

05/19/2003 11:05AM

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR FALLING WATERS SUBDIVISION

JACQUELYN M. STERLING  
RECORDER

42-B-6 2002-003049-NP

THE DECLARATION IS MADE AND ENTERED AS OF THIS 11TH DAY OF JULY, 2000, by

WITNESSETH:

WHEREAS, Declarant is the legal title holder of certain real property in the Porter County, State of Indiana, which real estate is legally described on Exhibit "A" attached hereto and made a part of hereof (the "Property"); and

WHEREAS, Declarant intends to develop and improve the Property with single family residences ("Residences" as hereinafter defined) together with certain Common Areas (As hereinafter defined); and

WHEREAS, an entranceway monument may be located along Porter County Road 100 South, Division Road and Porter County Road 675 West; and

WHEREAS, Declarant desires to provide for the preservation of the improvements, the landscaped area and the entranceway monument; provide for the use, maintenance, repair, replacement and administration thereof; and establish the persons entitled to use thereof and their respective obligations for the cost of maintenance, repair, replacement and administration of same; and

WHEREAS, Declarant desires to establish for its own benefit and the mutual benefit of all future owners and occupants of the Property and any part thereof, and the Porter County (hereinafter referred to as the "County"), certain easements or rights in, over, under, upon and along the Property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

WHEREAS, in order to preserve and enhance the values and amenities of the Property, Declarant shall establish the "Falling Waters Subdivision Property Owners' Association" (the Association") which shall own and have the responsibility for maintaining the Common Areas and any improvements of facilities thereon, and for administering and enforcing the covenants, conditions, restrictions and easements as hereinafter set forth and for collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant intends to subject the Property to the covenants, conditions, restrictions, easements, assessments, charges and liens as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Property shall be subject to this Declaration and shall be hold, transferred, conveyed and occupied subject to this Declaration and the following covenants, conditions, restrictions, easements, assessments, charges and liens which are for the purpose of protecting the value and desirability of, and which shall run with the Property submitted hereto and be binding on and inure to the benefit of any Owner (as hereinafter defined) thereof and to all parties having or acquiring any right, title or interest therein or in any part thereof.

✓ Stuart Little 8675 Broadway Merrillville, In 46410

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ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Falling Waters SUBDIVISION, an Indiana not-for-profit corporation, its successors and assigns.

Section 2. "Board" shall mean and refer to the Board of Directors of the Association selected pursuant to the terms of this Declaration, the Articles of Incorporation of the Association, and the By-Laws thereof.

Section 3. "Common Area" or "Common Areas" shall mean and refer to all the real property and improvements thereon, legal title or benefit of easements to which shall be held by the Association for the common use, enjoyment and convenience of the members of the Association. The Common Area shall be referred as all outlots as designated on the site plan or plat of subdivision for the Property for the purpose of providing some of the subdivision's public improvements. These common areas may also include, if so designated on the plat, the area of an easement for entry monuments or signs. The Declarant has constructed or will construct these improvements on all outlots and entranceway monuments along Porter County road 100 South, 675 West and Division Road ( in accordance with requirements of the Porter County to benefit the Real Estate). Declarant covenants and represents that the improvements will have been installed pursuant to the engineering plans delivered to and approved by the Porter County and that the entranceway monuments will be constructed in accordance with the County approved plans.

Section 4. "Declarant" will mean and refer to FLORAMO PARTNERS, an Illinois corporation; "Developer" will mean and refer to the same corporation. For purposes of the Declaration, the terms of "Declarant" and "Developer" will be considered interchangeable as to the rights and obligations contained herein. The term "Declarant," as defined herein, will also include such successors and assigns who are specifically assigned the respective rights and obligations of Declarant and who consent in writing to assume the duties and obligations connected therewith. Declarant will have the right to assign any or all of its rights or obligations to any such successor or assign.

Section 5. "Declaration" will mean and refer to this Declaration and any amendments made hereto.

Section 6. "Lot" will mean and refer to the plots of land so shown and designated upon any recorded subdivision plat of the Property or any site plan attached to a planned residence development ordinance for the Property.

Section 7. "Member" will mean and refer to any person or entity who holds membership in the Association.

Section 8. "Occupant" will mean and refer to any person lawfully residing or in possession of a Residence, regardless of whether said person is an Owner. All occupants will be bound by the terms and provisions of the Declaration, although all Owners are responsible for the actions or inactions of their Occupants.

Section 9. "Owner" or "Residence Owner" will mean and refer to the record owner (or the beneficiaries of a land trust which may be a record owner) whether one or more persons or entities, of fee simple title to any Residences as defined herein, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" will include Declarant to the extent of the number of Residences owned by the Declarant and also includes the interest of Declarant as contract seller of any Residence.

Section 10. "Property" will mean and refer to the real property described on Exhibit "A."

Section 11. "Residence" will mean and refer to either a platted Lot or portion or a platted Lot upon which one single family residence is constructed or to be constructed as part of the Property, designated and intended for any type of independent use, with the exception of the Common Area.

ARTICLE II  
COVENANTS RUNNING WITH THE LAND AND NONSEVERABILITY OF RIGHTS

Section 1. Burden Upon the Property. Declarant hereby declares that his Declaration and the covenants, restrictions and easements established herein will be covenants to run with the land. Said covenants and restrictions will inure to the benefit of and be binding upon each and every Owner. And his or her respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees. By the recording or acceptance of the conveyance of any portion of the Property, a Residence, or any interest therein, the person or entity to whom such interest is conveyed will be deemed to accept and agree to be bound by the provisions of this Declaration, By-laws and rules and regulations of the Falling Waters SUBDIVISION Property Owners' ASSOCIATION, whether or not they are referred to or set forth in any deed or other transfer of title or interest.

