

DECLARATION OF COVENANTS, CONDITIONS, COMMITMENTS, RESTRICTIONS,  
EASEMENTS, AND ASSESSMENTS  
OF CLEAR CREEK SUBDIVISION, SECTION I,  
AND SUBSEQUENT SECTIONS THERETO  
DANVILLE, INDIANA

TABLE OF CONTENTS

	PAGE
Article I -- Definitions	
A. 1. Assessment.....	1
2. Association.....	1
3. Builder.....	1
4. Committee.....	2
5. Common Expenses.....	2
6. Common Property/Common Areas.....	2
7. Dwelling Unit.....	2
8. Lot.....	2
9. Owner.....	2
10. Plat.....	2
Article II -- Character of the Development	
A. In General.....	2
B. Other Restrictions.....	2
Article III -- Restrictions Concerning Size, Placement, and Maintenance of Dwelling Units and Other Structures	
A. Type, Size and Nature of Construction Permitted and Approvals Required.....	3
1. Minimum Areas.....	3
2. Masonry Requirement.....	4
3. Attached Garages.....	4
4. Driveways and Off-Street Parking Spaces.....	4
5. Prohibition of Relocated or Moveable Structures.....	4
6. Time Limits on Construction.....	5
7. Maintenance of Lots During Construction.....	5
8. Basketball Goals and Similar Structures.....	5
9. Fences.....	5
10. Landscaping.....	6
11. Mailboxes.....	6
12. Storage Tanks.....	6
13. Gutters and Downspouts.....	6
14. Awnings and Patio Covers.....	6
15. Above Ground Swimming Pools.....	6
16. In Ground Swimming Pools.....	6
17. Storage Sheds.....	6
18. Satellite Dish Antennas.....	6
19. Dog Kennels.....	7
20. Clothes lines.....	7
21. Solar Heat Panels.....	7
22. Utility Lines.....	7
23. Utility Meters and HVAC Units.....	7
24. Notice.....	7
B. Sight Distance at Intersections.....	7
C. Building Setback Lines.....	7
D. Damaged Structures.....	7
E. Maintenance of Lots and Improvements.....	7
F. Requirement to Mow Grass in Public Rights-of-Way.....	8

JCCCOVETAB

9600024656 **BOOK 157 PAGE 483**  
 Filed for Record in  
 HENDRICKS COUNTY IN  
 JOY BRADLEY  
 On 11-22-1996 At 10:55 am.  
 COV 58.00  
 Vol. 157 Pg. 483 - 507

25

DECLARATION OF COVENANTS, CONDITIONS, COMMITMENTS, RESTRICTIONS,  
EASEMENTS, AND ASSESSMENTS  
OF CLEAR CREEK SUBDIVISION, SECTION I,  
AND SUBSEQUENT SECTIONS THERETO  
DANVILLE, INDIANA

BOOK 157 PAGE 484

TABLE OF CONTENTS  
(continued)

	PAGE
Article IV -- Easements.....	8
Article V -- Easements, Party Walls, Rules as to Designated Village Homes Lots, 1-28	
A. Party Walls.....	8
B. Encroachment Easements.....	9
Article VI-- Miscellaneous Provisions and Prohibitions	
A. Nuisances.....	9
B. Signs.....	9
C. Animals.....	9
D. Vehicle Parking.....	10
E. Ditches and Swales.....	10
F. Garbage, Trash, and Other Refuse.....	10
G. Outside Toilets.....	10
Article VII -- Submittal and Approval of Plans	
A. Submittal of Plans.....	10
B. Approval of Plans.....	11
C. Development Control Committee.....	11
1. Power of Committee.....	11
Article VIII -- Rules Governing Building on Several Contiguous Lots Having One Owner.....	12
Article IX -- Remedies	
A. Available Remedies.....	13
B. Government Enforcement.....	13
C. Delay or Failure to Enforce.....	13
Article X -- Effect of Becoming an Owner.....	13
Article XI -- Titles.....	14
Article XII -- Duration and Amendment	
A. Duration of Declaration.....	14
B. Amendment of Declaration.....	14
Article XIII -- Severability.....	14
Article XIV -- Dedication of Street Rights-of-way.....	14
Article XV -- Homeowners' Association.....	15
Article XVI -- Association Membership and Voting Rights	
A. Membership.....	15
B. Classes of Membership.....	15
1. Class A	
2. Class B	



DECLARATION OF COVENANTS, CONDITIONS, COMMITMENTS, RESTRICTIONS,  
 EASEMENTS, AND ASSESSMENTS  
 OF CLEAR CREEK SUBDIVISION, SECTION I,  
 AND SUBSEQUENT SECTIONS THERETO  
 DANVILLE, INDIANA

\_\_\_\_\_

TABLE OF CONTENTS  
 (continued)

	PAGE
C. Board of Directors.....	15
D. Responsibilities of the Association.....	15
E. Transfer of Control of Association.....	16
 Article XV <sup>II</sup> -- Insurance	
A. Public Liability Insurance for Common Property.....	16
B. Comprehensive Public Liability Insurance.....	16
C. Professional Management Firm Insurance.....	16
D. Owner's Responsibility for Loss.....	16
 Article XVIII- Covenant for Assessments	
A. Purpose of Assessments.....	16
B. Pro-rata Share.....	17
C. Liability for Assessments.....	17
D. Basis of Annual Assessments.....	17
E. Basis of Special Assessments.....	17
F. Fiscal Year; Date of Commencement of Assessments; Due Date.....	17
G. Duties of the Association.....	18
1. Books and Records.....	18
2. Certificate of Assessments.....	18
3. Request for Notice from Mortgagee.....	18
H. Association Remedies for Non-Payment of Assessments.....	19
1. Lien for Non-Payment of Assessment.....	19
2. Initiation of Action by Association for Non-Payment of Assessment.....	19
I. Adjustments.....	19
J. Initial Assessments.....	19
K. Notice and Quorum for any Action to Increase Assessments or to Amend the Declaration.....	19
L. Subordination of the Lien to Mortgages.....	20
 Article XIX -- Annexation	
A. Effective Date for Assessments and Voting Rights.....	20
B. Improvements.....	20
C. Equality of Rights.....	20
D. Annexation Document.....	20

