded in Plat Book 102, Page 94 in the Office of the Recorder of Lake County, Indiana.

## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

**Section 6.01. Insurance.** Each owner of a Parcel or Lot at its own expense shall also obtain a public liability policy covering the Structure, Lot or Parcel owned by such Owner, and shall name the Association as an additional insured for all damages or injury caused by the negligence of such Owner. The public liability policy shall have at least a Five Hundred Thousand Dollars (\$500,000.00) limit per occurrence and a One Hundred Thousand Dollar (\$100,000.00) minimum property damage limit. In addition, each Owner upon request of the Association shall provide a copy of the insurance policy or a certificate to the Association.

All casualty insurance coverage obtained by any Owner shall be governed by the provisions hereinafter set forth.

- a. All policies shall be written with a company licensed to do business in Indiana and holding a "secure rating" of A or better as reflected in the current A.M. Best Company, Inc. guide, if reasonably available, or, if not available, the most nearly equivalent rating. Additionally, property damage insurance shall be for the full replacement cost.

**Section 6.01A. Association Insurance.** The Board shall also have the authority to and shall obtain, as a Common Expense, the following:

(a) Comprehensive public liability and property damage insurance against claims for person injury or death or property damage suffered by the public or by any Owner occurring in or about the streets, sidewalks and passageways and/or with respect to the Association's maintenance obligations set forth in Section 5.01 hereof, in such amounts as the Board shall deem desirable.

(b) Such workmen's compensation insurance as may be necessary to comply with applicable laws.

(c) Employer's liability insurance in such amount as the Board shall deem desirable.

(d) Fidelity bond or bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, 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 canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

(e) Directors' and Officers' liability insurance, as set forth in Section 14.02 hereof.

(f) Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insurance parties. The premiums for such insurance shall be Common Expenses.

## **ARTICLE VII**

### **NO PARTITION**

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Structure, paired villa or any part thereof, nor shall any person acquiring any interest in any Structure, paired villa or any part thereof seek any such judicial partition unless the Submitted Parcel has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring title to real property which may or may not be subject to this Declaration.

## **ARTICLE VIII**

### **CONDEMNATION**

Whenever all or any part of a Parcel or Lot shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner damaged by such condemnation shall be entitled to pursue all available remedies against the condemning authority. Should any property owned or maintained by the Association for common use be affected by the condemnation, the Association shall be entitled to pursue all available remedies against the condemning authority for the damages sustained to such property.

## ARTICLE IX

### RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

**Section 9.01. Personal Property for Common Use.** The Association, through action of its Board of Directors, may acquire, own, lease, hold and dispose of tangible and intangible personal property.

**Section 9.02. Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the operations of the Association, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may be imposed in accordance with Article XII. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association shall permit Lake County, Indiana, to enforce ordinances on the Submitted Parcel for the benefit of the Association and its Members.

**Section 9.03. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation, the ByLaws, or the Rules and Regulations, and 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.

## ARTICLE X

### ASSESSMENTS

**Section 10.01. Creation of Assessments.** There are hereby created Assessments for Common Expenses authorized by the Board of Directors to be commenced at the time and in the manner as determined by the Board of Directors in its sole discretion. Assessments shall be for expenses determined by the Board to be for the benefit of the Association. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments. All such Assessments, together with interest at the rate of twelve percent (12%) per annum, costs, and reasonable attorneys' fees shall be a charge on the Parcel or Lot and shall be a continuing lien upon the Parcel or Lot against which each Assessment is made. If any assessments are not paid within thirty (30) days of due date the same shall be deemed to be past due and subject to collection.

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 Parcel or Lot at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed, except no first Mortgagee who obtains title to a Parcel or Lot

pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title. 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, acceleration of the annual Assessment for delinquents; unless the Board otherwise provides, the Assessments shall be paid in monthly installments.

The Association is specifically authorized to enter into subsidy contracts with Declarant or other entities for the payment of some portion of the Common Expenses.

**Section 10.02. Computation of Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of the budget year (the budget year shall be from January 1 through December 31) 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 budget year. Subject to the provisions of Section 10.05 hereof, the budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall separately list general expenses. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Lot or Parcel for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding budget 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 budget year.

Until the Board of Directors of the Association establishes an assessment, at the time that each Parcel in the case of a paired villa and each individual residential lot in all other cases is transferred from the Developer to the Purchaser, an initial assessment of Three Hundred Dollars (\$300.00) shall be collected at the closing. In addition, each Owner shall be responsible to pay a yearly assessment of Three Hundred Dollars (\$300.00) per calendar year (prorated for the first year of ownership) which amount shall be due on or before June 30 of said year.