Section 2. Nonseverability of Rights. The rights, liabilities, and obligations set forth herein will attach to and run with the ownership of a Residence as more specifically set forth below, and may not be severed or alienated from such ownership.

ARTICLE III  
MEMBERSHIP

Section 1. Incorporation of Association. Prior to the sale of the first Residence, Declarant will cause to be incorporated a not-for-profit corporation known as Falling Waters SUBDIVISION Property Owners' ASSOCIATION, or such other name as Declarant may elect (the "Association"). The Association will be the sole governing body for the administration and operation of the Common Areas and all the terms and provisions of the Declaration. Said corporation will be the legal representative for all matters and claims relating directly or indirectly to the Common Areas or matters of common interest to all Owners. Pursuant to this Declaration, the Board of Directors of the Association will constitute the final administrative authority and all decisions of the Board with respect to the administration of the Property will be held and performed by the Board of Director of the Association, although the actual day to day management of the functions of the Association may ultimately be performed by a managing agent or agency. No

management agreement entered into by the Association will exceed the term of two (2) years, and every management agreement will be terminable for cause by the Association on thirty (30) days' written notice and without cause or payment of any termination fee by either party on a least ninety (90) day's written notice. The By-Laws for governing the Association will be those duly enacted by the Association, said By-Laws being appended hereto and incorporated herein as Exhibit "B."

Section 2.     Membership. Every person or entity, including the Declarant, who is the record Owner of a fee or undivided fee interest in any Residence which is subject to this Declaration, including contract sellers, will automatically be a Member of the Association so long as he continues as an Owner, where or not it will be so expressed in any deed or other conveyance. The foregoing is not intended to include any person or entities who hold an interest merely as a security for the performance of an obligation. For each residence owned, the Owner thereof will be entitled to one membership except voting rights will be determined as hereinafter set forth in Article IV. Membership will be appurtenant to and may not be separated from the fee ownership of any residence. Ownership of such Residence will be the sole qualification for membership. For the purpose of this Declaration, the "Member" will include any beneficiary of a trust holding legal title to one or more such Residences. The Association may, from time to time hereafter, issue certificates of Membership to Members of the Association.

Section 3.     Transfer. Upon the termination of the interest of an Owner, his membership will thereupon automatically terminate and transfer and inure to the new Owner succeeding him in interest. The membership held by an Owner of a Residence will not be transferred, alienated, or pledged in any way, except upon the sale or encumbrance of such Residence, and then only to the purchaser or mortgagee of such Residence. Any attempt to make prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the Owner of any Residence should fail or refuse to transfer the membership registered in his name to the purchaser of such Residence, the Association will have the right to record the transfer upon the books of the Association and issue a new certificate to the purchaser, if certificates are issued, and thereupon to the old certificate outstanding in the name of the seller will be null and void as though the same had been surrendered.

Section 4.     By-Laws. As a Member of the Association, each owner hereby covenants and agrees to be bound by the provisions of the By-Laws of the Associating attached hereto as Exhibit "B," as such may be properly adopted, altered, or amended from time to time pursuant to the terms thereof.

#### ARTICLE IV VOTING RIGHTS- ADMINISTRATION

Section 1.     The Association will have two (2) classes of voting membership whose Members will be all those Owners as defined in article I and also the Declarant. All Members, except Declarant, will be Class A Members and entitled to one (1) vote for each Residence in which they hold a fee or undivided fee interest, provided, however, when more than one person holds such interest in any Residence, all such persons will be Members and the vote for such Residence will be exercised as they among themselves determine, but in no event will more than one vote be cast on behalf of any Residence.

Section 2. Declarant will be the Class B Member and will be entitled to three (3) votes for each Residence owned, provided that Declarant will be entitled to only one (1) per Residence upon the happening of the earliest to occur of the following:

When seventy-five percent (75%) of the Residences have been sold and conveyed by Declarant; or

Five (5) years after the date of the Residence is conveyed by Declarant; or

Upon written notice of election by Declarant sent to the Association as of the date specified in said notice.

Class B Members will cease once Declarant has closed the sale of the last Residence.

Section 3. Administration of the Property. The directions, operation and administration of the Property, including the Common Areas, will initially be vested in Declarant and subsequently in the Association upon its organization. Direction, operation and administration of the Property will comprehend, but will not be limited to maintenance, repair, restoration, reconstruction, replacement, administration, regulation, and operation of the Property in the manner as provided in this Declaration and the By-Laws. Until such time as the Association is organized, Declarant, its successors and assigns, will be vested with all powers of the Association and the Board described herein and in the By-Laws.

#### ARTICLE V PROPERTY RIGHTS

Section 1. General Use. The Common Area is hereby restricted to ingress, egress, recreational and ancillary uses and structures relating thereto, all for the benefit of the Owners and their Occupants. Maintenance, repairs, replacements, payments of taxes and general administration of the Common Area, including, without limitation, the obligation to maintain entry signs and the obligation to contract with any outside party or governmental authority in connection therewith will be the responsibility of the Association acting through the Boards, and the costs thereof, will be paid from the assessments as established herein below.

Section 2. Members' Easements and Enjoyment. Every Member, Owner and Occupant by and through the Association will have the right and easement of enjoyment in and to the Common Areas and a right and easement of ingress and egress to, from and through the Common Areas and such easement will be appurtenant to and will pass with the title to every Residence subject to the following provisions:

- (A) The right of the Association to establish uniform rules and regulations pertaining to the use, operation and maintenance of the Common Areas and/or facilities affecting the welfare of the Members.
- (B) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and in aid

thereof to mortgage the Common Areas; provided that the rights of such mortgagee in said properties will be subordinate to the rights of the Owners hereunder.