DECLARATION OF COVENANTS, CONDITIONS, COMMITMENTS, RESTRICTIONS,  
EASEMENTS, AND ASSESSMENTS  
OF CLEAR CREEK SUBDIVISION, SECTION I,  
AND SUBSEQUENT SECTIONS THERETO  
DANVILLE, INDIANA

THIS DECLARATION of Covenants, Conditions, Commitments, Restrictions,  
Easements, and Assessments, hereinafter referred to as the "Declaration" or the "Covenants," is  
made this 13<sup>th</sup> day of November, 1996, by Cedar Run Limited, Inc., an Indiana Corporation,  
hereinafter referred to as "Declarant" or "Developer,"

WITNESSETH:

WHEREAS, Declarant is the owner of a certain 37.69-acre parcel of real property,  
hereinafter referred to as the "Real Estate," as described in Exhibit "A" attached hereto and by  
reference is made a part hereof;

WHEREAS, Declarant hereby subdivides said real property into single-family lots and  
two-family lots ("Village Homes") known and designates said subdivision as CLEAR CREEK,  
Section I, hereinafter referred to as the "Subdivision", as per plat thereof recorded on the  
day of 22, 1996, under Instrument No. 27660, Plat Cabinet 1, Slide 37 pg 1 & 2  
3 & 4, in the records of the Office of the Recorder of Hendricks County, Indiana, and by reference  
made a part hereof; and

WHEREAS, Declarant establishes a system of assessments and charges, hereinafter  
referred to as the "Assessments," to be borne by Lot Owners (hereinafter referred to as  
"Owners") of the Development, to provide for maintenance of the Common Property in the  
Development, for insurance coverage, and for mutual enforcement of the Covenants; and

NOW, THEREFORE, Declarant hereby affirms that the Real Estate described in Exhibit  
"A" attached hereto and by reference made a part hereof shall be held, subdivided, sold and  
conveyed subject to the following Covenants which purport to protect the value and desirability  
of the Development, and which shall run with the Real Estate and shall be binding on all parties  
having any right, title or interest in the Real Estate or any part thereof, their heirs, successors and  
assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I  
DEFINITIONS

- A. The following are the definitions of terms used in this Declaration:
  1. "Assessment" shall mean that share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of Article XVII herein.
  2. "Association" shall mean Clear Creek Homeowners' Association, Inc. or an organization of similar name, its successors and assigns, and shall be created as an Indiana not-for-profit corporation. Its membership shall consist of Owners who pay mandatory assessments for liability insurance, project sign maintenance, Common Area "A" and any improvements thereto, storm water detention area maintenance, maintenance of landscaped areas in landscape easements, management fees and other expenses as determined by the Association.
  3. "Builder" shall mean the contractor(s) constructing the first residence on each Lot, which may be the Developer for one or more Lots.



- 4. "Committee" shall ~~mean the Clear Creek Development Control Committee,~~ composed of three (3) members appointed by Developer who shall be subject to removal by Developer at any time with or without cause as long as Developer owns one (1) lot. Developer by appointment shall fill vacancies which may occur from time to time on the Committee until such time as the Subdivision is completely developed, at which time the Association shall appoint the Committee from its membership.
- 5. "Common Expenses" shall mean the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of the Common Property as hereinafter defined and including, but not limited to, the maintenance of the storm water detention areas, but excluding normal mowing and cleaning of such areas, etc., and any other costs or expenses incurred by the Association for the benefit of the Common Property, including the cost of insurance as required herein. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation and completion of streets, utility lines and mains, the drainage system, or other public improvements constructed by Developer.
- 6. "Common Property/Common Area" shall mean all real and personal property which is in the nature of common or public improvements.

It is anticipated all future sections may have certain additional amenities.

At the entry on Rockville Road (State Road 36), there are landscape, utility, and sign easements.

- 7. "Dwelling Unit" shall mean:
  - A. In R-2, on Lots numbered 129 through 146, inclusive, a single-family residence, including attached garage, situated upon a Lot in the Development.
  - B. In R-3, on Lots numbered 29 through 49, 73 through 92, and 114 through 128, all inclusive, a single-family residence, including attached garage, situated upon a Lot in the Development.
  - C. "Village Homes" in R-3, on Lots numbered 1 through 28, inclusive, a two-family residence, including attached garages, situated upon a Lot in the Development.
- 8. "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designated and intended for use as a building site, or developed and improved for use as a one (1) family Dwelling Unit or a "Village Home" which accomodates a two-family dwelling on each Lot, identified by number and as shown on the Plat of the Development which is recorded in the Office of the Recorder of Hendricks County, Indiana. No Lot may be subsequently subdivided for development purposes, except to adjust for minor side yard infractions which may occur.
- 9. "Owner" shall mean a person who acquires any right, title or interest, legal or equitable, in and to a Lot being a single-family Lot or one-half of a "Village Home," but shall exclude those persons having such interest merely as security for the performance of an obligation.
- 10. "Plat" shall mean the subdivision plat of the Development identified as the Final Plat of Clear Creek Subdivision, Section I, recorded on the \_\_\_ day



of \_\_\_\_\_, 1996, under Instrument Number \_\_\_\_\_ in the Office of the Recorder of Hendricks County, Indiana, and any Plats of subsequent Sections recorded thereafter.