In the event any commercial property is subjected to these Covenants, then in that event, until the Board of Directors establishes an assessment, at the time that each commercial lot is transferred from the Developer to the Purchaser, an initial assessment of Two Thousand Dollars (\$2,000.00) shall be collected at the closing. In addition, each Owner of a commercial lot shall be responsible to pay a yearly assessment of Two Thousand Dollars (\$2,000.00) per calendar year (prorated for the first year of ownership) which amount shall be due on or before June 30 of said year.

**Section 10.03. Special Assessments.** In addition to the Assessments authorized in Section 10.01, the Association may levy a Special Assessment or Special

Assessments in any year applicable to that year, provided, however, that such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of fifty-one percent (51%) of a quorum of Members entitled to vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Member to reimburse the Association for costs incurred in bringing a Member and his Parcel or Lot into compliance with the provisions of the Declaration, the Amendments thereto, the Articles of Incorporation, the By-Laws, and the Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

**Section 10.04. Lien for Assessments.** When a notice of the lien has been recorded, such Assessment or Special Assessment shall constitute a perfected lien on each Parcel or Lot prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgage or deeds of trust) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Parcel or Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association, following foreclosure: (a) No right to vote shall be exercised on its behalf; (b) no Assessment shall be assessed or levied on it; and (c) each other Parcel or Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Parcel or Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments, and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 10.05. Capital Budget and Contributions.** In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in any amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 9.02 hereof. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 10.06. Date of Commencement of Annual Assessments.** The annual Assessments provided for herein shall commence as to each Parcel or Lot on the first day of each year and shall be prorated to the date of conveyance of title to an Owner

of said Owner's Parcel or Lot. Assessments 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 budget year.

**Section 10.07. Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any bona fide first Mortgage upon any Parcel or Lot. The sale or transfer of any Parcel or Lot shall not affect the Assessment or Special Assessment lien. However, the sale or transfer of any Parcel or Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel or Lot from lien rights for any Assessments or Special Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Parcel or Lot obtains title, his successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to such Parcel or Lot which became due prior to the acquisition of title to such Parcel or Lot by such acquirer. Such unpaid share of the Assessments shall be deemed to be Common Expense collectible from all of the Parcels or Lots, including such acquirer, his successors and assigns.

**Section 10.08. Association Insurance.** In addition to the other expenses the Board shall also have the authority to and shall obtain, as a Common Expense, the following:

- (i) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Owner occurring in or about the streets, sidewalks and passageways and other areas adjoining the Submitted Parcel and/or with respect to the Association's maintenance obligations set forth in Section 5.01 hereof, in such amounts as the Board shall deem desirable.
- (ii) Such workmen's compensation insurance as may be necessary to comply with applicable laws.
- (iii) Employer's liability insurance in such amount as the Board shall deem desirable.
- (iv) Fidelity bond or bonds indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, 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 canceled or

substantially modified without at least ten (10) days' prior written notice to the Association.

(v) Directors' and Officers' liability insurance.

(vi) Such other insurance in such reasonable amounts as the Board shall deem desirable.

Such insurance coverage shall include cross liability claims of one or more insured parties against other insurance parties. The premiums for such insurance shall be Common Expenses.

## ARTICLE XI

### **ARCHITECTURAL REVIEW PROCESS**

**Section 11.01. Objectives.** Developer's objectives are to carry out the general purposes expressed in this Declaration; and to assure that any improvements or changes in the Existing Property will be of good and attractive design and will serve to preserve and enhance existing features of natural beauty; and to assure that materials and workmanship of all improvements are of high quality and comparable to other improvements in the area.

**Section 11.02. The Committee.** To achieve Developer's objectives, the Developer shall create a three (3) member Architectural Review Committee with the power to administer this Declaration with regard to approving or disapproving those matters which are expressed herein to be within the jurisdiction of the committee. The right to appoint and remove all members of the committee or the alternative right to solely act as the Committee, shall vest solely in the Developer, its successors and assigns, until such time as Developer, in its sole option, at any time hereafter relinquishes to three (3) Lot Owners the power to appoint and remove one or members of the Committee. Matters requiring approval of the Committee shall be submitted to its Chairman, or as the Committee otherwise designates. It is the intention and purpose of these Covenants to ensure that all structures shall be of a quality of design, workmanship and materials which are compatible and harmonious with the natural setting of the area and other structures within the development.