- (C) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Residence remains unpaid and delinquent, and for a period not to exceed sixty (60) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights, except for failure to pay assessments, will be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the By-Laws of the Association.
- (D) The right of the Association and the Declarant to enter upon any Lot or Residence upon which or as to which any breach of a covenant or term as herein set forth exists and to summarily abate and remove, at the expense of the Owner which caused said breach, any structure, thing or condition which may then exist contrary to the provisions hereof, and the party so entering will not thereby be deemed guilty in any manner of trespass, conversion or damage to the Residence or Lot. Said parties will also have the right to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.
- (E) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer will be effective unless an instrument agreeing to such dedication or transfer has been approved by two-third (2/3) of the voting Members.
- (F) Such other rights as are reserved or created by this Declaration.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws and rules and regulations of the Board, his right to enjoyment to that portion of the Common Area allowable to his use (other than the right to vote) to the members of his family, his tenant, guests, invitee, or contract purchaser of the Residence.

Section 4. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Residence owned by him from liens and charges hereof, by waiver of the use and enjoyment of the Common Area or by abandonment of his Residence.

Section 5. Title to Common Areas. The Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Areas which is located on the Property subject to covenants, conditions and restrictions of record, public zoning laws, current real estate taxes, if any, which will be prorated among the parties, utility easements granted or to be granted for sewer, water, gas, electricity, or telephone and any other necessary utilities and public street dedications, if any. Said fee simple title will be free of all encumbrances and liens other

than those aforescribed. Title to the Common Areas will be conveyed to the Association no later than the date fifty percent (50%) of the Residences are sold and conveyed by Declarant to purchasers. Some of the Common Areas will be conveyed to the Falling Waters Conservancy District.

Section 6. Common Area Encroachments. In the event any portion of the Common Area encroaches upon any part of any Residence or any portion of a structure or Residence owned by an Owner encroaches upon a portion of the Common Area, because of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, then a valid easement for such encroachment and the maintenance thereof is hereby established and will exist for the benefit of such owner or the Association, as the case may be. However, in no event will an easement for an encroachment of a structure owned by an Owner on the Common Area be created in favor of any Owner if such encroachment is created willfully and with the knowledge of same by such Owner or unreasonable interferes with the use of the Common Area.

Section 7. Alterations of Common Areas. No Owner will make any alterations or additions, including any planting or plantings thereon the Common Area. In addition to any repair or reconstruction required elsewhere hereunder with the use of insurance proceeds, the Board may authorize as Common Expenses (as hereinafter defined) any alterations, improvements or additions to the Common Area; however, subsequent to the first annual meeting of the Members, the Board will not approve any alterations, improvements or additions requiring any expenditures in excess of Ten Thousand Dollars (\$10,000.00) without the approval of a majority of Members affected thereby voting in person or by proxy at a meeting duly called for such purposes. The Declarant and Developer will have sole control in determining the architectural style of development over any of the Common Areas and facilities until their completion and will have the right to alter any previously designed plans, models, or specifications.

Section 8. Use of Common Areas. The Declarant intends to convey certain of the Common Areas to the Falling Waters Conservancy District for the various purposes for which that District is created. These Common Areas are likely to contain certain features and improvements which provide storm drainage and storage; erosion and sedimentation controls; passive recreational areas; centralized water booster pumping facilities; maintenance facilities; telecommunication devices and facilities; aeration facilities for the existing ponds; centralized sanitary collection, pumping and treatment facilities; and areas which will be irrigated with a subsurface drip system to disperse treated and disinfected wastewater. In these latter areas, certain plants and trees are likely to be cultivated. No owner may interfere with the activities of the Conservancy District on these areas. No owner may object to the Conservancy District's use of these areas for any of the purposes for which the District is created.

## ARTICLE VI ARCHITECTURAL CONTROLS

Section 1. Fences Walls, and other Structures. It is understood and agreed that the purpose of the architectural controls set forth herein is to secure an attractive and harmonious development. The Association will have exclusive authority and responsibility for establishment of standards and duties for Owners and Occupants for the Common Area, and for the case, upkeep, maintenance, use and appearance of

the Common Area, the control over architectural design of all buildings and all other exterior and exposed portions of the property, including but not limited to the roof, the front of the Residences and the area located at the side and in the rear of the Residences, even though such areas may not be deemed part of the common area. Therefore, no storm sashes, storm doors, canopies, awnings, building, fence, wall, or other structure will be erected or maintained upon the Property except such as are installed or approved by the Developer and Declarant in writing or with the approval by an Architectural Control Committee established by the Board as hereinafter set forth. The Board, by its duly authorized Architectural Control Committee, will have the right and power to adopt reasonable rules and regulations governing architectural design of all structures and improvements. The provisions of this paragraph and the entire Declaration will be liberally construed to effectuate the purpose of creating a uniform plan of operation for a desirable and harmonious development.