## ARTICLE II CHARACTER OF THE DEVELOPMENT

- A. In General: Each Lot in the Development shall be a residential lot and shall be used exclusively for single or two family residential purposes, as specified by the Zoning Classification for each specific Lot. No structure shall be erected, placed or permitted to remain upon any Lot except a Dwelling Unit.

No business buildings may be erected on any Lots thereof. No business may be conducted on any Lots thereof, other than those occupations permitted in the Dwelling Districts' Zoning Ordinance of the Town of Danville, Indiana.

Common Area "A" is a non-buildable Lot for residential dwelling units and is to be used as a park for the benefit of the Lot Owners in the Clear Creek Subdivision. Common Area "A" will be deeded to the Clear Creek Homeowners' Association.

- B. Other Restrictions: All Lots in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

## ARTICLE III RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF DWELLING UNITS AND OTHER STRUCTURES

- A. Type, Size, and Nature of Construction Permitted and Approvals Required: No Dwelling Unit, greenhouse, porch, garage, swimming pool, exterior structure, fences, basketball court, tennis court or other recreational facility may be erected, placed or altered on any Lot without the prior written approval of the Committee. Such approval shall be obtained prior to the commencement of construction and shall take into account restrictions as to the type of materials, exterior facade, design, layout, location, landscaping and finished grade elevations. Builders shall submit sets of Master Plans of typical homes to the Committee. When approved by the Committee, these Master Plans shall not require subsequent approval unless there are changes thereto.

1. Minimum Areas: The following restrictions shall apply: Any Dwelling Unit erected, placed, or altered shall have the following minimum areas, exclusive of garages and open porches:
  - a. R-2, single-family: Lots numbered 129 through 146, inclusive.
    1. shall be 1,100 square feet of main floor area for a one-story dwelling unit; or
    2. shall be 960 square feet of main floor area if higher than one-story, with any dwelling unit higher than one story having a minimum of 1,500 square feet of finished living space.
  - b. R-3, single family: Lots numbered 29 through 49, 73 through 92, and 114 through 128, all inclusive.
    1. shall be 950 square feet of main floor area for a one-story dwelling

unit; or

2. shall be 720 square feet of main floor area if higher than one-story, with any dwelling unit higher than one story having a minimum of 1,400 square feet of finished living space.

c. R-3, two-family; Lots numbered 1 through 28, inclusive.

1. shall be 950 square feet of main floor area for a one-story dwelling unit with one bedroom. For each additional bedroom, 150 square feet additional living space is required; or
2. shall be 720 square feet of main floor area if higher than one-story, with any dwelling unit higher than one story having a minimum of 1,400 square feet of finished living space. For each additional bedroom, 150 square feet additional living space is required.

2. Masonry Requirement: The front elevation of all homes shall be fifty percent (50%) masonry of the first floor exterior wall area, exclusive of doors, windows, gables, and garage doors.

Side elevations of all homes on corner lots shall have a minimum masonry requirement on the side facing the street of three feet (3') side masonry.

A waiver of this requirement may be allowed by the Clear Creek Development Committee on any two-story dwelling.

3. Attached Garages: Each single-family Dwelling Unit shall have a minimum of a two-car attached garage; two-family Dwelling Units ("Village Homes") shall have a minimum of a two-car attached garage per side.

4. Driveways and Off-Street Parking Spaces: There shall be a minimum of two (2) off street parking spaces in each driveway. All driveways shall be constructed of concrete or asphalt material.

Driveways shall be not be more than twelve (12) inches wider than the outside of the garage door or doors it serves. A driveway shall not exceed in width the side boundaries of the garage it serves.

A driveway must be a minimum width of no less than the interior width of the garage door or doors it serves.

No additional parking shall be permitted on a Lot other than in the existing driveway.

Builders shall install driveways during original construction of the Dwelling Units.

No inoperative or unlicensed vehicles shall be stored or repaired on the outside on any Lot or on the driveway thereof. No camper, trailer, motor home, mobile home, boat, truck, school bus or other vehicle of like kind may be parked within the subdivision unless such vehicle is kept in the garage, except for personal automobiles, vans, and pick-up trucks.

5. Prohibition of Relocated or Moveable Structures: No Dwelling Unit, garage, out building or other structure of any kind may be moved onto any Lot. No trailer, mobile home, tent, basement, shack, garage, motor home, barn or other structure



may be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a Dwelling Unit on a Lot.

- 6. Time Limits on Construction: The exterior of every Dwelling Unit, garage, or other structure permitted to be constructed or to remain on any Lot shall be completed within six (6) months from the start of construction, including the application of at least one (1) coat of paint, stain or varnish on any exterior wood surfaces. All such structures shall be completed within one (1) year.

All structures must be completed, and the site graded, sodded, or seeded and reasonably landscaped within one (1) year from the date of the commencement of construction thereof.

- 7. Maintenance of Lots During Construction: All Lots shall be kept and maintained in a sightly and orderly manner during the period of construction of any structures on said Lots. No trash or rubbish of any kind shall be permitted to accumulate on any Lot or adjacent Lots. Construction debris shall be placed in dumpsters or wire/plastic trash enclosures which shall be placed on the Lots and not on the streets. The streets shall be kept clear of mud and dirt from water run off and excavation.

