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This Instrument Was Prepared By:

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RECORDER
RECORDER

After Recording Mail To:

Greg A. Bower
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425 Joliet Street, Suite 425
Dyer, Indiana 46311

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RECORDER'S STAMP

FILED

MAR 5 2002

*DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
AUBURN MEADOW COMMUNITY ASSOCIATION*

PETER BENJAMIN
LAKE COUNTY AUDITOR

This Declaration of Covenants, Conditions and Restrictions for Auburn Meadow Community Association is made this 5 day of MARCH, 2002 by Auburn Meadow Development, LLC ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in Schererville, Indiana, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference, and the Declarant desires to subject such property to the provisions of this Declaration and to have constructed by Auburn Meadow Development, LLC, an Indiana limited liability company ("Developer"), together with other homebuilders, if any, various residential communities, and to provide a flexible and reasonable method for the administration and maintenance of such property; and

WHEREAS, as hereinafter provided in this Declaration, the Declarant has retained and reserved the right, privilege, and option to submit to the provisions of this Declaration at a later time and from time to time as a part of the residential community described herein, all or any portion of the property described in Exhibit B attached hereto and incorporated herein by this reference, and such other property as the Declarant may acquire from time to time and/or wish to subject to the terms of this Declaration.

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NOW, THEREFORE, the Declarant hereby declares that all of the property described in Exhibit A and any additional property described in Exhibit B as may by subsequent amendment hereto be subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration, and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof and where provided herein, shall benefit the property on which certain common areas are located.

ARTICLE I **DEFINITIONS**

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

(a) "Additional Property" shall mean and refer to the real property described in Exhibit B attached hereto and all improvements thereon, together with such other additional property and all improvements thereon as Declarant shall acquire from time to time and shall desire to subject to the terms of this Declaration and by amendment to Exhibit B hereto recorded in the Office of the Recorder of Lake County, Indiana, include within the property described in Exhibit B.

(b) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Auburn Meadow Community Association, Inc., an Indiana not-for-profit corporation, as amended from time to time.

(c) "Association" or "Community Association" shall mean and refer to Auburn Meadow Community Association, Inc., an Indiana not-for-profit corporation.

(d) "Association Delegates" shall mean those delegates representing Members at the Association meetings, as described more fully in Article IV hereof.

(e) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Community Association.

(f) "By-Laws of the Association" or the "By-Laws" shall mean and refer to those By-Laws of Auburn Meadows Community Association, Inc., which govern the administration and operation of the Association, as the same may be amended from time to time, a copy of which is attached hereto as Exhibit C.

(g) "Common Area" shall mean and refer to all real and personal property now or hereafter owned and/or maintained by the Association for the common use and enjoyment of the Owners. Included within the Common Area may be the following, if any: stormwater management facilities, entry monuments, center islands in cul-de-sacs, retention area(s) and landscaped areas not

platted as lots, walking trails, clubhouse and pool, and community fencing, except to the extent any of the foregoing have been publicly dedicated. The designation of any land and/or improvements as Common Area shall not mean or imply that the public at large acquires any easement of use or enjoyment therein. Declarant may, but shall not be required to, designate and/or convey other property to the Association. The legal description of the Common Area existing as of the date hereof is attached hereto as Exhibit D and such additional parcels of land as may be subjected to the terms of this Declaration in accordance with Article II.

(h) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(i) "Declarant" shall mean and refer to Auburn Meadow Development, LLC, its successors and assigns.

(j) "Declarant Rights" shall mean any and all rights, powers and privileges reserved, granted or otherwise provided for herein which may be exercised by, or which benefit only, the Declarant.

(k) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Auburn Meadow Community Association and all amendments thereof filed for record in the Office of the Recorder of Lake County, Indiana.

(l) "Developer" shall mean Auburn Meadow Development, LLC, an Indiana limited liability company, its successors and assigns as may be designated in a recorded instrument.

(m) "Development", with an initial capital letter, shall mean and refer to the Property and all improvements located or constructed thereon, and any portion of the Additional Property submitted to the provisions hereof pursuant to Section 2.02.

(n) "Dwelling", with an initial capital letter, shall mean and refer to any improved property intended for use as a single-family detached dwelling or as a townhouse, condominium unit, or patio or cluster home, whether detached or attached, located within the Development.

(o) "Family" shall mean one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than two (2) persons not all so related, together with his or their domestic servants, maintaining a common household in a Dwelling.

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

(q) "Lease" shall mean and refer to any lease, sublease, or rental contract, whether oral or written.

(r) "Lot" shall mean and refer to any unimproved portion of the Property (and a subdivided lot of record) upon which it is intended that a Dwelling (or Dwellings, in the event condominium units are constructed) shall be constructed. A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof and a certificate of occupancy has been issued by the Town. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

(s) "Member" shall mean an Owner who holds membership in the Association pursuant to Section 4.01 of this Declaration.

(t) "Mortgage", with an initial capital letter, shall mean and refer to a security deed, deed of trust, mortgage, installment land sales contract or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot, Dwelling, or Neighborhood.

(u) "Mortgagee", with an initial capital letter, shall mean and refer to the holder of a Mortgage.

(v) "Neighborhood" shall mean and refer to any portion of the Property, designated by Declarant, which is intended to be a distinct community within the Property and which shall have a separate association responsible for maintenance and administration, and within which it is intended that there will be constructed Dwellings. In no event shall a Neighborhood Association own any of the Common Area, except that a Neighborhood Association that is also a Condominium Association shall own the Common Area within the Condominium.

(x) "Neighborhood Association" shall mean and refer to a corporation or an unincorporated association whose shareholders or members are comprised entirely of Owners of Dwellings within a Neighborhood, including Auburn Meadow Terrace Homes, Inc., Auburn Meadow Paired Cottage Association, Inc. and Auburn Meadow Townhome Association, Inc.

(y) "Neighborhood Declaration" shall mean and refer to any instrument or document, and any amendments thereto, which is recorded in the Office of the Recorder of Lake County, Indiana, with respect to any Neighborhood and which imposes covenants, conditions, easements, and restrictions with respect to such Neighborhood.

(z) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(aa) "Owner", with an initial capital letter, shall mean and refer to one (1) or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, excluding, however, those persons having such an interest under a Mortgage. In the event that there is recorded in the Office of the Recorder of Lake County, Indiana, any installment land sales contract covering any Lot or Dwelling, the Owner of such Lot or Dwelling shall be the purchaser under said contract

and not the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payment for a Lot or Dwelling for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such Lot or Dwelling until all such payments are made, although the purchaser is given use of such Lot or Dwelling.

(ab) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(ac) "Property," with an initial capital letter, shall mean and refer to those tracts or parcels of land described on Exhibit A together with all improvements thereon, including the Common Area, utility systems, drainage systems, and other improvements serving the Lots and Dwellings, and, upon submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit B, or any portion thereof, or any tracts or parcels of land hereafter added thereto, together with all improvements thereon.

(ad) "Record" or "place of record" means to record a document in the Office of the Recorder of Lake County, Indiana.

(ae) "Unit Membership" shall mean the membership in the Association, which is appurtenant to a member's Dwelling or Lot as provided in Section 4.01 of this Declaration.

(af) "Town" shall mean and refer to the Town of Schererville, a municipal corporation, its successors and assigns.

ARTICLE II **DEVELOPMENT**

2.01 Development of Property. Except as otherwise set forth in Section 10.10, all Lots within the Development shall be and are hereby restricted exclusively to residential use and related uses and shall be subject to the standards and restrictions set forth in Article X hereof. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option (as defined in Section 2.02) to submit Additional Property to the terms of this Declaration and to make improvements and changes to all Common Area and to any other portion of the Property owned by Declarant, including, without limitation, (i) installation and maintenance of any improvements in and to the Common Area, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Common Area, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) installation of security and/or refuse facilities. Any and all improvements or changes made, as aforesaid, shall not result in an encroachment on Lots not owned by Declarant.

2.02 Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time the Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause the Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Declarant in accordance

with the following rights, conditions, and limitations, which are the only conditions and limitations on such option to add all or any portion of the Additional Property to the Development:

(a) The option may be exercised from time to time during a period of ten (10) years from the date of this Declaration; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such ten (10) year period by executing and filing an agreement evidencing such termination in the Office of the Recorder of Lake County, Indiana, and, except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such ten (10) year period.

(b) The legal description of the Additional Property as of the date hereof is set forth on Exhibit B, portions of the Additional Property (together with additions thereto made in accordance herewith) may be added to the Development and to the terms of this Declaration at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence, or location in which any of such portions may be added to the Development. The exercise of the option to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this option as to other portions or the balance of the Additional Property.

(c) If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate the boundaries of the Lots, Dwellings, and Neighborhoods, as well as the Common Area, if any, to be added to the Development in connection therewith.

(d) Should the option to add the Additional Property, or any portion thereof, not be exercised within the term specified herein or be terminated by Declarant, such option shall in all respects expire and be of no further force and effect.