**Section 11.03. Materials to be Submitted.** No improvements shall be constructed or placed on any Parcel or Lot within the Subdivision until final plans and specifications showing the site plan and all existing or proposed improvements have been submitted to, and approved in writing by the Committee or Developer, as the case may be. An Owner may choose to submit a preliminary concept to the Developer or Committee, which concept, if approved, may be incorporated into final plans and specifications. If a preliminary concept is approved by the Developer or the Committee, a final plan which is

substantially similar to the preliminary concept plan shall be approved by the Developer or the Committee as to those items submitted in the preliminary concept.

The Owner shall request architectural review in writing, and shall furnish two (2) complete copies of each of the following:

- (i) The lot site plan or plat prepared by a registered surveyor showing elevations, setbacks, erosion control, drainage and the location and dimensions of all structures and accessory buildings;
- (ii) Drawings and specifications of all exterior building surfaces, showing elevations and including the color, quality and type of exterior construction materials;
- (iii) Any additional information reasonably required for, or requested by the Committee which shall enable the Committee to determine the location, character, design, scale and appearance of the proposed improvements.
- (iv) A statement specifying the builder of the improvements on the Lot.

Changes in approved plans and specifications, or subsequent alterations, additions and changes to any existing improvements that affects dwelling size, placement or external appearance must be similarly submitted to and approved by the Developer or the Committee. Plans and specifications for the repair or reconstruction of improvements after casualty or condemnation must be similarly submitted to and approved by the Developer or the Committee.

**Section 11.04. Procedure.** The Committee, or Developer, as the case may be, shall disapprove preliminary concepts or plans and specifications submitted to it in the event the same are not in accordance with this Declaration or if the concept or final plans and specifications submitted are incomplete, and shall specify the reason for such disapproval. The Developer or the Committee shall consider any request which is submitted in accordance with the terms hereof on the basis of its conformity and harmony of external design and location in relation to surrounding structures, relation to topography, grade and finish ground elevation of the Lot being improved to that of neighboring sites, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning and rooftop installations, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Developer or the Committee shall, within thirty (30) days after the submission of such complete plans and specifications approve or disapprove any such request in writing. In the event such plans and specifications are disapproved, the Developer or the Committee shall specify the reasons therefor. If the Developer or the Committee fails to so approve or disapprove such request within thirty (30) days after such plans and specifications are submitted, such request shall be deemed approved. The decision of the Developer or the Committee shall be final, but the Committee shall not arbitrarily or unreasonably withhold

its approval of such plans and specifications. The Developer or the Committee shall retain one (1) full set of each Owner's final plans for its file. The Developer or the Committee shall have the rights, in its sole discretion, to approve the builder of the improvements on the Lot.

**Section 11.05.**      **As-Built Drawings.** Upon obtaining the final plan approval of the Committee, the Owner shall, as soon as practicable, proceed diligently with the commencement and completion of all approved improvements. Upon completion of the approved improvements, each Owner shall provide the Committee with one (1) plat of survey showing the location of all improvements and elevations.

**Section 11.06.**      **Variances.** The Architectural Control Committee, by the written consent of two-thirds of the members thereof, or by the decision of Developer, as the case may be, is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that variances shall not materially injure any other Existing Property or improvements within other Existing Property, and shall otherwise be subject to all applicable laws, ordinances, rules and regulations of any governmental agency or political subdivision having jurisdiction over the Existing Property. No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other person, Owner or Lot.

**Section 11.07.**      **Liability.** Neither the Committee, Developer, nor any member, employee or agent thereof, shall be liable to any Owner, to anyone submitting plans for approval, or to any other person, by reason of good faith exercise of judgment or mistake or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications or for any other action in connection with its or their duties hereunder. No Committee member shall receive any compensation for serving on the Architectural Control Committee.

**Section 11.08.**      **Remedies.** If any Owner or Owners believe that:

- (i)      the disapproval of any plans and specifications;
- (ii)     the finding of any unfulfilled declaration obligations; or
- (iii)    the finding of a nuisance or violation under this Declaration is arbitrary and capricious, the Owner must, as its sole remedy, submit the matter to final and binding arbitration pursuant to the provisions of the Indiana Uniform Arbitration Act and the rules of the American Arbitration Association not in conflict with said Act. The fees for the arbitrator and a court reporter shall be divided equally between the Owner and the Committee. All other costs shall be borne by the party incurring same. The parties to arbitration agree to cooperate in providing the relevant

documents, witnesses, employees, agents and contractors requested by the other party. No arbitrator shall vary form, or change the provisions of this Declaration.

**Section 11.09. Minimum Criterion for Architectural Review.** No dwelling shall be permitted to be constructed upon the Existing Property, nor shall the Committee be required to approve any construction which shall fail to comply with the following minimum requirements:

A. Single Family Lots (Lots 126 to 286)

(i) The ground floor coverage and/or living area as hereinafter defined of the dwellings, exclusive of attached garages, carports, open terraces, porches, and breezeways, shall be as follows:

One-story dwelling (Ranch) — Not less than 1,500 square feet of ground coverage.