Section 2. Exterior Additions or Alterations. No new structure, ancillary building, fence or antenna will be constructed on or connected to any Residence nor will any addition to, change or alteration of the exterior of any structure located on a Residence be permitted except if such will be approved in writing by the Board through its Architectural Control Committee. This review process is describe in Exhibit "C." This will not apply to any construction performed at any time by Developer. If any Owner desires to alter, add to or change the exterior of any structure located on his Residence in any manner, or construct a fence or antenna upon his Residence, then, such Owner will submit detailed plans and specifications showing the nature, kind, height, shape, color, and material and location of the same to the Board through its Architectural Control Committee (the "Committee") of not less than three (3) Members as may be appointed by the Board. As long as the Declarant owns any Residences, a representative of Declarant will be a member of the Committee. The Committee will consider any such request on the basis of its harmony of external design and location in relation to surrounding structures and topography, and will, within thirty (30) days after the submission of such plans and specifications, approve or disapprove of any such request in writing. The Committee will furnish the Board with a copy of its approval or disapproval and the Board will then confirm, modify or reverse the Committee's action. In the vent the Committee fails to so approve or disapprove such a request in thirty (30) days after such plans and specifications are submitted, such request will be deemed approved. Nothing in this Article VI will be construed as to be applicable to Declarant or Developer. Any noncompliance by an Owner of the provisions of this Section will be deemed to be a default by Owner of this Declaration and the Board may take such action as is necessary to require compliance by defaulting Owner, including bringing an action for specific performance or injunctive relief.

Section 3. Exterior Maintenance and Repairs by Association. Each Residence Owner will cause all work which he deems necessary to be performed in connection with any maintenance required on the exterior portions of his Residence, including painting, tuckpointing, and repairing or replacing roofs, gutters, and sidewalks located upon his Residence. Each Owner will have sole authority and responsibility in this regard; provided that to the extent, if at all, that any Owner will fail to perform the maintenance of his own Residences which is required by the foregoing, at reasonable times and in a reasonable manner, the Association may, but will not be required to, perform such maintenance or repair and, in such event, the cost thereof will be added to such Residence Owner's annual assessment and such amount will be immediately due and



payable and the Association will have rights and remedies with respect to the collection of the same as are herein provided with respect to annual or special assessments.

Section 4. Maintenance and repair of the Common Areas and Other Maintenance and Repair. The Association will maintain and keep in repair all the Common Areas, including any improvements thereon, and the cost thereof will be part of the "Common Expenses" (as hereinafter defined). In addition thereof, the Association will paint, maintain, repair, and replace, as necessary, landscaping and other improvements on the Common Areas, including but not limited to the entry monuments, signs, roadways and other improvements.

Maintenance of Berms and Lake Shore and Roadways. The Owner of each lot abutting outlots will maintain that portion of the Common Area lying between the lot boundary substantially parallel to the lake shore and the water line where located from time to time between the points on the shoreline; and the roadways and sidewalks.

Some owners may not elect to start construction in Falling Waters for several years. While vacant, these homesites must be kept clear of dead material (including trees), fallen branches, debris, shrubs, and other noxious vegetation and weeds. Maintenance of a manicured lawn (sod) will not be required prior to building but yard areas must not restrict views from the road or adjacent homesites.

Existing grass and lawn areas must be trimmed or cut to a height of 6" or less and be clear of all weeds and unsightly vegetation. Any removal of dead trees must be reviewed by the Architectural Control Committee prior to extraction. Failure to maintain a homesite or lot in an acceptable condition will result in notification to the owner by the Architectural Control Committee of the infraction. Owners will have ten (10) working days to complete corrective action. If corrective action is not completed in a timely fashion, the Committee will have the option of having the necessary work performed at the lot owner's expense. Association's Right to Perform Certain Maintenance. In the event that the owner of any lot in the Development will fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association will have the right, by the through its agents of employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association, plus 5% will be added to and become a part of the annual charge to which said lot is subject, and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors will be liable for any damage which may result from any maintenance work performed hereunder.

Yard Lights. Each Owner of any lot in the Development, other than the Developer, will install two (2) yard lights at the time a house is constructed upon the lot. The type and location of the lights on the lot must be approved by the Committee. Lights must be maintained in a working condition by the Owner.

Pollution. In the interest of public health and sanitation, and so the Development may be benefitted by a decrease in the hazards of extreme pollution and by the protection of water supplies, recreation and wildlife, and other uses thereof, and specifically, without limiting the generality of the foregoing, in the protection and preservation of the existing drainage patterns in the Development, Owners may not use

their lots for any purpose that would impair the ecological balance of their lot, surrounding lands, or the Development.

**Snow Removal and Private Maintenance.** The Association will provide reasonable snow plowing services for the streets, common areas, and public driveways within the Development. Lot Owners will be responsible for keeping private driveways unobstructed so as to facilitate said snow plowing. The Association may determine, provide other services to lot Owners.

**Security System.** The Development is intended to be an exclusive residential development totally enclosed by a fence and having a main entrance gate controlled by an electronic limited access security system. The Developer and/or Association may adopt and enforce reasonable rules and regulations regarding access to the development and enforce the same by fines, liens, and foreclosure as in the case of other Association charges and assessments. Each lot owner will install and maintain, within his residence and at his expense, a security terminal approved by the Committee and compatible with the association's system. Each lot Owner will also install and maintain the necessary electrical connections between said terminal and the main security cable in the Common Area in front of his lot.

All costs for maintenance, repair, restoration and reconstruction charges not specifically allocated by this Declaration to the Association will be the responsibility of the individual Owner, including without limitation the maintenance, repair, restoration and reconstruction of such Owner's Residence. Such maintenance, repair, reconstruction will be performed by said Owner in such a manner and with such materials as will preserve the harmony of exterior design and appearance as the same existed on the date the initial construction of the residences was complete. The manner of such performance by the Owner will be determined by the Association.

Section 5. Specific Standards

(Some of these standards are summarized on Exhibit D).

- A. Each two-story residence will be a minimum of 2,600 square feet, not including basement or garages. Each ranch home will be a minimum of 2200 square feet, not including basement or garages. The front elevation facing the street must be masonry on the first level. If a ranch is constructed of all masonry, the minimum size of the habitable area is 2000 square feet.