- 8. Basketball Goals and Similar Structures: To preserve the natural quality and aesthetic appearance of the Development, basketball goals or similar structures shall be approved by the Committee for size, location, height, composition, and color prior to installation.

No goal or structure may be installed or maintained such that playing basketball occurs in the street.

If portable goals are used, they may not be placed so that playing basketball occurs in the street.

- 9. Fences: All fences, except for masonry landscape walls to be built by the Developer, shall meet the following standards, shall be approved by the Committee, and shall comply with the standards of the Town of Danville Zoning Ordinance.

- a. Pool fences, where required, shall be a decorative type with some screen landscaping of the sides exposed to the streets. All pool fences must meet requirements of the Town of Danville Building Commission codes and regulations.

- b. No solid fence construction shall be permitted without approval of the Committee.

- c. Fences shall be shadow box, split-rail, chain link, black iron or aluminum picket style, unless otherwise approved by the Committee.

- d. The Committee shall require fences to be painted or stained to blend with the color of the respective houses.

- e. For non-corner lots, no fence may be installed between the street and the rear face of a house.

For corner lots, no fence may be installed between the street and the side and the rear corner of the house facing the two respective streets.



- Landscaping shall be required along corner lot side-yard fences exposed to the street yard.
- f. All corner lot fences shall meet the requirements of Article III, Section B of these covenants.
  - g. The height of shadow box fences or pool fences may ~~not exceed six (6)~~ feet. The height of any other type of fence may not exceed four (4) feet. All owners shall maintain their respective fences in good condition including repainting and/or re-staining wood fences, removing rust and repainting metal fences, and repairing any structural defects or signs of deterioration.
  - h. Any deviation from the above requirements shall require approval from the Committee.
  - i. The Committee shall have the discretion to allow other fence types, based on the plans submitted under Article III, Section A, and Article VI, Section A.
10. Landscaping: At least two (2) deciduous ~~shade (overstory) trees~~ (one in the front yard and one in the back yard) and ~~one (1) deciduous ornamental (understory, in the front yard) tree~~ shall be planted by Purchaser.
    - a. At least six (6) shrubs shall be installed as foundation plantings.
    - b. Front yards shall be sodded. The remainder of the yard shall be seeded and covered with straw, or seeded by an equivalent or better treatment.
  11. Mailboxes: Builders shall install matching Committee-approved and Post Office-approved curb side rural mail boxes during original construction of the Dwelling Units. Each Owner shall maintain and replace his or her mailbox with the same type, unless a change in design and color is approved by the Committee.
  12. Storage Tanks: Gasoline or other fuel storage tanks will not be permitted in the Development.
  13. Gutters and Downspouts: All gutters and downspouts shall be painted, except if copper gutters are installed.
  14. Awnings and Patio Covers: Awnings and patio covers made of metal, fiberglass or similar type materials will not be permitted in the Development.
  15. Above Ground Swimming Pools: Above ground swimming pools will not be permitted in the Development.
  16. In Ground Swimming Pools: In ground swimming pools shall be permitted in the Development, with the approval of the Committee.
  17. Storage Sheds: All accessory buildings shall be placed on a permanent foundation, shall be constructed of new materials, shall be architecturally compatible with the dwelling unit, shall be constructed with the same or equivalent materials as the dwelling unit and shall be subject to the approval of the Committee. Accessory buildings shall not exceed ten (10) feet in width and ten (10) feet in height. Only one accessory building shall be permitted per lot.
  18. Satellite Dish Antennas: Satellite dish antennas exceeding 24 inches in diameter



will not be allowed. Satellite dishes 24 inches in diameter or less shall not be visible from the public street; similarly, the satellite dishes shall not be visible from the first floor level of adjoining homes.

All antennas shall be approved by the Committee and shall be screened from view, as required by the Committee. The color of the dish shall blend with the color of the background in such a way that the dish shall become essentially invisible.

Any television or communication antenna shall not extend more than five (5) feet above the highest point of the dwelling unit, shall be new or in like-new condition, and shall be maintained in good condition.

19. No dog kennels or dog runs: No dog kennels or dog runs will be allowed in the development.
  20. Clothes lines: Only "umbrella type" clothes line fixtures will be permitted; no "telephone pole" style or permanent clothes lines shall be permitted.
  21. Solar Heat Panels: Solar heat panels will not be permitted.
  22. Utility Lines: All utility lines in the Development shall be placed underground. Utility lines shall be installed under completed streets by jacking or boring methods. Street cuts will not be permitted.
  23. Utility Meters and HVAC Units: Wherever possible, all utility meters and HVAC units in the Development shall be located in places not seen from the street or shall be screened, if located in the fronts of the Dwellings.
  24. Notice: The Developer shall include a copy of the recorded Plat and a copy of the recorded Declaration with all Builder's Agreements or forward as soon as these documents are recorded. The aforesaid Plat and Declaration shall be presented to and reviewed with the Buyer by the Builder during the selection of the Lot by the Buyer (prior to the Closing of the Lot).
- B. Sight Distance at Intersections: No fence, wall, hedge, shrub, or landscape planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height sufficient to prevent obstruction of such sight lines.
- C. Building Setback Lines: Front building setback lines are established as shown on the Plat. Between said lines and the right-of-way lines of the streets no structures may be erected or maintained. Additionally, no structures may be erected or maintained between the side and rear lot lines and the right-of-way lines of the street.
- D. Damaged Structures: No dwelling unit which has been partially or totally destroyed by fire or other catastrophic event shall be allowed to remain in such state for more than thirty (30) days from the date of such occurrence unless otherwise approved by the Committee.
- E. Maintenance of Lots and Improvements: The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements thereon in such a manner to prevent



the Lot and its improvements from becoming unsightly. Specifically, the Owner shall:

1. Establish and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height. This mowing requirement shall not apply to Lots owned by the Declarant.
  2. Keep Lot free of debris and rubbish;
  3. Prevent conditions of any kind from evolving which in the Committee's opinion may detract from or diminish in any way the aesthetic value of the Development;
  4. Remove dead trees and replace with like species; and,
  5. Maintain the exterior of all improvements in a state of good repair.
- F. Requirement to Mow Grass in Public Rights-of-Way: All Owners shall be required to mow the grass in public rights-of-way including the areas between the sidewalk and the curb for their respective Lots.

#### ARTICLE IV EASEMENTS

The strips of ground shown on the recorded plat of the Development which are marked "D., & U. E." (Drainage and Utility Easements) are reserved for the use of public utility companies, including cable television companies and municipal agencies, but not including transportation companies, for the purpose of installing and maintaining drainage swales, ducts, poles, lines, wires, sewers, drains and appurtenances thereto. Said easements shall be perpetual from the date of this Instrument as subscribed to by the Developer, its successors and assigns. No permanent or other structures may be erected or maintained in said easements except for temporary structures, fences, driveways and walkways. The Owners of Lots in the Development shall take title to said Lots subject to the rights of said companies and agencies and the other owners of said Lots in the Development for purposes of ingress and egress and maintenance and repair in, along and through said easements so reserved.

#### ARTICLE V EASEMENTS, PARTY WALLS, RULES AS TO DESIGNATED VILLAGE HOME LOTS 1-28

- A. Party Walls
1. General Rules of Law to Apply: Any wall which is built as a part of the original construction of any Dwelling Unit upon the Real Estate and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.
  2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.
  3. Destruction by Fire or Other Casualty: If any party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions; without



prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

4. **Weatherproofing:** Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against those elements.
  5. **Right to Contribution Runs with Land:** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
  6. **Arbitration:** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator from among disinterested Owners, and such arbitrators shall choose an additional arbitrator, who need not be an Owner, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.)
- B. **Encroachment Easements.** If any portion of the Common Properties encroaches on any Dwelling Unit or any Dwelling Unit encroaches upon the Common Properties or another Dwelling Unit or Lot as a result of construction, re-construction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Developer and/or Association or to the Owner of the encroaching Lot or improvement for the encroachment and for the maintenance thereof so long as such encroachment exists.

#### ARTICLE VI MISCELLANEOUS PROVISIONS AND PROHIBITIONS

- A. **Nuisances:** No noxious or offensive activities shall be conducted on any Lot in the Development, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to the Owners of other Lots in the Development. Nor shall Developer, any officer, agent, employee or contractor thereof, the Association, or any Owner be liable for any damage which may result from enforcement of the provisions of this paragraph.
- B. **Signs:** No signs or advertisements shall be displayed or placed on any Lot or structure in the Development without the prior written approval of the Committee, except for the sale of a Lot or residence. However, Developer and designated Builders may use for sale and advertising signs during the sale of lots and the construction of houses in the Development.
- C. **Animals:** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they
  1. shall not be kept, bred, or maintained for any commercial purpose;
  2. shall not become a nuisance to other Owners; and
  3. shall be leashed upon leaving Owner's property.

Not more than three (3) pets of 20 pounds or less, not more than two (2) pets of 21 to 75



pounds, and not more than 1 pet 76 to 150 pounds shall be permitted to be domiciled in a Dwelling Unit or on a Lot. Pets which exceed 150 pounds shall be approved by the Committee.

- D. Vehicle Parking: Any motor vehicle which is inoperative and not being used for normal transportation will not be permitted to remain on any street or lot except within a closed garage. Motor vehicles may not be parked upon grassy or landscaped areas. Unless otherwise provided by the rules and regulations of the Committee, motor homes, mobile homes, boats, campers, trailers, commercial trucks and similar vehicles may not be parked or stored upon a Lot unless within a closed garage. All passenger vehicles shall be parked in garages or in driveways. Guest vehicles may be parked on the public streets for a period not to exceed twenty-four (24) hours, unless the guest is from out-of-town; however, this shall not include vehicles parked on public streets on a frequent (in excess of 24 hours per month) basis. Vehicles may not be placed on blocks or jacks for purposes of repair, except for repairs made in garages.

- E. Ditches and Swales: All Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales located on their respective Lots. Owners of all Lots in the Development shall comply at all times with the provisions of the Development and Grading Plans for the Plat as approved by the Town of Danville Plan Commission, and with the requirements of all drainage permits issued for any Lot within the Development. Any field tile or underground drain encountered during the construction of any improvements within the Development shall be perpetuated. All Lot Owners in the Development, their successors, and assigns, shall comply with the Indiana Drainage Code of 1965, and all amendments thereto. No culverts shall be installed by any Lot Owner without the written consent of the Town of Danville Plan Commission.