(e) The option reserved by Declarant to cause all, or any portion of, the Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add all or any portion of the Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

The option reserved under this Section 2.02 may be exercised by Declarant only by the execution of an amendment to this Declaration which shall be filed in the Office of the Recorder of Lake County, Indiana, together with a legal description of the Additional Property or such portion or portions thereof as are being added to the Development by such amendment. Simultaneously therewith, Declarant may, at its option, convey to the Association the Common Area, if any, contained within the Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and/or the Additional Property, and any exceptions which would be disclosed by survey or physical inspection of such parcel(s). Any such amendment shall expressly submit the Additional Property or such portion thereof to all the provisions of this Declaration, and upon the exercise, if any, of such option or options, the provisions of this Declaration shall then be construed as provisions embracing the real property described in Exhibit A and the Additional Property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. In no event shall Declarant be obligated to submit the Additional Property, or any portion thereof, to the provisions of this Declaration or to impose upon the Additional Property, or any portion thereof, any covenants, conditions, or restrictions whatsoever.

2.03 Neighborhood Associations. It is presently contemplated that there may be established by Declarant, its successors or assigns, Neighborhood Associations limited to the Owners of Lots or Dwellings within the Neighborhoods located within such portion or portions of the Property designated as a Neighborhood by Declarant in order to promote their health, safety, and social welfare, as well as to provide for the maintenance of Dwellings and/or common area owned by such Owners and/or such Neighborhood Associations, provided that such Owners shall also be members of the Association and such Lots and Dwellings shall continue to be subject to the terms of the Declaration. Such Neighborhoods may be subject to Neighborhood Declarations, which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Neighborhood Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules, and regulations with respect to such Neighborhoods.

2.04 Interest Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, subject to Declarant's right to add the Additional Property, or any portion or portions thereof, to the Development as hereinabove provided, and to convey to the purchaser thereof the title to the Lot or Dwelling and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

2.05 Subdivision Plat. Declarant reserves the right to record, modify, amend, revise, and add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of the Lots, Dwellings, Neighborhoods, Common Area, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements and set-back line restrictions.

ARTICLE III **PROPERTY RIGHTS**

3.01 General. Each Lot and Dwelling shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his Lot or Dwelling, subject to the provisions of this Declaration, including, without limitation, the provisions of this Article III. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services to a Lot, Dwelling, or Neighborhood lie partially within and partially outside of the designated boundaries of the Lot, Dwelling, or Neighborhood in question, any portions thereof which serve only such Lot, Dwelling, or Neighborhood shall be deemed to be a part of such Lot, Dwelling, or Neighborhood, and any portions thereof which serve more than one (1) Lot, Dwelling, or Neighborhood, or any portion of the Common Area, shall be deemed to be a part of the Common Area. The ownership of each Lot and Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot or Dwelling. Lots shall not be subdivided, and,

except as otherwise provided hereunder, the boundaries between Lots shall not be relocated, unless the relocation thereof is made with the consent of at least a majority of the Owners in the Development and of Declarant, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development. Notwithstanding the foregoing, nothing herein shall prohibit the combination of two (2) or more Lots into a larger parcel in order to create a Dwelling site larger than one (1) Lot nor shall the prohibition against the subdivision of Lots and relocation of boundaries between Lots apply to the Declarant. In the event of such combination, any assessment obligation shall be imposed on the original pre-combined Lots.

3.02 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Area, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

(a) The right of the Association to borrow money (i) for the purpose of improving the Common Area, or any portion thereof, (ii) for acquiring additional Common Area, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Common Area, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a mortgage deed or other security instrument conveying all or any portion of the Common Area; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(b) The rights and easements reserved to Declarant in Sections 3.03, 3.04, 3.05, 3.06, 3.09, 3.10, 3.11, 3.12. and 3.14 or as otherwise provided for in this Declaration.

(c) The right of the Association to grant and accept easements as provided in Section 3.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Area to Lake County, Indiana, the Town or to any other public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.08 hereof for the benefit of the Association, its directors, officers, agents, and employees.

(e) The rights and easements reserved in Section 3.10 hereof for the benefit of the Additional Property.

(f) The rights of the holder (and its successors and assigns) of any Mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

(g) The right of the Association to have reasonable rules and regulations.

(h) The right of the Association to suspend the use of any facilities located upon the Common Area by a Member for the period of time during which any assessment against his Lot remains unpaid and for an additional reasonable period for any infraction of its rules and regulations.

3.03 Access and Walking Trail Easement. All Owners, by accepting title to Lots or Dwellings conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot or Dwelling and acknowledge and agree that such access, ingress, and egress shall be limited to roads, sidewalks, walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all Lots and Dwellings shall be provided at all times. All Owners, Developer and Declarant grant to each other an easement for use and enjoyment on a walking trail in the Property, subject to the rules and regulations of the Association.

3.04 Easements for Declarant. During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, Declarant shall have an alienable and transferable right and easement on, over, through, under, ad across the Common Area for the purpose of constructing Dwellings and other improvements in and to the Lots and within Neighborhoods and the Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including any portions of the Common Area) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all thing reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Dwelling or Lot or has the right to submit the Additional Property or any portion thereof to the Development, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress, and egress to the Common Area and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of Owners in the Development to the use of the Common Area.

3.05 Changes in Boundaries: Additions to Common Area. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Area, any Lots, Dwellings, or Neighborhoods owned by Declarant and the realignment of boundaries between adjacent Lots, Dwellings, and/or Neighborhoods owned by Declarant. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional Property, such real property to be conveyed to the Association as an addition to the Common Area and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors, and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Area, such other portion of the Development owned by Declarant as it, in its discretion, shall choose.

3.06 Easements for Utilities and Public Services.

(a) There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power and obligation to grant and accept easements to from Lake County, Indiana, the Town of Schererville, Indiana, or any other public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (i) all or any portion of the Common Area, and (ii) all portions of all Lots owned by Declarant, as are reasonably necessary, for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and al utilities, including, but not limited to, storm sewers, drainage systems, and retention ponds and facilities for the Development or any portion thereof, and electrical, gas, telephone, water, and sewer lines, provided that such easements shall not unreasonably affect the developability, of any such Lot or Dwelling. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board, provided, however, that notwithstanding anything contained herein to the contrary, the Board shall not have any rights to grant any easements over any portion of any Lots. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacements, and use of such utilities and systems; provided, however, that such utility company or other supplier or servicer shall take reasonable actions to repair any damage caused by such utility company or other supplier or servicer during the exercise of any rights conveyed under any easement granted hereunder.

(b) Declarant hereby grants to the relevant governmental authority or agency, as shall from time to time have jurisdiction over the Development with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over and across all of the Common Area for purposes of performing such duties and activities related to law enforcement and fire protection in the Development as shall be required or appropriate from time to time by such governmental authorities under applicable law.

3.07 Intentionally Omitted.

3.08 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot, Dwelling, or Neighborhood or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner, Occupant, or Neighborhood Association of the Lot, Dwelling, or Neighborhood directly affected thereby.

3.09 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, Developer, and its successors and

assigns the alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Declarant or Developer may be reasonably required, convenient, or incidental to the completion, improvement, and/or sale of Lots, Dwellings, Neighborhoods, Common Area, or the Additional Property, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

3.10 Easements for Additional Property. There is hereby reserved in Declarant, and its successors, assigns, and successors-in-title to the Additional Property (if said rights are granted by Declarant to such successors, assigns, and successors-in-title), for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) pedestrian and vehicular ingress, egress, and parking, across, within, and on all roads, sidewalks, trails and parking facilities, from time to time located within the Common Area or within easements serving the Common Area, (ii) the installation, maintenance, repair, replacement, and use within the Common Area and those portions of Lots, Dwellings, and Neighborhoods encumbered pursuant to Section 3.06 hereof of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water, sewer, and master television antenna and/or cable system lines, and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Property or any improvements from time to time located thereon.

3.11 Maintenance Easement. Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling or Neighborhood for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions.

3.12 Environmental Easement. There is hereby reserved for the benefit of Declarant, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all portions of the Common Area for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to maintain any and all wetland areas on the Property, the right to drain standing water, and the right to dispense pesticides.

3.13 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

3.14 Burden upon the Property. Declarant hereby declares that this Declaration and the covenants, restrictions and easements established herein shall be covenants to run with the land. Said covenants and restrictions shall inure to the benefit of and be binding upon each and every Owner, and his or here respective heirs, representatives, successors, purchaser, lessees, grantees and mortgagees. By the

recording or acceptance of the conveyance of a Lot or Dwelling or any interest therein, the person or entity to whom such interest is conveyed shall be deemed to accept and agree to be bound by the provisions of this Declaration and the By-Laws of Auburn Meadow Community Association.

3.15 Nonseverability of Rights. The rights, liabilities and obligations set forth herein shall attach to and run with the ownership of any portion of the Property as more specifically set forth herein and may not be severed or alienated from such ownership.