One and one-half story dwelling and Two-story dwelling — Not less than 1,750 square feet of total living area.

Bi-level and Tri-Level dwelling — Not less than 1,400 square feet of living area above grade.

B. Cottage Home Lots (Lots 72-125)

(i) The ground floor coverage and/or living area as hereinafter defined of the dwelling, exclusive of attached garages, carports, open terraces, porches, and breezeways, shall be as follows:

One-story dwelling (Ranch) — Not less than 1,350 square feet of ground coverage.

One and one-half story dwelling and Two-story dwelling – Not less than 1,550 square feet of total living area.

C. Paired Villas (Lots 1-71)

(i) The ground floor coverage and/or living area as hereinafter defined of the dwellings, exclusive of attached garages, carports, open terraces, porches, and breezeways, shall be as follows:

One-story dwelling (Ranch) — Not less than 1,350 square feet of ground coverage per paired villa and 2,700 square feet of ground coverage per Parcel.

One and one-half story dwelling and Two-story dwelling – Not less than 1,550 square feet of total living area per paired villa and 3,100 square feet of ground coverage per Parcel.

D. Requirements Applicable to all Residential Construction

(i) All structures shall be required to have at least an attached two-car garage, which garage, as indicated above, shall not be included when computing the total square footage required;

(ii) All structures shall maintain a roof pitch of 6/12;

(iii) All structures shall be 25% masonry on the first floor, front elevation, vinyl, cedar, fiber cement siding and/or aluminum siding, soffit and fascia on the remainder of the exterior of the structure;

(iv) All structures shall be constructed with 30-year architectural grade shingles;

and

(v) All structures shall be constructed with concrete driveways and concrete walks.

E. For purposes of this Section, the following definitions are applicable:

(i) A one-story dwelling is defined as a dwelling having all living area on one floor. The living area floor level is at or slightly above the exterior grade level;

(ii) A one and one-half story dwelling is defined as a dwelling having one and one-half floors of living area, both above grade, with the second floor of living area consisting of approximately one-half of the size of the ground level;

(iii) A two-story dwelling is defined as a dwelling having two floors of living area, both above grade and both approximately the same size;

(iv) A bi-level dwelling is defined as a dwelling having the floor entry at or slightly above the exterior grade level. The main living area is up approximately 1/2 flight of stairs from the entry. The windows of the lower level are of a size compatible with the upper level windows;

(v) A tri-level dwelling is defined as a dwelling having at least two floors of living area at or above grade. A third floor area can be partially below grade and can be considered living area if the windows are above grade;

(vi) Ground Coverage is defined as the total foundation area supporting all living area;

and

(vii) Living area is defined as living room, bedroom, kitchen, dining room, family room, closets, utility rooms, entry ways and bath usage. To qualify as living area the interior finish must be of a manner and quality of materials in keeping with the other rooms.

F. Home styles shall be compatible with the neighboring homes and the contour of the land.

G. Any construction undertaken on any Lot shall be continued with diligence toward the completion thereof and construction of any dwelling shall be completed within twelve (12) months from the date final approval of the plans by the Developer or Architectural Review Committee, except that such period may be extended for a reasonable time by reason of Acts of God, labor disputes or other matters beyond the Owner's control.

H. All lots shall be landscaped within forty-five (45) days of issuance of an occupancy permit by the governmental agency authorized to issue the same, weather permitting. Landscaping for winter occupancy permits shall be completed by May 15. Landscaping shall include a sodded front yard and hydro-seeded, seeded or any combination thereof side yards and rear yards. A landscaped border of no less than 36" shall be maintained around the front elevation of the home which shall consist of shrub/flower plantings and stone aggregate base.

I. The location and elevation of each structure, including driveways on a lot shall be subject to approval in writing by the Committee, giving consideration to setback lines and easements on the recorded Subdivision, provided that each Owner shall be given reasonable opportunity to recommend the suggested construction site.

J. Commercial Buildings

(a) Commercial structures to be built on any land zoned commercial which is added to these Covenants pursuant to Article XVIII shall be subject to the Architectural Review Committee, which review shall include design, location on lot and materials used and impact on Residential Units in the Subdivision.