No sanitary waste or other wastes shall be permitted to enter the storm drainage system. Discharge from any floor drain shall be permitted to discharge into the sanitary sewer system. Drainage from any floor drain (including, but not limited to, footing drains and downspouts) shall not be permitted to discharge into the sanitary sewer system. Downspouts shall discharge onto the surface of the ground. Footing drains shall be connected to yard subdrains or storm drains. With the purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Developer, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall become a lien upon the Lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

- F. Garbage, Trash, and Other Refuse: No owner of a Lot in the Development shall burn or bury out-of-doors, any garbage or refuse. Nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his or her Lot.
- G. Outside toilets: No outside toilets shall be permitted on any Lot in the Development (except during the period of construction and then only with the consent of Committee).

#### ARTICLE VII SUBMITTAL AND APPROVAL OF PLANS

- A. Submittal of Plans: No building, wall or other structure, except original construction of buildings by or on behalf of Declarant or an original Builder, may be commenced, erected or maintained in the Development, nor may any exterior additions, changes, or alterations therein or thereto be made until the plans and specifications for said additions, changes or alterations are submitted to and approved in writing by the Committee for harmony of external design and location in relation to surrounding structures and topography.



- B. Approval of Plans: Approvals, determinations, permissions or consents of and for plans required herein shall be deemed granted if given in writing and signed with respect to Developer by an authorized Officer or agent thereof, or with respect to the Committee by two of its authorized designee(s).
- C. Development Control Committee: Upon transfer of control of the Association to the Board of Directors and/or Officers of the Association, Developer will retain the approval of the first Dwelling constructed upon any Lot. All other approvals of plans will be transferred to the Development Control Committee.

1. Power of Committee:

- a. In General: No building structure, or improvement of any type of kind shall be constructed or placed on any Lot in the Development without prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee.

Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing all existing conditions upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of one-quarter (1/4) inch equals one foot (1'), or to such other scales as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer, or architect. Plot plans submitted for Building Permits shall bear the stamp or signature of the Committee acknowledging the approval thereof.

- b. Power of Disapproval: The Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement, when:

1. the plans, specifications, drawings, or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
2. the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
3. the proposed improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare, or rights of all or any part of the other Owners.



- c. Developer Improvements: The Committee shall have no power with respect to any improvements or structures erected or constructed by the Developer (or any Builder, if Developer has approved the plans therefore).
- d. Duties of Committee. The Committee shall approve or disapprove the proposed improvements within fifteen (15) days after all required information is received by it. One (1) copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval. In the event that a written approval is not received from the Committee within fifteen (15) days from the date of receipt of the information required to be submitted by these Subdivision Restrictions, the failure to issue such written approval shall be construed as the disapproval of any such plans submitted.

The submitting party can re-submit and if no written approval or denial is received, after the next fifteen (15) days, the no action shall be construed as approval.

- e. In General. Any party to whose benefit these restrictions inure, including Developer, Association and any Owner in the Development, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither Developer nor Association shall be liable for damages of any kind to any person for failing to abide by, enforce, or carry out any of these Restrictions.
- f. Liability of Committee. Neither the Committee nor any agency thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications, or other materials submitted to it, nor for any defects in any work done according thereto.
- g. Inspections. The Committee may inspect work being performed to assure compliance with these Restrictions and applicable regulations.
- h. The failure of the Committee to act in any particular situation with any particular party shall in no way be a waiver of any right of action or enforcement in the future.

ARTICLE VIII  
RULES GOVERNING BUILDING ON SEVERAL  
CONTIGUOUS LOTS HAVING ONE OWNER



Whenever two or more contiguous Lots in the Development are owned by the same Owner, and said Owner proposes to use two or more of said Lots as a site for one (1) Dwelling Unit, said Owner shall apply in writing to the Committee for permission to use said Lots for this purpose. If permission is granted, Owner must comply with all requirements of the Town of Danville Unified Subdivision Ordinance. The Lots constituting the site for said Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions while the Lots remain improved with one (1) Dwelling Unit. Two-family dwellings shall be permitted in the Development only on Lots 1 through 28, inclusive.

ARTICLE IX  
REMEDIES

- A. Available Remedies: In the event of a violation, or threatened violation, of any of the Covenants herein recited, Declarant, the Owners and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Covenants contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with the Covenants contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.
- B. Government Enforcement: The Town of Danville Plan Commission, its successors and assigns, shall have no right, power or authority to enforce any Covenants contained in this Declaration other than those Covenants which expressly run in favor of the Town of Danville Plan Commission, provided further, that nothing herein shall be construed to prevent the Town of Danville Plan Commission from enforcing any provisions of the Unified Subdivision Control Ordinance, as amended, or any conditions attached to approval of the plat of Clear Creek, Section 1, by the Plat Committee, and any subsequent sections approved thereafter.
- C. Delay or Failure to Enforce: No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Covenants shall be held to be a waiver by that party (or any estoppel of that party to assert) of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Covenants.

ARTICLE X  
EFFECT OF BECOMING AN OWNER

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through, or under them, shall be subject to and shall comply with the provisions of this Declaration and the Articles, the By-Laws, and the rules and regulations adopted by the Board of Directors of the Association as each may be amended or supplemented from time to time. The acceptance of a deed or conveyance of the act of occupancy of any Lot or Dwelling Units shall constitute an agreement that the provisions of this Declaration and the Articles, the By-laws and the rules and regulations of the Association as each may be amended or supplemented from time to time, are accepted and ratified by such owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration and the Articles, the By-Laws, and the rules and regulations of the Association applicable thereto as each may be amended or supplemented from time to time.