**ARTICLE IV
MEMBERSHIP AND VOTING
RIGHTS IN THE ASSOCIATION:
BOARD OF DIRECTORS OF THE ASSOCIATION**

4.01 Membership. Every Owner of a Dwelling or Lot (including the Declarant and the Developer) is hereby declared to be a Member of the Association. Membership is appurtenant to and shall not be separated from ownership of such Owner's Dwelling or Lot. Each such Owner, by acceptance of a deed or other conveyance of a Dwelling or Lot, thereby becomes a Member, whether or not this Declaration or such membership is made a part of, incorporated by reference in, or expressed in said deed or conveyance. There shall be one (1) membership allocable to each Dwelling or Lot (herein called a "Unit Membership") and any Member who is the Owner of more than one (1) such Dwelling or Lot shall have the number of Unit Memberships equal to the number of such Dwellings or Lots. In the event any Lot may be zoned for a multi-family structure, then the Owner of any such Lot shall have the number of Unit Memberships equal to the number of Dwellings which may be legally constructed upon such Lot. If the record ownership of a Dwelling or Lot shall be in more than one (1) person, or if an Owner of a Dwelling or Lot is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the Unit Membership and be responsible for the obligations attributable thereto, shall be designated by such Owner or Owners in writing.

4.02 Voting Rights. Members shall be represented at Association meetings exclusively through delegates selected in accordance with the provisions of Paragraph 4.03 hereof (herein called "Association Delegates"). Except for Association Delegates appointed by Declarant, each such Association Delegate must be a Member of the Association or a spouse of a Member.

4.03 Selection of Association Delegates. Each Neighborhood Association shall be represented at Association meetings by a delegation composed of Two (2) Association Delegates, which delegation shall be composed of the President of the respective Neighborhood Association and one (1) other officer. The board of directors of each Neighborhood Association shall designate the Association Delegates for such Association and fix the rules of administration of that Neighborhood Association's delegation. Each Association Delegate appointed by a Neighborhood Association must be a member of such Neighborhood Association or be appointed by the Declarant.

4.04 Method of Voting. The total number of votes which may be cast on any matter requiring assent of Members of the Association shall be equal to the total number of Unit Memberships at the time of any such vote. Whenever a vote of the Members of the Association is required pursuant to this Declaration, or pursuant to the Articles of Incorporation or By-Laws of the Association, or is otherwise

required by law, such votes shall be cast only by the Association Delegates representing the respective Members, in the same manner and with the same force and effect as though each Member had given the delegation of Association Delegates which represents such Member's Neighborhood Association an irrevocable proxy coupled with an interest. The Association Delegates for each such Neighborhood Association shall collectively cast a total number of votes equal to the number of Unit Memberships which it represents. Such total number of votes may be cast in such manner as the Association Delegates, acting in accordance with its rules of administration, deem advisable, and the delegation shall not be required to cast all such votes as a unit. Each Association Delegate shall be entitled to cast one-half (1/2) of the total vote of the Unit Memberships it represents. Unless this Declaration or the Articles of Incorporation or By-Laws of the Association, or any law, shall specify a greater vote, all Association matters requiring action by Members or by the Association Delegates shall be decided by a majority of the votes cast by Association Delegates voting at a meeting at which a quorum (as defined in the By-Laws) is present. In the event of a tie, the tie shall be broken by a mediator chosen by the Association Delegates. Should the Association Delegates be unable to reach an agreement on the selection of a mediator, the current administrator (Manager) of the Town of Schererville shall choose the mediator.

4.05 Board of Directors.

(a) The Association shall be governed by its Board of Directors ("Board") comprised of six (6) persons duly appointed or elected as provided herein and in the Articles of Incorporation and By-Laws of the Association. The initial Board shall be comprised of three (3) persons duly appointed by the Declarant pursuant to its rights under Section 4.06 hereof, until such time as the Initial Meeting to elect the First Board occurs.

(b) The Board shall administer the Common Area in accordance with the terms and provisions of this Declaration, and in accordance with the Articles of Incorporation and By-Laws of the Association. All matters requiring action by the Board shall be decided by the majority vote of the Board, except as otherwise provided herein or in the By-Laws.

(c) Prior to the appointment of the First Board of the Association pursuant to Paragraph 4.06 hereof, Declarant (or its beneficiary or designees) may exercise all rights, powers and privileges of the Board and may perform all of its functions, including its functions under Article IV of this Declaration.

4.06 Appointment of Directors by Declarant. Notwithstanding any other provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association, the first and each subsequent Board shall consist of, and vacancies on the Board shall be filled by, such persons as Declarant shall from time to time appoint, until the first to occur of any one of the following events: (i) seven (7) years after the recording of this Declaration; or (ii) Declarant surrenders such authority by an express amendment to this Declaration executed and recorded by Declarant. For purposes of this Section 4.06, "Dwellings in the Development" shall refer to all Dwellings within or contemplated to be within the Property and Additional Property. Such right of Declarant to appoint directors to the Board shall be to the exclusion of the right of the Members or the Association Delegates so to do. The Owners, Members or Association Delegates shall not, without the prior written consent of Declarant, have the right to amend, modify or change the Articles of Incorporation or By-Laws of the Association to in any way diminish the authority of the Board during the period that Declarant has the right to appoint any members of the Board.

Declarant may, from time to time, by written notice to the Association, voluntarily terminate its right to appoint one (1) or more Directors, and continue to exercise its right to appoint the remaining members of the Board for the period hereinabove specified. Declarant's election to terminate its right to appoint any number of members of the Board or to terminate its control of the Association, shall not affect the right of Declarant to participate in the Association as a Member thereof and to appoint Association Delegates to cast the number of votes equal to the number of Dwellings of Lots owned by Declarant. All directors who are not subject to appointment by Declarant shall be elected in accordance with the provisions of Paragraphs 4.07 and 4.08 hereof.

4.07 Initial Meeting of Association Delegates to Elect Directors. Upon receipt by the President of the Association of a copy of the written notice of Declarant to voluntarily terminate its control of the Association, described in Paragraph 4.06(ii), or of any other appropriate evidence of the termination of Declarant's right to appoint all the directors of the Board, he shall promptly convene a meeting of the Association Delegates for the purpose of electing a new Board or to elect those directors who no longer are to be appointed by Declarant (First Board). The President (or similar designee) of each Neighborhood Association shall be designated as a member of the Board, with the three (3) remaining openings to be filled by a Member of each Neighborhood Association elected by the Association Delegates.

4.08 Election of Directors. Upon termination of Declarant's right to appoint any of or all the directors of the Board, pursuant to Paragraph 4.06 hereof, those directors not subject to appointment by Declarant shall be selected by vote of the Association Delegates in accordance with the provisions of this Article. Notwithstanding such election, any director theretofore appointed by Declarant who does not elect to resign may stay in office for the balance of his unexpired term and until his successor is elected and qualified.

4.09 Transfer of Association Records. Within sixty (60) days following the initial meeting of the Association Delegates, the Declarant shall deliver to the Board:

(a) all original documents as recorded or filed pertaining to the Property, its administration, and the Association, such as the Declaration, Articles of Incorporation, By-Laws, other instruments, annual reports, minutes and rules and regulations, contracts, leases or other agreements entered into by the Association. If any original documents are unavailable, a copy may be provided if certified by affidavit of the Declarant, or an officer or agent of the Declarant, as being a complete copy of the actual document recorded as filed;

(b) a detailed accounting by the Declarant, setting forth the source and nature of receipts and expenditures in connection with the management, maintenance and operation of the Property and copies of all insurance policies and a list of any loans or advances to the Association which are outstanding;

(c) Association funds, which shall have been at all times segregated from any other monies of the Declarant;

(d) a schedule of all real or personal property, equipment and fixtures belonging to the Association, including documents transferring the Common Area or any part thereof,

warranties, if any, for all real and personal property and equipment, deeds, title insurance policies and all tax bills; and

(e) a list of all litigation, administrative action and arbitrations involving the Association, any notices of governmental bodies involving actions taken or which may be taken concerning the Association, engineering drawings and specifications as approved by any governmental authority, all governmental certificates, correspondence involving enforcement of any Association requirements, copies of any documents relating to disputes involving Owners and originals of all documents relating to everything listed in this Section 4.09.

4.10 Informal Action by Directors. Unless specifically prohibited by the Articles of Incorporation or By-Laws of the Association, any action required by this Declaration to be taken by the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors of the Board entitled to vote with respect to the subject matter thereof. Any such consent signed by all the directors of the Board shall have the same effect as a unanimous vote.

4.11 Informal Action by Association Delegates or Board of Directors. Any action required by this Declaration to be taken at a meeting of the Association Delegates or Board, or any other action which may be taken at a meeting of the Association Delegates or Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Association Delegates or Board entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of the Association Delegates or Board.