**Section 11.10. Compliance with Soil Erosion Control Plan.**

A. The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with Construction Activity. Each Owner shall undertake all

erosion control measures contained therein as the plan applies to “land distributing activity” initiated by Owner or Owner’s builders, contractors and their subcontractors and to comply with the Developer’s general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

B. Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner’s employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

C. The Builder of each Lot in the Subdivision shall pay to the Developer, or the Developer’s designee, a refundable deposit of One Thousand Dollars (\$1,000.00) per Builder. This deposit shall be held by the Developer to insure and guarantee the full and complete compliance by the Owner and the Owner’s contractors and subcontractors with the soil erosion measures required by state and local law and this Declaration. The deposit shall be paid at the time of closing on the purchase of the Lot from the Developer, or in the event that Developer elects to defer collection of the deposit, at the time of plan submission pursuant to this Declaration. The Developer may use all or a part of the Owner’s deposit to install, repair or replace slit fence, clean the street near the Owner’s Lot, repair any damage to the asphalt street or curbs or do any other work required to comply with the Owner’s obligations for soil erosion management. The Builder shall be responsible and shall reimburse the Developer for any costs incurred in excess of the deposit established in this Section. If not paid by the Builder, this obligation shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney’s fees, and cost of collection, as provided for herein and shall be subordinate to mortgage liens as provided for herein. Upon completion of the construction of the home on each Lot and all land distributing activities thereon, the Developer shall refund the deposit, or any unused portion thereof, to the Builder within thirty (30) days after written request but in no event later than ninety (90) days after final occupancy.

D. In addition to the above, any owner who does not comply with this Section shall be fined \$1,000.00 and may be charged an hourly rate by the Developer to bring any lot into conformance with this Section.

## ARTICLE XII

### ENFORCEMENT

Each Owner and Occupant of any Structure on any Lot or Parcel shall be governed by and shall comply with the terms of this Declaration and the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. A default or violation by an Owner or Occupant of any Structure located on any Lot or Parcel shall entitle the Association or any other Owner or Owners to the following remedies:

#### **Section 12.01. Authority and Administrative Enforcement and Procedures.**

A. Authority. Structures shall be used only for those uses and purposes set out in this Declaration, and subject to the covenants and restrictions set forth herein, and in the By-Laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Section 10.03 hereof, which shall constitute a lien upon the Owner's Structure and to suspend an Owner's right to vote, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XI that an Owner or Occupant has violated any provision of this Declaration, the By-Laws, or the Rules and Regulations as duly promulgated.

B. Procedure. The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

(i) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.

(ii) Notice. If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written notice of a hearing. The notice shall contain: (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf; and (d) the proposed sanction to be imposed.

(iii) Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice,

the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting.

C. Sanctions. The Board of Directors' power and authority to impose sanctions shall be governed by the following provisions:

(i) All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances which may include, but shall not be limited to, the following:

- (a) The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XII, and in otherwise attempting to remedy the violation.
- (b) The amount of actual damage done to other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of same.
- (c) The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Residential Unit.
- (d) The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.

(ii) All Special Assessments amounts imposed hereunder as a sanction shall be deemed to be a part of the Assessment attributable to the Structure occupied by the violator, and shall be assessed against said Structure and its Owner as a Special Assessment to be due and payable on the date that the next Assessment payment would be due, and any such special Assessments which are not paid as of that date shall become a lien on such Parcel, and shall be collected and enforced in the same manner as Assessments.

(iii) Nothing herein contained shall be construed as granting to the Board of Directors the power or authority to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of Directors finds, by specific special findings of fact in accordance with the foregoing procedure, that the violator's conduct was willful, malicious, oppressive and

outrageous in nature. Said special findings of fact shall specifically set forth all facts and circumstances.

(iv) All other sanctions imposed shall be reasonably related to the violation found.

(v) The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

**Section 12.02.**      **Legal Remedies.** In addition to the administrative remedies set forth in Section 12.01 hereof, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

**Section 12.03.**      **No Waiver of Rights.** The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall not constitute a waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

**Section 12.04.**      **No Election of Remedies.** All rights, remedies and privileges granted to the Association or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-Laws and Rules and Regulations or by law shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

## **ARTICLE XIII**

### **AMENDMENT**

The Declaration and the Articles of Incorporation, By-Laws, and Rules and Regulations may be amended in the following manner:

**Section 13.01.**      **Declaration.** Subject to Article XIV, Article XV and Article XVIII, amendments to the Declaration shall be proposed and adopted as follows, provided, however, that no amendment may revoke, remove, or modify any right or privilege of the Declarant, without the Declarant's written consent.

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the Notice of any meeting of the Board of Directors or Owners at which any proposed amendment is to be considered.

(ii) Resolution. Except as provided in subparagraph iv. hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the Members (not three-fourths (3/4) of a quorum), at any regular or special meeting of the Members called and held in accordance with the By-Laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).