Pre-Built Buildings. No building or major component thereof of any kind will be moved from any other place onto any of said lots, or from one lot to another.

- B. All exterior elevations of houses will be of a traditional style, either Early American or traditional Western, European, i.e. English Tudor, French Provincial, Dutch Colonial, etc. No building will be constructed unless the plans and specifications therefor have been approved by the Architectural Control Committee appointed by Declarant, hereinafter referred to as Committee, in accordance with the provisions hereinafter set forth. Contemporary housing styles that use acceptable materials and retain some traditional influence such as detailing around windows, doors and roof lines may be compatible with the overall development theme. "Modern" architectural styles will not be harmonious with the

general architectural characteristics of the Subdivision and may, therefore, be rejected by the Committee. Housing styles such as "A-Frame," "Geodesic Domes," traditional split levels, tri-levels and log homes are prohibited. Obsolete architectural styles are not permitted.

- C. The front yards, side yards and parkway on all homes constructed on the Property will be sodded and rear yards may be seeded.
- D. Two trees will be planted in the parkway between the curb and sidewalk according to the parkway tree exhibit. The trees will conform to the County's regulations.
- E. Fences, Mailboxes and Trees-Tree Control Plan. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, no fences will be permitted except around swimming pools, as required by law. All mailboxes must be approved by the Committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed, and if this requires plantings by the Owner, the Committee must approve the size and location of such trees. No living tree with a trunk diameter of six (6) inches or more when measured four (4) feet above the ground may be removed without the prior written consent of the Committee.
- F. Each residence will have an attached garage for not less than two (2) automobiles, nor more than four. All four car garages must be side loaded. Certain lots are identified on the approved grading plans as better suited for side loaded garages. For side loading garages, the Architectural Control Committee requires adequate screening using either landscaping, wall, or a combination of both. Garage entrances must face the side property line. Driveway grading should not exceed 8% grade within fifty (50) feet of the road right-of-way.
- G. All side yards on each home constructed on the Property will be a minimum of ten (10') feet measured from the Property line to the building foundation, or ten (10%) percent of the lot width, whichever is greater.
- H. For the purpose of further insuring the development of the subdivision as an area of high standards, the Committee, reserves the power to control the buildings, structures, and other improvements placed on each lot.

Whether or not provision is specifically stated in any conveyances of a lot made by the Declarant, its successors or assigns; the owner or occupant of each lot, by acceptance of title to or by taking possession of a lot, covenants and agrees that no building or other structure will be placed upon such lot unless and until the plans and specifications and plot plan have been approved in writing by the Committee. Each building or structure will be placed on the premises only in accordance with the plans and specifications and plot plan. Refusal of approval of plans and specifications by the Committee may be based on any ground, including

purely aesthetic grounds which, in the sole and uncontrolled discretion of the Committee will seem sufficient. The review process by the Architectural Control Committee is described in Exhibit "C."

Approval will be withheld if the design, exterior and interior size, exterior shape and materials or color scheme of the proposed building is not in harmony with adjacent building; in no event will a particular front elevation be duplicated within two hundred forty (240) feet adjoining on a common line. A different elevation would incorporate a significant change, i.e., a gable roof would be modified to a hip roof.

After approval, no alteration will be made in the exterior appearance of the buildings or structures without approval of the Committee. If there is a request for approval, and if the Committee approve or disapprove the plans and specifications within 30 days after written request, then such approval will not be required but will be presumed; provided that no building or other structure will be erected which violates any of the Covenants and Restrictions in this document.

Exterior materials will be of a type which is acceptable by the Porter County building codes. Homes should be constructed with a consistency of design and materials on all 4 sides. A maximum of 30% of the homes in the subdivision may be constructed of drivet on all elevations, first, and second story (all drivet). The all drivet house may also have a drivet chimney.

The rest of the homes in the subdivision must have brick, granite, or stone on the street side of the lower level. Bays and other window treatments, however, need not be brick. Brick elevation houses with external fireplace chimneys must have face brick chimney construction. Second story treatment may consist of materials such as brick, plaster, stone, drivet, aluminum, premium vinyl or solid wood lap siding like cedar, cypress, redwood, etc. No manufactured paneled siding is allowed.

Exterior Construction. No second-hand material will be used in the construction of any building or other structure in the Development without the prior written approval of the Committee.

- I. All access driveways and other private areas for vehicular use on a lot will have a base of compacted gravel, crushed stone or other approved base material and will have a wearing surface of asphalt, concrete or the equivalent thereof. Gravel driveways are not permitted. The edge of a driveway must be at least three feet from any side lot line. The portion of the driveway within the right of way will be concrete.
- J. The finish grading plan and top of foundation for each lot must conform to the master plan established for the Subdivision in addition to all other criteria required by County ordinance or regulation in effect from time to time, including without limitation:
  1. Compliance with the master grading plan elevations at lot corners