4.12 Board Liability. The Declarant (and its beneficiary), Developer, its directors, officers, shareholders, partners, employees or agents, the Board, members of the Board, Association Delegates, officers of the Association, and the agents and employees of any of them (all of the above hereinafter referred to as the "Protected Parties"), shall not be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions which shall occur subsequent to the date of the recording of this Declaration, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. The Owners shall indemnify, hold harmless, protect and defend any and all of the Protected Parties against all claims, suits, losses, damages, costs and expenses, including, without limitation, attorneys' fees and amounts paid in reasonable settlement or compromise incurred in connection therewith. Each Owner shall be entitled to a right of contribution from every other Owner in respect of said indemnity to the end that, to the extent possible, the burden of any such indemnity shall be borne by the Owners at the time the loss, cost, damage or expense is incurred in the proportion that the number of Dwellings or Lots in the Property owned by each respective Owner bears to the total number of Dwellings or Lots in the Property at the time the loss, cost, damage or expense is incurred. The Board shall assess each Owner for his share of the cost of such indemnification, and such assessment shall be collectible and enforceable in mode and manner as set forth in Article IX hereof. To the extent possible the obligation of the Owners for indemnification and the Board's liability hereunder shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

4.13 Nonprofit Purposes of Association. Nothing herein shall be construed to give the Association authority to conduct an active business for profit on its own behalf or on behalf of the Members, or on behalf of the Declarant.

4.14 Governing Law. Except as otherwise provided in this Declaration, the Association, the Board, officers and members shall be governed by the Indiana Nonprofit Corporation Act.

4.15 Board as Representative of Owners. The Board shall have standing and capacity to act in a representative capacity in relation to matters involving the Common Area or more than one (1) Dwelling or Lot, on behalf of the Owners as their interest may appear.

ARTICLE V **MAINTENANCE**

5.01 Responsibilities of Owners and Neighborhood Associations. Unless specifically identified herein or in a Neighborhood Declaration as being the responsibility of the Association or a Neighborhood Association, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all lawns (including parkways), landscaping, and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling or Neighborhood Declaration. Unless otherwise provided in the appropriate Neighborhood Declaration, the maintenance and repair of all common areas located within Neighborhood Areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Neighborhood Areas) shall be the responsibility of the Neighborhood Association for such Neighborhood. Each Owner or Neighborhood Association shall be responsible for maintaining his or its Lot, Dwelling, or Neighborhood, as the case may be, in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. As provided in Section 5.02(b) hereof, each Owner or Neighborhood Association shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner or Neighborhood Association, but which responsibility such Owner or Neighborhood Association fails or refuses to discharge. It is contemplated that only those portions of the Development submitted to the condominium form of ownership will require a Neighborhood Association to maintain a common area.

5.02 Association's Responsibility.

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Area, which responsibility shall include the maintenance, repair, and replacement of (i) all walks and trails (if any), lots, landscaped area, clubhouse, pool, facilities, community fencing, and other improvements made by Declarant or the Association situated within the Common Area or within easements encumbering Lots, Dwellings, or Neighborhoods pursuant to Section 3.03 hereof, (ii) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Area and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping and all lakes and ponds situated within or upon the Common Area, and (iv) all retention areas and facilities constructed by Declarant in the Common Area, and (v) any cul-de-sac islands within a dedicated right-of-way which have not been designated as an "Outlot" upon any applicable plat of subdivision excepting however, that no snowplowing shall be performed by the Association in connection with

such cul-de-sac-islands. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Area, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Area or any other portion of the Property. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of the Owner. As part of the Association's responsibilities, it is anticipated that there will be an annual controlled burn of the prairie grass in certain portions of the Common Area.

(b) In the event that Declarant or the Board determines that: (i) any Owner or Neighborhood Association has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, shall give such owner or Neighborhood Association written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner or Neighborhood Association, as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such owner or Neighborhood Association, as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner or Neighborhood Association to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner or Neighborhood Association, as the case may be, and said cost shall be added to and become a part of the assessment to which such Owner and his Lot or Dwelling are subject and shall become a lien against such Lot or Dwelling, or, in the case of a Neighborhood Association, shall be added to and become a part of the assessments for all Owners within such Neighborhood Association and shall become a lien against such Owners' Lots or Dwellings. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

ARTICLE VI
INSURANCE AND CASUALTY LOSSES

6.01 Insurance.

(a) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association an insuring all insurable improvements in and to the Common Area against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Area and all damage or injury caused by the negligence of the Association, its members, its trustees and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board.

(c) The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board; provided, however, that no mortgagee or other security holder of the Common Area having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in the State of Indiana and holding a rating of A-XI or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.

(ii) All property insurance policies (naming the Association as insured) shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

(iii) All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any Mortgage to which a mortgagee endorsement has been issued.

(iv) In no event shall the insurance coverage obtained and maintained by the Board be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(v) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(vi) All policies shall contain a provision that no policy may be canceled, invalidated, or suspended on account of the conduct of one (1) or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests, and invites, or on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(vii) All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an individual Owner and shall also name the Declarant as an additional insured.

(e) It shall be the individual responsibility of each Owner at his own expense to provide public liability, property damage, title, and other insurance with respect to his own Lot and Dwelling. The Board may require all Neighborhood Associations to carry public liability and property damage insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association.

6.02 Damage or Destruction to Common Area. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Area, Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, such special assessment to be in an amount sufficient to provide funds to pay such excess costs of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied or as one lump sum payment, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and alliums paid to the

Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Area damaged or destroyed by fire or other casualty shall be cleared and the Common Area left in a clean, orderly, safe, and sightly condition.

6.03 Damage or Destruction to Lots, Dwellings, or Neighborhoods. In the event of damage or destruction by fire or other casualty to any Lots, Dwellings, or Neighborhoods, and in the further event that either the Owner of such Lot or Dwelling or the Neighborhood Association responsible for the repair and replacement of such Neighborhood, as the case may be, elects not to repair or rebuild the damaged or destroyed Lot, Dwelling, or Neighborhood, such Owner or Neighborhood Association making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot, Dwelling or Neighborhood in a clean, orderly, safe, and sightly condition. Should such Owner or Neighborhood Association elect to repair or rebuild such Lot, Dwelling, or other improvements, such Owner or Neighborhood Association shall repair or rebuild such Lot, Dwelling, or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building, and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE VII **CONDEMNATION**

7.01 Condemnation of Common Area. Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy-five percent (75%) of the total vote of the Association (which conveyance may only occur with the approval of Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development), the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, together with at least seventy-five percent (75%) of the total vote of the Association, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Area which are available therefore, in accordance with the plans approved by the Board, the Architectural Review Committee, and by Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired

option to add the Additional Property or any portion thereof to the Development. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, or as a lump sum payment, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association.

(b) If the taking or sale in lieu thereof does not involve any improvements to the Common Area, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Association.

(c) If the taking or sale in lieu thereof includes all or any part of a Lot, Dwelling, or Neighborhood and also includes any part of the Common Area, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners of any Lot, Dwelling, or Neighborhood taken for their interest in such Lot, Dwelling, or Neighborhood; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board, (ii) the Owners of all Lots, Dwellings, or Neighborhoods wholly or partially taken or sold, together with the Mortgagees for each such Lot, Dwelling, or Neighborhood, and (iii) Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

7.02 Condemnation of Lots, Dwellings, or Neighborhoods.

(a) In the event that all or any part of a Lot, Dwelling, or Neighborhood is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Lot or Dwelling or the Neighborhood Association responsible for the maintenance and repair of such Lot, Dwelling, or Neighborhood, then such Owner or Neighborhood Association making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Lot, Dwelling, or Neighborhood and any remaining undamaged improvements thereon in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such Lot, Dwelling, or Neighborhood remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner or Neighborhood Association shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the Lot, Dwelling, or Neighborhood to the Association (at no cost to the Association) as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with

respect to the Development and shall not be subject to any further assessments imposed by the Association and payable after the date of such deed.

(b) In the event that any part of a Lot, Dwelling, or Neighborhood is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Lot or dwelling or the Neighborhood Association responsible for the maintenance and repair of such Lot, Dwelling, or Neighborhood, as the case may be, elects to restore the remainder of the Lot, Dwelling, or Neighborhood, such Owner or Neighborhood Association making such election shall restore such remainder of such Lot, Dwelling, or Neighborhood as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

ARTICLE VIII ADMINISTRATION

8.01 Common Area. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Furthermore, the Association may be responsible to maintain dedicated areas if such maintenance is required by the applicable governmental authority. Except to the extent otherwise required by the provisions of the laws of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Owners.

8.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the laws of Indiana relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the laws of Indiana, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the laws of Indiana, this Declaration, and the By-Laws, in that order, shall prevail, and each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance therefore, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one (1) or more Lots and/or Dwellings to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Lots and Dwellings, to furnish trash collections, water, sewer, and/or security service for the Common Area and/or the Lots, Dwellings, and Neighborhoods. Notwithstanding the foregoing provisions of this Section 8.02 or

any other provisions of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Area.

8.03 Agreements. Subject to the prior approval of Declarant for so long as Declarant shall have the right to appoint the Board pursuant to Section 4.06 hereof, all agreements and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development; and in performing its responsibilities hereunder, the Association, through the Board, shall have the authority to delegate to persons if its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board shall determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

8.04 Management Agreement. Declarant's affiliate or partner thereof may be employed as the manager of the Association and the Development for such period of time as Declarant has the right to appoint and remove officers and directors of the Association, with the option on the part of Declarant's affiliate or a partner to renew such employment for two (2) successive one (1) year terms from and after the termination of such appointment and removal right. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, shall be deemed to ratify such management agreement. The Declarant or the Board shall engage the initial management organization under contracts expiring not later than ninety (90) days after the date the Initial Meeting of Association Delegates is held ("Transfer Date"). Thereafter, the Board may engage the services of an agent to manage the Property to the extent deemed advisable by the Board provided, however, that if the Association, Declarant or Board shall enter into an agreement or agreements for the professional management of the Property before the Transfer Date, such agreement or agreements shall be terminable by the Association without cause at any time after the Transfer Date and shall not require the payment of any penalty by the Association and shall not require advance notice of termination of more than ninety (90) days. Any management fees incurred pursuant to this Section 8.04 shall be paid from the assessments collected pursuant to Article IX hereof.