(iii) Recording. The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Lake County, Indiana. A copy of any such amendment shall also be sent to each Owner and his Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

(iv) Amendments by Declarant. Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-Laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other Person, (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each sell, insure or guarantee first mortgages covering Residential Units, (5) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering residential units, or (6) to add portions of the Development Area to the Submitted Parcel by Supplemental Amendment pursuant to Article XVIII hereof. This subparagraph d. shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other Persons having an interest of any kind in the Submitted Parcel, for so long as Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Lake County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph c. hereof.

**Section 13.02. Articles of Incorporation.** The Articles of Incorporation of the Association shall be amended in the manner provided by such documents or by law.

## ARTICLE XIV

### GENERAL PROVISIONS

**Section 14.01. Term.** The covenants and restrictions of this Declaration shall run with and bind the Submitted Parcel, and shall inure to the benefit of an shall be enforceable by the Association or the Owner of any Lot or Parcel subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period often (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

**Section 14.02. Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action suite or other proceeding, (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud. The Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Association, or arising out of their status as directors or officers, unless any such contract or act shall have been made criminally, fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include an indemnification against all costs and expenses (including, but not limited to, attorneys' fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director or officer may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for criminal conduct, gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board of Directors, there is not reasonable grounds for such person being adjudged liable for criminal conduct, gross negligence or fraud in the

performance of his duties as such director or officer. Any right to indemnification provided for herein shall be not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 14.03. Perpetuities.** If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 14.04. Owner's Obligation to Maintain and Repair.** Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence keeping the same in a condition comparable to the condition of such residence at the time of its initial construction.

**Section 14.05. Self-Help.** In addition to any other remedies provided for herein, the Developer or its duly authorized agent shall have the power to take such remedial action, activity or otherwise perform or take such action or obligation of a defaulting Owner to bring a Lot or Parcel into compliance with this Declaration. The Developer or its duly authorized agent may enter upon a Lot or Parcel or any portion of the Subdivision (including Common Area, if any) to abate or remove, using such force as may be reasonably necessary, any construction, erection, thing or condition which violates this Declaration, the Architectural Guidelines, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Developer shall give the violating Parcel Owner five (5) days' written notice of its intent to exercise remedial activity (self-help). All costs of the Developer remedial activity (self-help), together with interest at the rate of twelve percent (12%) per annum, including attorneys' fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein. No liability shall be assumed or imposed by the Developer's exercise or failure to exercise such remedial activity. Notwithstanding the foregoing, in the event of an emergency or the blockage or material impairment of the easement rights granted hereunder, the Developer may immediately cure the same and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with interest as above described.

**Section 14.06. Notices.** Any notices required to be sent to any Owner under any provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as owner on the records of the Lake County Auditor's official property tax records at the time of such mailing.

**Section 14.07. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 14.08.**      **Effective Date.** This Declaration or any amendment hereto shall become effective upon its recordation in the Office of the Recorder of Lake County, Indiana.

**Section 14.09.**      **Severability of Invalid or Unenforceable Provisions.** If any term, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other terms, covenant, provision, phrase or other element of this Declaration, the Articles of Incorporation, the By-Laws or the Rules and Regulations.

If any part of this Declaration, or any term, covenant, provision, phrase or other element, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of the Declaration and the application of any other term, covenant, provision, phrase or other element in other circumstances shall not be affected thereby.

**Section 14.10.**      **Captions.** Captions used in this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of this Declaration, the Articles of Incorporation, the By-Laws and the Rules and Regulations.

**Section 14.11.**      **Binding Effect.** This Declaration shall be binding upon and inure to the benefit of each Owner, its successor, grantees, assigns and the legal representatives thereof.

## **ARTICLE XV**

### **MORTGAGEES' RIGHTS**

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-Laws of the Emerald Crossing Property Owners Association. Where indicated, these provisions apply only to "Eligible Holders," as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

**Section 15.01.**      **Notices of Action.** An institutional holder, insurer, or guarantor of a first mortgage, who provides written request (such request to state the name and address of such holder, insurer or guarantor and the Lot or Parcel address), to the

Association (thereby becoming an “Eligible Holder”), will be entitled to timely written notice of:

- (i) any proposed termination of the Association;
- (ii) any condemnation loss or any casualty loss which affects a material portion of the Submitted Parcel or which affects any Lot or Parcel on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (iii) any delinquency in the payment of Assessments or charges owed by an Owner of a Lot or Parcel subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (iv) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (v) any proposed action which would require the consent of Eligible Holders, as required in Section 15.02 hereof.