- and building lines.
2. 1% minimum drainage grades.
  3. Retaining walls are discouraged but may be necessary to achieve transitions in grade. No timber walls are allowed. Retaining walls may not be used as fences.
  4. The grading plan must be approved or prepared by the subdivision's design engineer and approved by the Architectural Control Committee.
- K. Accessory buildings are prohibited.
- L. No aboveground pools are permitted. In-ground pools and tennis courts cannot be located within any side yard, but can be located in a rear yard. They must be screened from visual observation along any interior street within the Subdivision. The screening may be an evergreen hedge, shrubbery, or other visual barrier which is subject to written approval by the Committee.
- M. Air conditioning condensers and other mechanical equipment are not permitted in the front yard. They will preferably be located in the rear yard or if necessary in the side yard, but in either case immediately adjacent to the house proper.
- N. Exterior flagpoles, exterior radio antennas, and exterior television antennas are prohibited. Satellite receivers over 36" in diameter are prohibited.
- O. On corner lots where a front and/or side yard is required or provided, no building, fence or hedge or other obstruction will be placed so as to interfere with clear vision between a height of two and a half (2 ½) feet and ten (10) feet above the center line grades of the intersecting streets bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of intersection of the centerlines.
- P. Terraces, patios, outdoor fireplaces and dog enclosures may only be located in the rear yard and must not encroach onto side yard setbacks.
- Q. Awnings or canopies may not project more than three feet from the building except at the rear of building.
- R. Open air laundry facilities are prohibited.
- S. Diligence in Construction. Every building whose construction or placement on any lot in the Development is begun will be completed within twelve (12) month after the beginning of such construction or placement. No improvement which has been partially or totally destroyed by fire or otherwise will be allowed to remain in such state for more than two (2) month from the time of such destruction or damage.

- T. Model Home. No Owner of any lot will build or permit the building or maintaining upon said lot of any dwelling house that is to be used as a model home or exhibit house without prior written consent from the Committee.
- U. Utility Services. No utility services will be installed under finished streets except by jacking, drilling or boring, and all utility services will be underground.
- V. Watercraft and Docks. No motorized watercraft or boat docks of any kind will be permitted on any lake or on any other pond in the Development.
- W. Irrigation systems using centrally supplied potable water are not allowed. Only sub surface drip systems are allowed. Acceptable sources for irrigation systems are private wells, drafting from existing ponds, or other suitable sources.
- X. The height of any dwelling unit will not exceed forty (40) feet, measured from the ground (main entry) level to the highest roof ridge.
- Y. Exterior pool and landscape lighting will not infringe upon adjacent neighbors. Therefore, glare shields are required to eliminate bright spots and glare sources. Exterior lighting should utilize low-voltage or similar non-glare direct task type fixtures and they should be as close to grade as possible. As no bare light bulbs are permitted to be shown, these shields also help in bulb concealment. All lighting conduit and fixtures must be as inconspicuous as possible.

ARTICLE VII  
USE AND OCCUPANCY RESTRICTIONS

Section 1. General Use. No Residence will be used for other than residential purposes and each Residence will be used only as a residence for a single family by the Owner and his family, their heirs, successors and assigns. All leases or rental agreements for Residences will be in writing, will not be for not less than twelve months, will be submitted to the Board for its records, and will be specifically subject to this Declaration. No business, industry, trade, occupation or profession of any kind or noxious or offensive activity will be carried on anywhere on the Property, nor will anything be done thereon which may become an annoyance or nuisance to the Owners.

Section 2. Animals. No animals, poultry or livestock of any kind will be raised, bred or kept anywhere on the Property, except that dogs, cats or other common household pets will be allowed (for other than commercial purposes), provided no more than two (2) household pets will be allowed per Residence, and subject to such rules and regulations as may be enacted by the Board from time to time. Residence Owners and Occupants will promptly remove any waste from the Common Area or outside of their Residences caused by such household pets. Any pets causing or creating a nuisance or unreasonable disturbance or causing

or creating damage to the Common Area, including landscaping, in the opinion of the Board may be by three (3) days written notice, prohibited from entering upon the Common Area or removed from the Property.

Section 3. Obstructions of Common Area. There will be no obstruction of the Common Area, nor will anything be stored on the Common Areas without the prior consent of the Association; provided, however, that Declarant may store construction materials on the Common Area when necessary in connection with the development of the Property.

Section 4. Nuisances. No nuisance, noxious or offensive activity will be carried on in the Common Areas or Residences (including garages) nor will anything be done therein, either willfully or negligently, which may be or become any annoyance or nuisance to the Owners or Occupants of the Residences. Notwithstanding any other provisions herein, any Owner, including the Declarant, or their assigns, will be entitled to conduct on the Property all activities normally associated with or convenient to the development of the Property and the construction and sale of single family residential Residences on the Property.

Section 5. Structural Integrity. Nothing will be done in, or on the Common Areas which would impair the structural integrity of any improvements or structure located thereon.

Section 6. Temporary Structures. No structures of a temporary character, including, without limiting the generality thereof, trailer, basement, tent, shack, garage, barn or other, outbuilding, will be used on any Lot (or on the Common Areas) at any time as a residence wither temporarily or permanently.

Section 7. Unsightly Activities. No clothes, sheets, blankets, laundry of any kind other or other articles will be hung out of any Residence and onto any portion of the Common Areas. The Common Areas will be kept free and clear of all rubbish, debris and other unsightly materials and no waste will be committed hereon.

Section 8. Signs and Light Standards. No signs (including "For Sale" or "For Rent" signs) of any kind will be erected, placed or permitted to remain on the Property, except a family name designated on a Residence of not more than 240 square inches will be allowed; provided, however, that any such sign is consistent with the architectural integrity of the Residence as may be determined by the Board. The foregoing restrictions will not apply to the signs and billboards, if any, of the Declarant or the Association.

Section 9. Storage. No rubbish, storage piles, trash, garbage or material will be dumped or allowed to remain on the Property at any time except as will be necessary to facilitate its pick up and disposal as required by the Porter County and within a reasonable time. All such storage will be screened from view and will otherwise be subject to such rules and regulations as may be enacted by the Board from time to time. All containers and equipment for the storage and disposal of such material will be kept in a clean and sanitary condition.