8.05 Personal Property and Real Property for Common Use. The Association, through action of the Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the

Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The undivided interest of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot or Dwelling.

8.06 Rules and Regulations. The Association, through the Board, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, Neighborhoods and Common Area, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

8.07 Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including court costs and reasonable attorney fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the Board) to which he may be made a party by reason of being or having been an officer or director at the time such expenses are incurred. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association) and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be 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.

8.08 Board Control. As provided in Section 13.01 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member of members of the Board or any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of seven (7) years after the date of the recording of this Declaration; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. For purposes of this Section 8.08, "Dwellings in the Development" shall refer to all Dwellings within or contemplated to be within the Property and Additional Property. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling, vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.08 and by Section 13.01 hereof.

ARTICLE IX

COVENANTS FOR MAINTENANCE ASSESSMENTS

9.01 Creation of the Lien and Personal Obligations. Each Owner of a Dwelling or Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance for each Dwelling or Lot owned by such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association such assessments as are levied pursuant to the provisions of this Declaration and the By-Laws of the Association. Such assessments, together with interest thereon and cost of collection, if any, as hereinafter provided, shall be a charge and continuing lien upon the Dwelling or

Lot against which such assessment is made. Each such assessment, together with such interest and costs, shall also be the personal obligation of the Member who was the Owner of such Dwelling or Lot at the time when the same fell due.

9.02 Purpose of Assessments. The assessments for Common Expenses levied by the Association (or by Declarant acting on its behalf pursuant to Section 4.05(c) hereof) shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and in particular, without limiting the foregoing: (i) for the improvement and maintenance of the services and facilities devoted to the use and enjoyment of the Common Area, (ii) for the making of repairs, replacements and additions to the Common Area, defraying the cost of labor, equipment, and material required for the maintenance of the Common Area, (iii) for the operation, care, upkeep, maintenance, replacement and of any common areas of any Neighborhood Association to the extent any such Neighborhood Association has delegated these powers and duties to the Association, and (iv) in general for carrying out the duties of the Board as set forth in this Declaration and the By-Laws of the Association; and for carrying out the purposes of the Association as stated herein and in its Articles of Incorporation.

9.03 Assessment Procedures.

(a) Preparation of Estimated Budget. Each year on or before November 1, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, fees, supplies and other items which, in the judgment of the Board, will be required to be provided to the Association or required to meet the Association's obligations during the ensuing calendar year to effect the purposes of the Association, a copy of which estimated budget shall be provided to all Owners at least thirty (30) days prior to its adoption by the Board. The annual budget shall take into account any estimated net operating income or deficit which may result from the operation of the Common Area during such year and income from user charges to be received pursuant to Section 9.03 hereof. Said "estimated cash requirement" shall be allocated among and assessed to Members in accordance with the provisions of Section 9.06 hereof. The Board shall give written notice, mailed or delivered, to each Owner no less than ten (10) and no more than thirty (30) days prior to any meeting of the Board concerning the adoption of any proposed budget or any increase or establishment of an assessment.

(b) Date Payments Due. On or before January 1 of the ensuing year, each Member shall be personally obligated to pay, in the manner prescribed by Sections 9.06, 9.07 and 9.08 hereof, such Member's annual assessment, together with all user charges incurred by such Member during the preceding year. If the actual expenditures paid or provided for by the Board during said year shall be more or less than said estimated cash requirement, any net shortage or excess shall be applied as an adjustment to the installments under the current year's estimate falling due after the amount of such net shortage or excess for the preceding year has been determined.

(c) Commencement of Assessments. The annual assessments provided for herein shall commence for the Dwelling or Lots within the Property upon the conveyance by the Declarant of the first Dwelling or Lot, except as otherwise provided in Section 9.03(d) hereof. The Board shall fix the amount of the annual assessment against each Dwelling or Lot at least thirty (30) days in advance of each annual assessment period and in lieu thereof, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed amount of annual assessment

shall be due on the first day of the month immediately preceding the effective date of the changed assessment. An Owner shall first be liable for payment of the assessment on the date of the conveyance of title to him, prorated through the end of the calendar year. The Association shall upon demand at any time furnish a certificate in writing signed by an officer or agent of the Association setting forth whether the assessments on a specified Dwelling or Lot have been paid and, if not paid, the amount of any such deficiency. Such certificate shall be conclusive evidence of payment of any assessment therein.

(d) Assessment on Declarant-Owned Lots. With regard to any Lots owned by Declarant upon which Dwellings are under construction and title has not been conveyed by Declarant, no assessment respecting any such portion of the Property shall be imposed upon such Lots, provided, however, that in the event Declarant enters into a lease or installment contract for any Dwelling, then Declarant shall be responsible for the payment of assessments on such Dwelling on the same basis as any other Owner as provided in Section 9.06 hereof.

(e) Adjustments to Estimated Budget. If any "estimated cash requirement" proves inadequate for any reason (including nonpayment of any Member's assessment), the Board may at any time levy a further assessment. The Board shall serve notice of such further assessment on all Members by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly assessment payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Members shall be personally liable for and obligated to pay their respective adjusted monthly amount.

(f) Failure to Prepare Annual Budget. The failure or delay of the Board to prepare an annual or an adjusted estimated budget shall not constitute a waiver or release in any manner of any Member's obligation to pay his share of the estimated cash requirement as herein provided, whenever the same shall be determined and in the absence of any annual estimate or adjusted estimate, each Member shall continue to pay the monthly charge at the then existing monthly rate established for the previous record.

9.04 Special Assessments for Capital Improvements. In addition to the annual assessment authorized by Section 9.03, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction or purchase of a specified capital improvement upon or to the Common Area, and the necessary fixtures and personal property related thereto; provided, however, that, except for special assessments which shall not exceed in any one (1) year the sum of Five Hundred Dollars (\$500.00) per assessed Dwelling or Lot, any such special assessment shall first be approved at a meeting of the Association Delegates by the affirmative votes of Association Delegates entitled to cast at least sixty-seven percent (67%) of all votes cast at a meeting called and held in accordance with the provisions of Section 9.05. The provisions of this Section 9.04 shall not limit the power of the Board, without such prior approval, to levy assessments to reconstruct, replace or restore any portion of the Common Area. The Board shall segregate and maintain a special reserve account (the "Master Fund") to be used solely to make capital expenditures in connection with the Common Area. In addition, at the time the initial sale of each Dwelling is closed, the purchaser of the Dwelling shall pay to the Association an amount equal to an annual assessment to be deposited into an account (the "Master Reserve") to be applied and used for start-up costs and as a working capital fund in connection with the initial operation of Common Area and for future working capital needs. Such payment shall not be deemed a prepayment of the annual assessments.

Notwithstanding anything contained herein to the contrary, the Declarant shall not be responsible for the payment of any special assessments or contributions to any Master Fund or Master Reserve. The Developer with regard to any portion of the Property shall have the same rights and obligations as the Declarant as contained in this Section 9.04 with regard to any Lots owned or controlled by such Developer.

9.05 Notice and Quorum. Written notice of any meeting called for the purpose of authorizing any special assessments requiring approval pursuant to Section 9.04 hereof shall be sent to all Association Delegates not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Association Delegates entitled to cast at least sixty percent (60%) of all the votes shall constitute a quorum; provided, that if Association Delegates entitled to cast sixty percent (60%) of all votes do not attend, a second meeting may be called with the same notice requirements as herein provided, except that the quorum therefor shall be reduced to Association Delegates entitled to cast thirty percent (30%) of all votes.

9.06 Allocation of Assessments Among Members. Both annual and special assessments shall be allocated among the Members by apportioning to each Member an amount equal to that proportion of the total assessment which the number of Unit Memberships held by such Member bears to the total number of Unit Memberships in the Association. Each Neighborhood Association shall be responsible for collecting on behalf of the Association all assessments due the Association from Members whose Dwellings or Lots are subject to assessment by such Neighborhood Association. In the event no Neighborhood Association is in existence, then the payment of such assessments shall be made directly by each Member to the Association.

9.07 Payment of Assessments.

(a) Assessments allocated under Section 9.06 hereof to Members shall be added to the assessment made or levied by a Neighborhood Association against each such Member for the Common Expenses and user charges as provided in the applicable Neighborhood Declaration. Each such Member shall pay the assessment levied by the Association directly to the Neighborhood Association and shall also pay to the Association any assessment levied by the Neighborhood Association as provided in the applicable Neighborhood Declaration. All such funds collected by the Neighborhood Association on behalf of the Association shall be remitted to the Association.