ARTICLE XI  
TITLES

The underlined titles of the various Articles and Sections of these Covenants are for the convenience of reference only. None of them shall be used as an aid to the construction of any provisions of the Covenants. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

ARTICLE XII  
DURATION AND AMENDMENT

- A. Duration of Declaration: This Declaration shall be effective for an initial term of twenty (20) years from the date of its recordation by the Recorder of Hendricks County, Indiana, and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners' vote pursuant to Article XVII, Section K, to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.
- B. Amendment of Declaration: As long as Developer is a Class B member as defined in Article XV, Section B.2., Developer hereby reserves the right to make such amendments to this Declaration as Developer may deem necessary or appropriate without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or any agency guaranteeing, insuring, or approving mortgages, or to change or modify Covenants for amendments to the Plat or Article III Restrictions which would apply to future construction, provided that Developer shall not be entitled to make any amendment which will have a materially adverse effect on the rights of any Mortgagee, nor which will substantially impair the benefits of the Covenants to any Owner or substantially increase the obligations imposed by the Covenants on any Owner without the written approval of said Owners as provided for under Article XVII, Section K.

Upon conversion of Class B membership to Class A membership as provided in Article XV, Section B.2, the Covenants may be amended as provided for under Article XVII, Section K.

ARTICLE XIII  
SEVERABILITY

The within Covenants shall run with the land and shall be binding on all parties claiming under them. Invalidation or unenforceability of any of the Covenants by Judgment or Court Order shall in no way affect the validity or enforceability of any of the other provisions which shall remain in full force and effect.

ARTICLE XIV  
DEDICATION OF STREET RIGHTS-OF-WAY

All street rights-of-way shown on the plat and not heretofore dedicated to the public are hereby dedicated to the public.



ARTICLE XV  
HOMEOWNERS' ASSOCIATION

The Association shall be an Indiana not-for-profit corporation and shall operate in accordance with Articles XV through XVIII of this Declaration.

ARTICLE XVI  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- A. Membership: Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. In addition, the Association, and/or its members therein, may be members in any one or more umbrella or joint homeowners' associations, if ~~any, composed~~ of associations and/or members from surrounding areas or, if organized by the Builders or Lot Owners of a community.
- B. Classes of Membership: The Association shall have two (2) classes of voting members:
1. Class A: Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot, except a "Village Homes" Lot would have two votes, one for each half.
  2. Class B: The Class B member(s) shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the members of the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
    - a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
    - b. on September 1, 2000.
- C. Board of Directors: The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Developer and shall manage the affairs of the Association until Developer transfers control of the Association to the Owners as required herein.
- D. Responsibilities of the Association: The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Covenants contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain casualty insurance, liability insurance and such other insurance as it deems necessary or advisable. The Association by its Board of Directors may contract for



management services and such other services as the Association deems necessary or advisable.

- E. Transfer of Control of Association: Developer shall transfer control of the Association to the Owners no later than the earlier of:
1. four (4) months after three-fourths (3/4) of the Lots in the Development have been conveyed to Owners; or
  2. on September 1, 2000.

#### ARTICLE XVII INSURANCE

- A. Public Liability Insurance for Common Property: The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Common Property, if any, as the Board of Directors shall deem appropriate.
- B. Comprehensive Public Liability Insurance: The Association also shall maintain in force comprehensive public liability insurance and such other liability insurance, with such coverages and limits, as the Board of Directors shall deem appropriate. All such policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, the Board of Directors, the Developer, any Managing Agent, their respective employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defenses based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies shall name the Association, for the use and benefit of the Owners, as the insured; shall provide that the coverage thereunder is primary even if an Owner has other insurance covering the same loss; shall show the Association or insurance trustee, in trust for each Owner and Mortgagee, as the party to which proceeds shall be payable; shall contain a standard mortgage clause and shall name Mortgagee as Mortgagee; and shall prohibit any cancellation or substantial modification to coverage without at least thirty (30) days prior written notice to the Association and to the Mortgagees. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors and any managing agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.
- C. Professional Management Firm Insurance: A professional management firm shall provide insurance coverage to the same extent as the Association would be required to provide if it were managing its own operation and shall submit evidence of such coverage to the Association.
- D. Owner's Responsibility for Loss: Each Owner shall be solely responsible for loss of or damage to the improvements and his personal property located on his Lot, however caused. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

#### ARTICLE XVIII COVENANT FOR ASSESSMENTS

- A. Purpose of Assessments: The Assessments levied by the Association shall be used exclusively for the purpose of improving, repairing, replacing and maintaining project



sign structures; maintaining the landscaping for said project signs and landscaping in the landscaping easements and in subsequent Sections, including utilities and maintenance for a sprinkler system and entrance street light; maintaining storm water retention areas; providing insurance coverage therefor; and paying for any other expenses related to the Association.

1. Each owner covenants and agrees to pay the Association:
  - a. A Pro Rata Share (as hereinafter defined) of the annual Assessments established and determined from time to time as hereinafter provided.
  - b. A Pro Rata Share (as hereinafter defined) of any special Assessments established and determined from time to time, as hereinafter provided.
  
- B. Pro Rata Share: The pro rata share for each Owner for purposes of this paragraph shall be the percentage obtained by the fraction of one over the total number of lots (1/Total no. of Lots) within the Plat.
  
- C. Liability for Assessments: The Assessment on each Lot, together with any interest thereon and any costs for collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs for collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee whose mortgage was recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.
  
- D. Basis of Annual Assessments: The Board of Directors of the Association shall establish an annual budget at the beginning of each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Common Property. A copy of this budget shall be delivered to each Owner of the Association.
  