Section 10. Vehicles. Any vehicles, boat, camper, trailer, truck, minibike, or

snowmobile will not be stored on the Common Area or driveways of Residence Owners (permanently or temporarily), except upon approval of the Board; provided, however, that passenger vehicles of any Owner may be parked in an Owner's driveway. Storage within a garage of such vehicles is permitted. The term "commercial vehicle" as used herein will include any automobile, truck, or wheeled equipment bearing any sign, logo, or writing, which relates or refers to any commercial enterprise. No commercial activity will be conducted within any garage. Except for maintenance or emergency vehicles, no vehicular traffic will be permitted to park on the Common Areas except as may be permitted by the Board. No motor vehicles in non-operative condition will be parked anywhere on the Property, except in garages.

Section 11. Camping and Picnicking. Tents, temporary shacks, Portering, picnicking and camping will be prohibited on the Common Areas and driveways of Residence Owners.

Section 12. Fences. Except as to those erected by Declarant and Developer, no fence or obstructions of any kind will be erected, removed or relocated anywhere within or adjacent to the Common Areas, unless such will be specifically approved by the Board. All fence installation must be approved by the Architectural Control Committee. Generally only rear line fences are allowed; fencing is encouraged to follow the same style and material that the developer may have installed. No chain link fencing is allowed. Fencing that is required to enclose certain uses, like swimming pools, must also be reviewed and approved by the Architectural Control Committee.

Section 13. Landscaping. The Association will be solely responsible for maintenance of all landscaping on the Common Area. No trees, shrubs, or other planting of any kind will be planted in or removed from the Common Areas without the express consent of the Board. No planting of any kind will be placed on any patio or deck area of any Residence in such a manner as to interfere with the use of neighboring Residences of the Common Areas, or to present any visual safety hazard, and foliage and landscaping will be neatly maintained.

Section 14. Owner's Responsibilities. Any expenses or costs incurred with respect to maintenance and/or repair of any portion of the Common Area due to the willful or negligent act of any Owner, his family, lessees, guests, invitees, or pets, will be borne by such Owner and will be added to such Owner's assessment. No Owner will do any act or commence any work that will impair any easement or other interest in the Property, nor do any act or allow any condition to exist which will adversely affect other Residences or their Owners or Occupants.

Section 15. Exterior Maintenance. In addition to the provisions of Section 3 Article VII as hereinabove set forth, in the event an Owner of any residence will fail to maintain the residence and any exterior improvements situated thereon which would be the Owner's responsibility as construed in this Declaration, in a manner satisfactory to the Association, after the approval of two-thirds (2/3) of the Association, the Association will have the right, through its agents and employees to enter upon the Residence and to repair, maintain and restore said exterior improvements erected thereon. The cost of such maintenance will be



added to and become part of the assessment to which such Residence is subject and will be immediately due and payable by the Owner of such Residence.

Maintenance of Lots and Improvements. To preserve and enhance the natural beauty of the Development, the owner of each lot will at all times maintain the lot and any improvements from becoming unsightly. Specifically, each Owner will:

1. Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weed, and to maintain vegetation, other than trees, flowers, and shrubs at an average height of not more than four (4) inches.
2. Remove all debris and rubbish. Remove and dispose of dead or diseased trees.
3. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetics appearance of the Development.

Section 16. Rights of Declarant. Anything herein to the contrary notwithstanding, the foregoing restrictions in Section 3, 6, 8, 9, 10, and 12 will not apply to Declarant, but will apply to its successors and assigns unless such are specifically exempt from the terms hereof by a document in writing signed by Declarant.

Section 17. Rules and Regulations. The Association Board may promulgate such rules and regulations with respect to the matters set forth in this Article VII, and with respect to any other matters concerning the use and occupancy of the Property as may reasonably be desirable to make and keep the Property a desirable and harmonious residential housing development including, without limitation, rules and regulations regarding the use of Residences and the Common Areas. Owners and Occupants will abide by all such rules and regulations.

Section 18.

Each owner of any portion of the Real Estate has the following obligations with respect to the Common Areas:

- a. To refrain from erecting any structure.
- b. To maintain the topography and grade of the land without change from the plan thereof on file with the Porter County and approved by the County engineer thereof;
- c. To refrain from any action that would interfere with the flow of surface water into and/or out.
- d. To keep free of all debris, trash, and obstructions;
- e. To refrain from mowing the natural vegetation except as specified for sidewalk transitions and controlled burns.
- f. Will use best efforts to obtain permit to control burn and to implement or cause to be implemented a control burn of the detention basin annually unless a longer period of time between burns is authorized by the County. The County will require a maintenance plan yearly in order to issue the burn permit. The burn will not take place until a fire lane 5'-10' wide has been mowed around the area's perimeter. The

- lane will be watered down if necessary to provide additional protection.
- g. The Association may, at its discretion, mow a 10' transitional strip in all outlots where they abut a sidewalk. This strip will provide a transition from a mowed parkway to the natural vegetation.
  - h. To replace promptly and restore the surface of all outlots and all vegetation, including trees, thereon, that are dislodged, moved, or injured by such owners, their contractors, subcontractors, agents, representatives, successors, and/or assigns or otherwise in connection with or resulting from any activity thereon to such condition with or resulting from any activity thereon to such condition as existed prior to entry thereon.
  - i. To maintain the entranceway monuments along Porter County Roads 100 South, 675 West and Division.
  - j. To erect and maintain approved erosion and sedimentation controls at the periphery of one's property during the course of any construction, remodeling, landscaping, or other activities that could allow sediment to flow to the drainage system. Any sediment that leaves one's property and enters the common areas will be promptly removed and any other consequent damage will be repaired.
  - k. Refrain from fertilizing lawns and gardens with excessive amounts of nitrogen and phosphorus which will eutrophy the surface waters.