(b) Upon written demand of an Owner or a Mortgagee at any time, the Association shall furnish such Owner or Mortgagee a written dated certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's Dwelling or Lot. Such Certificate shall be conclusive evidence of payment of any annual or special assessments theretofore levied and not stated therein as unpaid.

(c) The Declarant or Board may provide that the assessments may be paid in full the first day of the calendar year until otherwise provided.

(d) Lots which are owned by the Declarant and are utilized for models and a parking lot shall not be subject to assessment.

9.08 Nonpayment of Assessments.

(a) Any installment of an assessment which is not paid to the Association within fifteen (15) days after the due date shall be delinquent and a late charge of Fifteen Dollars (\$15.00) shall be added to it. The assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum and the Association may bring an action against the Member personally obligated to pay assessments and recover the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action; and the Association may enforce and foreclose any lien it has or which may exist for its benefit.

(b) No Member shall be relieved of personal liability for the assessments and for other amounts due as provided herein by nonuser of the Common Area or abandonment or transfer of ownership of his Dwelling or Lot, provided that upon transfer of ownership of a Dwelling or Lot, the transferor shall not be responsible for assessments accruing after the date of transfer.

(c) The lien of the assessments provided for in Section 9.01 hereof shall be subordinate to the lien of any first mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the earlier of the date the holder of said mortgage takes possession of the Dwelling or Lot, accepts a conveyance of any interest in the Dwelling or Lot or has a receiver appointed in a suit to foreclose his lien. Such taking of possession, conveyance or appointment shall not relieve the holder of said mortgage from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. Except for the foregoing, the lien for assessments provided for in Section 9.01 shall not be affected by any sale or transfer of a Dwelling or Lot.

ARTICLE X

USE RESTRICTIONS

10.01 Use of Lots and Dwellings. Except as permitted by Sections 3.09 and 10.03 hereof, each Lot and Dwelling shall be used for residential purposes only, for single-family occupancy and no trade or business of any kind may be carried on therein, except as provided for by ordinance by the Town, if any. No more than one (1) Dwelling shall be located on any Lot, except for those Lots upon which multi-family structures are constructed. The use of a portion of a Dwelling as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic. The use of a Dwelling or a portion thereof for business meetings, entertainment, or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic.

10.02 Satellite Dishes. Satellite dishes less than twenty-four inches (24") in diameter may be installed on the backside of a roof or attached to the rear of a Dwelling. A roof-installed or dwelling-attached dish may not be placed in the front or side of a roof or dwelling. Satellite dishes less than twenty-four inches (24") in diameter may be installed in the ground in a rear yard. A ground-installed dish may not be placed within the side yard or front yard of the Lot. Notwithstanding the foregoing, satellite dish installation

is subject to Town Ordinance (if any) and may not be installed in the ground in a Condominium Association (unless otherwise approved by the Board), and the location of dwelling-installed or roof-installed dishes must be approved prior to installation by the Board.

10.03 Fences or Remodeling. The installation of any type of fencing and any remodeling or additions to Dwellings requires a building permit from the Town prior to construction. Fences are not permitted in a Neighborhood Association unless also approved by the Board governing that particular Association.

10.04 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Neighborhoods, Common Area, and the Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, all as may be approved Declarant from time to time, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 10.03 shall be subject to Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

10.05 Leases. All leases must be in writing, demise not less than all of the Dwelling and be for a term of not less than thirty (30) days. Copies of such leases shall be furnished to the Associations.

ARTICLE XI **RULE MAKING**

11.01 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots, Dwellings, Neighborhoods, and the Common Area and facilities located thereon. In particular but without limitation, the Board may promulgate from time to time rules and regulations which shall govern activities which may, in the judgment of the Board, be environmentally hazardous to any wetland or other areas. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation is specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant shall have the right to appoint the Board pursuant to Section 4.06 hereof.

11.02 Authority and Enforcement. Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's

right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guest, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the recreational facilities located in the Common Area, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owner or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

11.03 Procedure. Except with respect to the failure of an Owner to pay assessments, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Development for violations of the Declaration, the By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

(i) The alleged violation;

(ii) The action required to abate the violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

(i) The nature of the alleged violation;

(ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(iv) The proposed sanction to be imposed.

(c) The hearing shall be held in executive session of the Board pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard 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, director, or other

individual who delivered such notice. In addition, the notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE XII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.01 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Dwelling on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Dwelling subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Dwelling of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

12.02 Amendments to Documents.

(a) The consent of Members representing at least sixty-seven (67%) percent of the votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the eligible holders of first Mortgages on sixty-seven (67%) percent of the Dwellings subject to a Mortgage held by an eligible holder, shall be required to terminate the Association for reasons other than substantial destruction or condemnation. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Members as specified above and the eligible holders of first Mortgages on fifty-one (51%) percent of the Dwellings subject to Mortgages held by such eligible holders.

(b) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the eligible holders of first Mortgages on Dwellings to which at least fifty-one (51%) percent of the Dwellings subject to Mortgages held by such eligible holders are allocated.

(c) The consent of Members representing at least sixty-seven (67%) percent of the votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of eligible holders of first Mortgages on fifty-one (51%) percent of the Dwellings subject to a Mortgage held by an eligible holder, shall be required materially to amend any provisions of the Declaration, By-Laws, or Articles of Incorporation of the Association or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to convey the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association (other than by Declarant as provided in Article II of this Declaration);
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Dwelling;
- (xi) establishment of self-management by the Association where professional management has been required by an eligible holder; or
- (xii) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders; guarantors, or insurers of first Mortgages on Dwellings.

12.03 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Members representing at least two-thirds (2/3) of the total Association vote entitled to be cast thereon consent, the Association shall not:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly, except as otherwise provided herein;
- (b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Dwelling (decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Property regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);
- (c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the maintenance of Dwellings and of the Common Area;
- (d) fail to maintain insurance, as required by this Declaration; or
- (e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

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

12.04 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Dwelling in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

12.05 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Dwelling.

12.06 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which negate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes. Copies of any amendments to this Declaration, except those enacted by the Declarant, shall be furnished to the Owners.

12.07 Failure of Mortgagee to Respond. Any Mortgagee who receives notice of and a written request from the Board to respond or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, with a return receipt requested.

ARTICLE XIII **GENERAL PROVISIONS**

13.01 Control by Declarant. Notwithstanding any other language or provision to the contrary in this declaration, in the Articles of Incorporation, or in the by-laws of the association, Declarant hereby retains the right to appoint and remove any member or members of the Board and any officer or officers of the Association as provided by and for the term set forth in Section 8.01 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove trustees and officers of the Association in accordance with the foregoing provisions of this Section 13.01 and the provisions of Section 8.01. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 13.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

13.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Office of the Recorder of Lake County, without the approval of any Owner or Mortgagee; provided, however, that with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, or as otherwise provided in Section 13.03 hereof, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling, Neighborhood, or the Common Area as set forth in this Declaration or adversely affects the title to any Lot, Dwelling, or Neighborhood, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 13.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself.

13.03 Special Amendments. Anything herein to the contrary notwithstanding, Declarant reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with 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 Administration, the Veteran's 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 such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Dwellings, (iii) to correct clerical or typographical errors in the Declaration or any Exhibit, or (iv) to bring the Declaration into compliance with applicable laws, ordinances or governmental regulations. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to make or consent to a Special Amendment on behalf of each Owner. Each deed, lease, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Dwelling and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the date Declarant no longer has the right to appoint all directors of the Board pursuant to Section 4.06 hereof.

13.04 Litigation. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage owned), and seventy-five percent (75%) of Owners (other than the Developer or builder) of the individual Lots have given their prior written approval, the Owners shall not be entitled to commence any class-action or other collective action against the Developer, Declarant, or any other persons acting on behalf of or in association with Developer or Declarant in connection with the development of the Property or this Declaration. Any such action shall proceed in accordance with Section 13.05 of this Declaration.

13.05 Arbitration. In the event of any unresolvable dispute with the Developer, Declarant, or any other persons acting on the behalf of or in association with Developer or Declarant in connection with the development of the Property or this Declaration, an Owner or Owners shall submit such dispute to arbitration in accordance with the rules of the American Arbitration Association before an arbitrator agreed to by the parties or selected as provided in the American Arbitration Association rules. The decision of the arbitrator shall be final and binding and shall be enforceable in any court of competent jurisdiction. The parties to the arbitration shall bear their own costs, and the cost of said arbitration shall be borne by the Owner or Owners.

13.06 Enforcement. Each Owner shall comply strictly with the By-laws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set both in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or for instituting an action to recover sums due, for damages and/or for injunctive relief and/or any other remedy available at law or in equity such actions to be maintainable by Declarant, the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the

provisions of this Declaration, the By-Laws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction or other equitable action to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person of the provisions of this Declaration, the By-Laws, or any rules and regulations of the Association, however long continued.

13.07 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of the initial twenty (20) year period or the last year of any ten (10) year renewal period, eighty-five percent (85%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be duly filed, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby. Reference in the respective deeds of conveyance or in any mortgage or trust deed or other evidence of obligation or transfer, to the covenants, conditions, restrictions, easements, rights, benefits and privileges of every character contained herein, shall be deemed and taken to be appurtenant to and covenants running with such property, and shall be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though the provisions of this Declaration were fully recited and set forth in their entirety in such documents.