- E. Basis of Special Assessments: Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. A special Assessment shall be imposed only with the approval of the Owners in attendance at the special meeting convened under Clause K of this Article XVII, and shall be due and payable on the date(s) determined by such Owners, or if not so determined, then as may be determined by the Board of Directors.
  
- F. Fiscal Year; Date of Commencement of Assessments; Due Date: The fiscal year of the Association shall be the calendar year and may be changed from time to time by action of the Association. The annual Assessments on each Lot in the Development shall commence no sooner than on the first day of the first month following the month in which Declarant first conveys ownership of any Lot to an Owner; provided, that if any Lot is first occupied for residential purposes prior to being conveyed by Declarant, full Assessments shall be payable with respect to such Lot commencing on the first day of the



first month following the date of such occupancy. The Declarant shall have the right, but not the obligation, to make up any deficit in the budget for the Common Expenses for any year in which Declarant controls the Association, subject to its right to be reimbursed therefor as provided herein.

The first annual Assessment shall be made for the balance of the fiscal year of the Association in which such Assessment is made and, with respect to particular Lots, shall become due and payable on the date of initial transfer of title to a Lot to the Owner thereof. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable, in full, as of the above date, except that the Board of Directors may, from time to time by resolution, authorize the payment of such Assessments in monthly, quarterly, or semi-annual installments. The Declarant shall not pay an assessment on Lots which are not sold.

G. Duties of the Association:

1. Books and Records: The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be delivered to the Owners or their designated representatives. Notices of the amount of Annual Assessments and the days following the determination thereof and Notices of the amounts of special Assessments shall be sent as promptly as practical and, in any event, not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual delivery of such notice.
2. Certificate of Assessments: Upon request the Association shall promptly furnish to any Owner, prospective purchaser, title insurance company, or Mortgagee, a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. For any person relying thereon, such certificate shall be conclusive evidence that of any Assessment therein stated has been paid.
3. Request for Notice from Mortgagee: The Association shall notify any Mortgagee from which it has received a request for notice:
  - a. of any default in the performance of any obligation under this Declaration by any Owner which is not remedied within sixty (60) days;
  - b. of any condemnation or casualty loss that affects either a material portion of the Development of the Lot securing its mortgage;
  - c. of any lapse, cancellation, or material modification of any insurance policy



required to be maintained by the Association; and

- d. of any proposed action which requires the consent of the Mortgagees or a specified percentage thereof, as set forth in the Declaration.

H. Association Remedies for Non-Payment of Assessments:

1. Lien for Non-Payment of Assessment: If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in said Lot; provided however, that the lien of the Assessment provided for herein shall be subordinate to the lien of any first mortgage.
2. Initiation of Action by Association for Non-Payment of Assessment: If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all cost of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum. The Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against Owner's Lot. There shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

- I. Adjustments: In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following year, except that so long as the Declarant controls the Association, Declarant may, at its sole discretion, make up such deficit; provided, however, that Declarant shall be reimbursed by the Association for such funded deficits, together with interest at 18% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to the Owners.

- J. Initial Assessments: During the first year in which the date when the Declaration is recorded, the annual Assessment per Lot shall not exceed One Hundred Twenty-five Dollars (\$125.00) for Class A members, payable annually. This amount shall not indicate amounts of future annual Assessments. Future Assessments shall be based on an annual budget and shall be for a full year.

Regular Assessments may be increased up to 15% each year without a vote of the membership; provided that proper notice is given to the Owners not less than thirty (30) days in advance of the meeting to approve the annual budget.

The Declarant, at its sole discretion, may advance to the Association any of the first year deficit and may be reimbursed by subsequent assessments.

- K. Notice and Quorum for any Action to Increase Assessments In Excess of 15% or to Amend the Declaration: Written notice of any meeting called for the purpose of increasing the regular or special Assessments of the Association or an Amendment to the Declaration shall be sent to all Owners not less than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to



cast sixty percent (60%) of all the votes shall constitute a quorum.

If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum shall be those Owners who are present at this subsequent meeting. A majority of the lots represented in this Quorum must approve the assessment or amendment.

- L. Subordination of the Lien to Mortgages: The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. If and to the extent this Paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail.

\_\_\_\_\_

#### ARTICLE XIX ANNEXATION

- A. Effective Date for Assessments and Voting Rights: The regular assessment provided for in the Declaration shall commence for each Lot within the annexed area on the first day of the first month following the conveyance of the Lot to the Owner by the Declarant. A Builder may delay the commencement of a Lot assessment during the construction period for a maximum of six (6) months and upon the approval of Declarant. Voting rights of the Owners of the Lots within the annexed property shall be effective upon the same date, except the Declarant shall have the voting rights provided for in Article XV, Section B.
- B. Improvements: All improvements intended for future sections shall be substantially completed prior to annexation. Any future improvements shall be consistent with the initial improvements within the Real Estate in terms of quality of construction and shall be approved by the appropriate governmental agencies.
- C. Equality of Rights: All Lot Owners within an annexed area shall have the same rights, liabilities and obligations as all Owners within the Real Estate, subject to the rights, liabilities and obligations specifically set forth as to the Declarant or a Builder in other sections of this Declaration.
- D. Annexation Document: Annexation shall be by written document including, but not necessarily limited to, the following information:
1. A description of the property to be annexed;
  2. The identity of the Declarant;
  3. The effective date of annexation;
  4. A description of the Common Area to be owned by the Association, if any;
  5. A cross-reference to this Declaration, as amended; and
  6. Any other information which the Declarant may deem necessary to identify the annexed area.