**Section 15.02. Special FHLMC Provision.** So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing two sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer);
- (ii) change the method of determining the obligations, Assessments, dues or other charges which may be levied against the Owner;
- (iii) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance;
- (iv) fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- (v) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 16.03 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required for any of the actions contained in this Section.

**Section 15.03. Mortgagee's Right to Cure.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for any Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

## ARTICLE XVI

### **DECLARANT'S RIGHTS**

**Section 16.01. Control by Declarant.** Notwithstanding any of the other provisions of this Declaration or the By-Laws to the contrary, and in addition to any other right or privilege given or granted or reserved to Declarant under this Declaration, the first and all subsequent Board of Directors shall consist solely of three (3) individuals designated by Declarant, which individuals may be need not be Owners or Members until the date on which the Declarant elects to terminate its sole control by the delivery of written notice of such election to the Owners.

**Section 16.02. Absence of Warranty.** The Declarant specifically disclaims any warranty or representation in connection with the Submitted Parcel or Development Area or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation not specifically set forth therein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

**Section 16.03. Assessment Exemption.** Declarant shall be exempt from any Assessment levied by the Association on any or all Parcels owned by the Declarant and/or Declarant's designee, Builders Group, LLC, which are unoccupied and offered by the Declarant for sale.

**Section 16.04. Right to Amend Declaration.** The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-Laws, and Rules and Regulations, in accordance with Article XIII hereof.

**Section 16.05. Transfer of Rights.** Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is a written instrument signed by the Declarant and duly recorded in the Office of the Recorder of Lake County, Indiana.

**Section 16.06. Declarant's Reserved Rights and Easements.** Notwithstanding any provisions herein to the contrary, Declarant hereby expressly reserves

unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel, for the benefit of Declarant, its successors, and assigns over, under, in, and/or on the real estate and any portion of the Development Area which becomes part of the Submitted Parcel, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, maintenance, repair, replacement, use and enjoyment and/or otherwise dealing with the Submitted Parcel and Development Area. The reserved easement shall constitute a burden on the title to all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel and specifically includes, but is not limited to:

(i) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Submitted Parcel and any portion of the Development Area which becomes part of the Submitted Parcel; and the right to tie into any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel with driveways, parking areas, streets, and drainage systems; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, and in connection therewith the right to store construction equipment and materials in appropriate areas in areas owned by Declarant without payment of any fee or charge whatsoever; and

(ii) the right to construct, install, replace, relocate, maintain, repair, use and enjoy model units, parking spaces, signs, lighting, construction offices, business offices and sales offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction of improvements and sale of units in all or any portion of the Submitted Parcel and Development Area;

(iii) no rights, privileges, and easements granted or reserved herein shall be merged into the title of any Structure within the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Submitted Parcel and any portion of the Development Area that becomes part of the Submitted Parcel.

This Section 16.06 may not be amended without the advance written consent of Declarant.

## ARTICLE XVII

### LIMITATION ON DECLARANT'S LIABILITY

**Section 17.01.      Limitation on Declarant's Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed, and such Owner, by accepting title to a Lot or Parcel and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any members of Declarant (or any member, partner, officer, director or shareholder in any such assignee) shall have any liability, personal or otherwise, to any Owner or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of Declarant (or its assignee), to the extent of its interest in the Submitted Parcel; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

## ARTICLE XVIII

### ANNEXATION OF ADDITIONAL PROPERTY

**Section 18.01.      Annexation Without Approval of Membership.** 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 the end of the twentieth (20th) year after the recording of this Declaration, to annex, submit and subject to the provisions of this Declaration, all or any part of the Development Area, or other property adjacent to or in the vicinity of the Development Area, including but not limited to the property described in Exhibit "B," by recording an amendment to this Declaration ("Supplemental Amendment") as hereinafter provided. For the purposes of this Article, any portion of the Development Area which is made subject to this Declaration by a Supplemental Amendment shall be referred to as "Added Property," and any Parcel in the Added Property shall be referred to as "Added Parcel." Added Property may be made subject to the Declaration at different times and there is no limitation on the order in which Added Property may be made subject to this Declaration. There is no limitation on the location of improvements which may be made on Added Property and no particular portion of the Development Area must be made subject to this Declaration.

**Section 18.02.      Power to Amend.** In furtherance of the foregoing, Declarant reserves the right to record a Supplemental Amendment, at any time and from time to time prior to ten (10) years from the date of recording hereof, which amends those portions of this Declaration necessary to reflect the Added property and the effect of the Added Parcels and/or Lots.