13.08 Perpetuities. If any of the covenants, conditions, restrictions, 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 Michael Jordan, ex-Chicago Bulls basketball player.

13.09 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and *given* that interpretation or construction which, in the opinion of Declarant or the Board, will best effect the intent of the general plan of development. The provisions hereof shall be

liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance, building codes or other regulations which are less restrictive. The effective date of this Declaration shall be the date of its filing for record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Indiana.

13.10 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

13.12 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

13.13 No Trespass. Whenever the Association or Declarant and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

13.14 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant at the following address:

Auburn Meadow Community Association, Inc.
1945 Harder Court
Schererville, Indiana 46375

or to such other address as the Association may from time to time notify the Owners. The notices to Declarant shall be delivered or sent to Declarant at the above address or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. All notices are deemed delivered when delivered by hand or when deposited in the United States mail.

13.15 Land Trust. In the event title to a Lot or Dwelling is held by a land trust under which all powers of management, operation and control remain vested in the trust beneficiaries, then the beneficiaries thereunder shall be considered Owners for all purposes hereunder and they shall be responsible for any obligation created under this Declaration against such Lot or Dwelling. No claim shall be made against any such title holder trustee personally for any claim or obligation created hereunder and the trustee shall not be obligated to sequester funds or trust property to apply in whole or in part against any such obligation, but the amount thereof shall continue to be a charge or lien upon the Lot or Dwelling notwithstanding any transfers of beneficial interest or in the title to such Lot or Dwelling. By directing said trustee to take title to said Lot or Dwelling, the beneficiaries agree to be bound by the provisions of this Section 13.13 as permitted hereunder.

13.16 Declarant's Rights. All Declarant's Rights shall be mortgageable, pledgeable, assignable or transferable. The Declarant shall have the right to assign some or all of the Declarant Rights reserved or granted hereunder to Declarant, subject to the following:

(a) Declarant may assign to a Person which acquires title to a portion of the Property the non-exclusive right to exercise some or all of the Declarant Rights, subject to such terms, conditions and limitations as the Declarant shall deem appropriate, in their discretion.

(b) If Declarant conveys all of the Additional Property owned by it to a Person, then the Declarant shall no longer have the right to exercise any Declarant Rights and the person which acquires such portions of the Additional Property from Declarant may become the successor to the Declarant and, if so, shall have the right to exercise all Declarant Rights hereunder, subject to any assignments previously made by the Declarant permitted hereunder.

(c) Any Declarant Rights may be collaterally assigned by the Declarant to a lender which makes a development or construction loan to Declarant with respect to a portion of the Additional Property.

(d) Except as provided in Section 13.14 hereof, no transfer of Declarant rights shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Recorder's Office of Lake County, Indiana.

13.17 Termination. No termination of the Association and/or this Declaration shall be effective unless all of the Common Area maintained by the Association has been conveyed to the Town.

IN WITNESS WHEREOF, Auburn Meadow Development, LLC, has caused its Corporate Seal to be affixed hereunto and has caused its name to be signed to these presents by its Vice President, this 5 day of MARCH, 2002.

AUBURN MEADOW DEVELOPMENT, LLC

By: *Frederick A. O'Neil*
Its: PRESIDENT

STATE OF INDIANA
COUNTY OF LAKE

I, Kimberly Jermolowicz, a Notary Public in and for County and State aforesaid, do hereby certify Frederick A. Olthof as President of Auburn Meadow Development, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Frederick A. Olthof, appeared before me this day in person and acknowledged he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 5th day of March, 2002.

My Commission Expires: Jan. 24, 2007

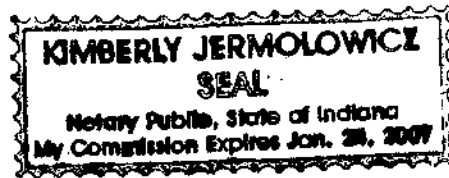


Exhibit A

Legal Description

Lot 1 – 3, 24 – 29, 31 – 38, 64 - 75, a plat of correction of Auburn Meadow Subdivision Phase I as recorded October 23, 2001, Book 90, Page 98, in the office of the Recorder, Lake County, Indiana.

EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1: Parcel East of Shell Pipeline; South of Kerasotes Subdivision; West of Lot Two and North and West of Lot One in Teibel's First Addition, being a parcel of land lying in the North half of the South half of Section 8, Township 35 North, Range 9 West of the Second Principal Meridian, all in the Town of Schererville, Lake County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the North half of the South half of said Section 8; thence South 89 degrees 46 minutes 24 seconds West, along the aforesaid south line, a distance of 1591.03 feet to the point of beginning; thence South 89 degrees 46 minutes 24 seconds West, a distance of 577.10 feet; thence North 24 degrees 46 minutes 23 seconds East, a distance of 671.06 feet to the Southwest corner of Kerasotes Subdivision; thence North 89 degrees 59 minutes 00 seconds East, along the aforesaid South line of Kerasotes Subdivision, a distance of 747.19 feet, to the Northwest corner of Lot Two in Teibel's First Addition; thence South 01 degrees 23 minutes 30 seconds East, along the West line of said Lot Two, a distance of 365.79 feet; thence South 89 degrees 46 minutes 24 seconds West, along the North line of Lot One in said addition, a distance of 466.0 feet; thence South 01 degrees 23 minutes 30 seconds East, a distance of 240.0 feet to the point of beginning.

PARCEL 2: That part of the Northwest Quarter of the Southeast Quarter of Section 8, lying West of the Shell Pipeline Company Basement; being a parcel of land lying in Section 8, Township 35 North, Range 9 West of the Second Principal Meridian, all in the Town of Schererville, Lake County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 8, said point being the point of beginning; thence North 01 degrees 00 minutes 13 seconds West, along the centerline of said Section, a distance of 1320.61 feet; thence North 89 degrees 50 minutes 27 seconds East, along the centerline of said Section 8, a distance of 1114.07 feet; thence South 24 degrees 46 minutes 23 seconds West, a distance of 1455.55 feet, to a point on the South line of the North half of the South half of said Section 8; thence South 89 degrees 46 minutes 24 seconds West, along the aforesaid South line, a distance of 481.03 feet, to the point of beginning.

PARCEL 3: The Northeast Quarter of the Southwest Quarter in Section 8, Township 35 North, Range 9 West of the 2nd Principal Meridian, all in the Town of Schererville, Lake County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northeast Quarter of the Southwest Quarter of said Section 8, said point being the point of beginning; thence North 01 degrees 01 minutes 49 seconds West, a distance of 1322.17 feet; thence North 90 degrees 50 minutes 27 seconds East, a distance of 1325.22 feet; thence South 01 degrees 00 minutes 13 seconds East, a distance of 1320.61 feet; thence South

(continued)

EXHIBIT B

LEGAL DESCRIPTION

89 degrees 46 minutes 24 seconds West, a distance of 1324.58 feet, to the point of beginning.

END OF LEGAL DESCRIPTION

EXHIBIT C

2003 059772

2003 JUN 12 PM 3:34

RECORDER

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR AUBURN MEADOW COMMUNITY ASSOCIATION**

THIS 1ST AMENDMENT is entered into this 12 day of June, 2003, by AUBURN MEADOW DEVELOPMENT, LLC (hereinafter referred to as "Declarant").

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions, and Restrictions for Auburn Meadow Community Association recorded in the Office of the Recorder of Lake County, Indiana on March 5, 2002 as instrument no. 2002-022841; and

WHEREAS, pursuant to Article II, Section 2.02, Declarant reserves the right to amend the Declaration to add additional property by Subsequent Amendment; and

WHEREAS, Declarant now desires and intends hereby to so amend the Declaration.

NOW THEREFORE, Declarant does hereby amend the Declaration as follows:

1. Exhibit A to the Declaration amended by adding the following real estate:
See attached
2. Except as expressly set forth therein, the Declaration shall remain in full force and effect with its terms and conditions.
3. Unless otherwise provided, all capitalized terms herein will have the same meaning as given in the Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Amendment to Declaration this 12 day of June, 2003.

AUBURN MEADOW DEVELOPMENT, LLC

By: Frederick A. Olthof
Frederick A. Olthof, President of OD Enterprises, Inc., Manager of
Auburn Meadow Development, LLC

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STATE OF INDIANA)
) SS
COUNTY OF LAKE)

Before me, the undersigned Notary Public in and for Lake County, State of Indiana, personally appeared Frederick A. Olthof who, being duly sworn upon his oath, acknowledged that he is the President of OD Enterprises, LLC, Manager of Auburn Meadow Development, LLC and that he is authorized and empowered so to do, executed the above and foregoing Amendment to Declaration for the uses and purposes therein set forth.

DATED this 12 day of June, 2003.