**Section 18.03. Effect of Amendment.** Upon the recording of a Supplemental Amendment by Declarant which annexes and subjects Added Property and/or Lots to this Declaration, as provided in this Article, then:

(a) The restrictions, conditions, covenants, reservations, lien, charges, rights, benefits and privileges set forth and described herein shall run with and bind the Added Property (including Added Parcels) and inure to the benefit of and be the personal obligation of the Owners of Added Parcels in the same manner, to the same extent, and with the same force and effect that this Declaration applies to the Submitted Parcel and Owners of Parcels which were initially subjected to this Declaration.

(b) Every Person who is an Owner of an Added Parcels shall be a Member of the Association on the same terms and subject to the same qualifications and limitations as those Members who are Owners of Parcels.

(c) Each Owner of an Added Parcel shall pay a percentage of the common assessments due as calculated at the time of the annexation by the Board of Directors in its sole discretion; provided, however, the Owner of an Added Parcel shall not be required to pay any installment of a Special Assessment levied to cover a deficit under a prior year's budget.

(d) The amount of the lien for Assessments, charges or payments levied against an existing Parcel or Lot prior to the recording of the Supplemental Amendment shall not be affected unless specifically notified by the Developer at the time of the annexation.

Such Supplemental Amendment shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such Supplemental Amendment unless otherwise provided herein. Declarant shall have the unilateral right to transfer to any other person the said right, privilege and option to annex such Added Property which is herein reserved to Declarant, provided that such transferee or assignee shall be the Developer of at least a portion of such Added Property and that such transfer is memorialized in a written, recorded instrument.

**Section 18.04. Amendment.** This Article XVIII shall not be amended without the written consent of Declarant, so long as the Declarant owns any portion of the Development Area.

**Section 18.05. Annexation of Common Areas.** If, at any time pursuant to this Article XVIII, property is annexed adjacent to or in the vicinity of the development area, including but not limited to the property described in Exhibit "B" and said property includes common area, then it shall be the responsibility of the Association to maintain, repair and

replace any part of the common area, including but not limited to any retention or detention ponds.

**IN WITNESS WHEREOF**, the Developer has caused this Declaration of Covenants and Restrictions to be executed on the date first written above,

**THE BUILDER GROUP, LLC**

**BY:** \_\_\_\_\_  
Jeffery H. Wozniewski,  
Manager

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF LAKE        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffery H. Wozniewski as Manager of The Builder Group, LLC and acknowledged the execution of the foregoing instrument for and on behalf of The Builder Group, LLC and as its free and voluntary act.

Signed and sealed this 25th day of August, 2008.

\_\_\_\_\_  
Denise Kessler, Notary Public

My Commission Expires: June 25, 2016

County of Residence: Porter

This instrument prepared by: Richard E. Anderson, #2408-45  
Anderson & Ward, P.C.  
Barrister Court  
9211 Broadway  
Merrillville, IN 46410  
(219) 769-1892

**EXHIBIT "A"**

Emerald Crossing, Unit 1A, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 102, Page 94, in the Office of the Recorder of Lake County, Indiana.

and

Emerald Crossing, Unit 1B, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 102, Page 95, in the Office of the Recorder of Lake County, Indiana.

and

Emerald Crossing, Unit 1C, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 102, Page 96, in the Office of the Recorder of Lake County, Indiana.

**EXHIBIT "B"**

PARCEL 1) The West Half of the Northeast Quarter and the Northwest Quarter of Section 1, Township 34 North, Range 10 West of the Second Principal Meridian, in Lake County, Indiana, excepting therefrom the following 3 parcels: 1.) that tract conveyed to Henry W. Meyer by Quit Claim Deeds recorded in Deed Record 305, Pages 493 and 494, and 2.) that tract conveyed to Harry E. Bowman and Mabel E. Bowman by warranty Deed recorded in Deed Record 930, Page 45, and 3.) that tract described as the South 72 1/14 rods of the West 111 rods of said Northwest Quarter and known as PON and CO'S LAKE COUNTY FARMS as shown in Plat Book 25, Page 67, in the Lake County Recorders Office.

PARCEL 2) Lots 1 and 2 of PON and CO'S LAKE COUNTY FARMS, as shown in Plat Book 25, Page 67, in the Lake County Recorder's Office.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

Emerald Crossing, Unit 1A, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 102, Page 94, in the Office of the Recorder of Lake County, Indiana.

and

Emerald Crossing, Unit 1B, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 102, Page 95, in the Office of the Recorder of Lake County, Indiana.

and

Emerald Crossing, Unit 1C, a Subdivision in Lake County, Indiana, as per record plat thereof appearing in Plat Book 102, Page 96, in the Office of the Recorder of Lake County, Indiana.