Gail M. Anderson
NOTARY PUBLIC

My commission Expires: 9-16-10
County of Residence: Lake



AFTER RECORDING RETURN TO: Greg Bouwer, of Koransky & Bouwer, P.C., 425 Joliet Street, Dyer, IN 46311

SCHEDULE 1

Lots 4-6, 19-23, 39-41, 48-50, Auburn Meadow Subdivision Phase 2 as recorded October 15, 2002, Book 92, Page 61 in the office of the Recorder, Lake County, Indiana; and
Lots 57-63 and 76-86, Auburn Meadow Subdivision Phase 3 as recorded June 12, 2003, Book 93, Page 79 in the office of the Recorder, Lake County, Indiana; and
Lots 7-10, 15-18, 42-44, and 46-47 of Auburn Meadow Subdivision Phase 4 as recorded October 15, 2003, Book 093, Page 45 in the office of the Recorder, Lake County, Indiana.

Exhibit A

Lot 1-3, 24-29, 31-38, 64-75, a plat of correction of Auburn Meadow Subdivision Phase I as recorded October 23, 2001, Book 90, Page 98, in the office of the Recorder, Lake County, Indiana.

Lots 4-6, 19-23, 39-41, 48-50, Auburn Meadow Subdivision Phase 2 as recorded October 15, 2002, Book 92, Page 61 in the office of the Recorder, Lake County, Indiana.

Lots 57-63 and 76-86, Auburn Meadow Subdivision Phase 3 as recorded June 13, 2003, Book 93, Page 79 in the office of the Recorder, Lake County, Indiana.

Lots 7-10, 15-18, 42-44, and 46-47 of Auburn Meadow Subdivision Phase 4 as recorded October 15, 2003, Book 093, Page 45 in the office of the Recorder, Lake County, Indiana.

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Commencing at the Southeast corner of the North half of the South half of said Section 8; thence South 89 degrees 46 minutes 24 seconds West, along the aforesaid south line, a distance of 1591.03 feet to the point of beginning; thence South 89 degrees 46 minutes 24 seconds West, a distance of 577.10 feet; thence North 24 degrees 46 minutes 23 seconds East, a distance of 671.06 feet to the Southwest corner of Kerasotes Subdivision; thence North 89 degrees 59 minutes 00 seconds East, along the aforesaid South line of Kerasotes Subdivision, a distance of 747.19 feet, to the Northwest corner of Lot Two in Teibel's First Addition; thence South 01 degrees 23 minutes 30 seconds East, along the West line of said Lot Two, a distance of 365.79 feet; thence South 89 degrees 46 minutes 24 seconds West, along the North line of Lot One in said addition, a distance of 466.0 feet; thence South 01 degrees 23 minutes 30 seconds East, a distance of 240.0 feet to the point of beginning.

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Commencing at the Southwest corner of the Northwest Quarter of the Southeast Quarter of said Section 8, said point being the point of beginning; thence North 01 degrees 00 minutes 13 seconds West, along the centerline of said Section, a distance of 1320.61 feet; thence North 89 degrees 50 minutes 27 seconds East, along the centerline of said Section 8, a distance of 1114.07 feet; thence South 24 degrees 46 minutes 23 seconds West, a distance of 1455.55 feet, to a point on the South line of the North half of the South half of said Section 8; thence South 89 degrees 46 minutes 24 seconds West, along the aforesaid South line, a distance of 481.03 feet, to the point of beginning.

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Commencing at the Southwest corner of the Northeast Quarter of the Southwest Quarter of said Section 8, said point being the point of beginning; thence North 01 degrees 01 minutes 49 seconds West, a distance of 1322.17 feet; thence North 90 degrees 50 minutes 27 seconds East, a distance of 1325.22 feet; thence South 01 degrees 00 minutes 13 seconds East, a distance of 1320.61 feet; thence South

(continued)

EXHIBIT B

LEGAL DESCRIPTION

89 degrees 46 minutes 24 seconds West, a distance of 1324.58 feet, to the point of beginning.

Except Lots 1-3, 24-29, 31-38, 64-75, a plat of correction of Auburn Meadow Subdivision Phase I as recorded October 23, 2001, Book 90, Page 98, in the office of the Recorder, Lake County, Indiana.

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Except Lots 57-63 and 76-86, Auburn Meadow Subdivision Phase 3 as recorded June 13, 2003, Book 93, Page 79 in the office of the Recorder, Lake County, Indiana.

Except Lots 7-10, 15-18, 42-44, and 46-47 of Auburn Meadow Subdivision Phase 4 as recorded October 15, 2003, Book 093, Page 45 in the office of the Recorder, Lake County, Indiana.

End of Legal Description

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2004 053676

2004 JUN 24 PM 3:50

MORRIS J. ...
RECORDER

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR AUBURN MEADOW COMMUNITY ASSOCIATION**

THIS 2nd AMENDMENT is entered into this 21st day of June, 2004, by AUBURN MEADOW DEVELOPMENT, LLC (hereinafter referred to as "Declarant").

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions, and Restrictions for Auburn Meadow Community Association recorded in the Office of the Recorder of Lake County, Indiana on March 5, 2002 as instrument no. 2002-022841; and

WHEREAS, pursuant to Article II, Section 2.02, Declarant reserves the right to amend the Declaration to add additional property by Subsequent Amendment; and

WHEREAS, Declarant now desires and intends hereby to so amend the Declaration.

NOW THEREFORE, Declarant does hereby amend the Declaration as follows:

1. Exhibit A to the Declaration amended by adding the following real estate:
See attached
2. Except as expressly set forth therein, the Declaration shall remain in full force and effect with its terms and conditions.
3. Unless otherwise provided, all capitalized terms herein will have the same meaning as given in the Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Amendment to Declaration this 21st day of June, 2004.

AUBURN MEADOW DEVELOPMENT, LLC

By: Frederick A. Olthof
Frederick A. Olthof, President of OD Enterprises, Inc., Manager of
Auburn Meadow Development, LLC

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STATE OF INDIANA)
) SS
COUNTY OF LAKE)

Before me, the undersigned Notary Public in and for Lake County, State of Indiana, personally appeared Frederick A. Olthof who, being duly sworn upon his oath, acknowledged that he is the President of OD Enterprises, LLC, Manager of Auburn Meadow Development, LLC and that he is authorized and empowered so to do, executed the above and foregoing Amendment to Declaration for the uses and purposes therein set forth.

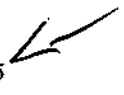
DATED this 21st day of June, 2004.



NOTARY PUBLIC

My commission Expires: 1/24/07
County of Residence: Lake



AFTER RECORDING RETURN TO: Olthof Homes, 1945 Harder Ct., Schererville, IN 46375 

SCHEDULE 1

Lots 4-6, 19-23, 39-41, 48-50, Auburn Meadow Subdivision Phase 2 as recorded October 15, 2002, Book 92, Page 61 in the office of the Recorder, Lake County, Indiana; and

Lots 57-63 and 76-86, Auburn Meadow Subdivision Phase 3 as recorded June 12, 2003, Book 93, Page 79 in the office of the Recorder, Lake County, Indiana; and

Lots 7-10, 15-18, 42-44, and 46-47 of Auburn Meadow Subdivision Phase 4 as recorded October 15, 2003, Book 093, Page 45 in the office of the Recorder, Lake County, Indiana

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Lots 4-6, 19-23, 39-41, and 48-50, Auburn Meadow Subdivision Phase 2 as recorded October 15, 2002, Book 92, Page 61 in the office of the Recorder, Lake County, Indiana.

Lots 57-63 and 76-86, Auburn Meadow Subdivision Phase 3 as recorded June 12, 2003, Book 93, Page 79 in the office of the Recorder, Lake County, Indiana.

Lots 7-10, 15-18, 42-44, and 46-47 of Auburn Meadow Subdivision Phase 4 as recorded April 15, 2003, Book 93, Page 45 in the office of the Recorder, Lake County, Indiana.

Lots 54-56 and 87-98, of Auburn Meadow Subdivision Phase 5 as recorded March 8, 2004, Book 95, Page 13 in the office of the Recorder, Lake County, Indiana.

Lots 128-143 of Auburn Meadow Subdivision Phase 6 as recorded December 11, 2003, Book 94, Page 85 in the office of the Recorder, Lake County, Indiana.

EXHIBIT B

LEGAL DESCRIPTION

89 degrees 46 minutes 24 seconds West, a distance of 1324.58 feet, to the point of beginning.

Except Lots 1-3, 24-29, 31-38, 64-75, a plat of correction of Auburn Meadow Subdivision Phase I as recorded October 23, 2001, Book 90, Page 98, in the office of the Recorder, Lake County, Indiana.

Except Lots 4-6, 19-23, 39-41, 48-50, Auburn Meadow Subdivision Phase 2 as recorded October 15, 2002, Book 92, Page 61 in the office of the Recorder, Lake County, Indiana.

Except Lots 57-63 and 76-86, Auburn Meadow Subdivision Phase 3 as recorded June 13, 2003, Book 93, Page 79 in the office of the Recorder, Lake County, Indiana.

Except Lots 7-10, 15-18, 42-44, and 46-47 of Auburn Meadow Subdivision Phase 4 as recorded October 15, 2003, Book 93, Page 45 in the office of the Recorder, Lake County, Indiana.

End of Legal Description