#### ARTICLE VIII EASEMENTS-PROPERTY RIGHTS

Section 1. Easements for Utilities. Easements for the installation, construction, reconstruction, maintenance, repair, operation and inspection of sewer, water, gas drainage, electric, telephone or other public utility or commercial entertainment services will be granted as shown on any plat or other documents of record filed from time to time in connection with the Common Areas. The use of such common areas for such purposes, however, is subject to the terms, conditions and fees established by the developer, his successor or assigns. Further, any additional easements for such purposes may be granted by the Declarant or the Association at any time for the purposes of obtaining such services.

The Declarant, its successors and assigns, and the Porter County will at all times have the right of and are hereby granted ingress and egress over said easements for the purpose of installing, constructing, reconstructing, maintaining, repairing, operating, and inspecting any sewer, gas, water, drainage, and other easements, and, notwithstanding any amendment to any other provisions of this Declaration, the aforesaid easement rights contained herein will be perpetual and run with and bind the land forever.

Anything contained in this Declaration to the contrary notwithstanding, the Declarant hereby reserves for itself, and does hereby grant for its agents, employees, contractors, subcontractors, workmen, materialmen, invitee, and any successor of Porter County, and easement under, over and across the Common Area or any part thereof, for the purposes of constructing, completing, repairing, maintaining, inspecting, exhibiting, selling, and renting any Residences then owned by the Declarant and for the purpose of constructing, completing, repairing, maintaining, inspecting and exhibiting the Residences permitted herein on the Common Area. This will include, but will not be limited to, the right of Declarant and Developer to

maintain signs, sales offices, model Residences, and any other use attendant thereto.

Section 2. Easements, Noninterference. No residence Owner will interfere with any easement as hereinabove set forth in this Article.

Section 3. Easement Rights. The Declarant, its successors and assigns, and any party for whose benefit easements are granted pursuant to the terms hereof, will have the right to do whatever may be required for the enjoyment of the easement rights herein granted, including the right to clear said easement areas of trees, or shrubs, or any building, fence, structure, or paving erected on or installed within the easement areas and no charge, claim or demand may be made against such parties for any such activities in the exercise of such rights.

Section 4. Easement for Municipal Authorities. Police, fire, water, health and other authorized municipal official, employees and vehicles will have the right of and are hereby granted ingress and egress to the Property and any part thereof for official duties and for the purpose of enforcing all County ordinances and statutes of the State of Indiana. In addition, duly designated officials and employees of the Porter County and other governmental bodies having jurisdiction over the Property will have an easement to enter upon, on and over the Property and the Common Areas generally for the purposes of maintaining the Common Areas, drainage systems, and enforcing the applicable ordinances, rules and regulation of the said County and governmental bodies, and to correct or eliminate nuisances or violations resulting from the failure to exercise maintenance responsibilities by either an Owner or the Association.

Section 5. Easements for Developer. During the period in which the Developer is constructing improvements on the Property and/or marketing all or any portion of the Property, Developer will have and is hereby granted an easement for the right of ingress and egress, and the right to install any improvements over, across and through the Common Area. Further Developer, will have the right to store such equipment and materials, as it deems necessary for the purpose of construction and marketing during said period. These easements will apply to Developer's successors and assigns.

Section 6. Easement for Ingress and Egress. The Declarant and its successors and assigns, and the residence Owners, their Occupants, guests, agents, invitees and licensees, will have and are hereby granted a general easement for ingress and egress over, across and through the Common Area and the peripheral access reserved for Floramo Construction.

Section 7. Easements for Association. The Association and its successors and assigns will at all times have the right of ingress and egress across any Lots and Common areas, prior to the time title to the Common Areas are deeded to the Association as hereinabove provided, for purposes of landscaping, maintenance and repair of the Common Areas.

Section 8. Easements for Decks. Each Residence Owner will have the right to erect and maintain a deck that attaches to the exterior of the dwelling, subject to the

following limitations. The Residence Owner must obtain prior written approval from either the Developer or the Architectural Control Committee for the erection of a deck. The foregoing approval will include but not be limited to the location of the deck, the design, construction materials and size. No Residence Owner will use a deck for storage or other uses that are unacceptable to the Association.

Section 9. Easements for Residence Owners Not Adjacent to Common Area. Certain perpetual easements for ingress and egress for use and enjoyment purposes as are labeled on a plat of subdivision or site plan for the Property are hereby granted access to the Common Areas to Residence Owners whose Lots are not adjacent to the Common Area. Said easements will be labeled "Access Easements" on said plats. All such easements will be kept free of any obstructions and shrubbery.

Section 10. Easements Running with the Land. All easements herein described are easements appurtenant to and running with the land; they will at all times inure to the benefit of and be binding on the undersigned, all of its grantees and their respective heirs, successors, personal representatives and assigns, and the Porter County, perpetually in full force and effect. Except with respect to easements nothing stated in this Declaration will be construed as a dedication or an acceptance of a dedication by the Porter County. The "streets" are contained within the common areas and not dedicated rights of way.

As to any Property that is subject to the terms of this Declaration, reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation or transfer, to the easements, covenants, and restrictions contained herein will be binding upon any such grantee, mortgagee or trustee and their successors and assigns as fully and completely as though said easements, covenants and restrictions were fully recited and set forth in their entirety in such documents.

Section 11. Maintenance of Interior Utility Facilities. Each Residence Owner will be liable for his own utilities and utility payments. The Association will have the right and power but will not be obligated to provide for the acquisition or construction of and payment for any additions, improvements, alterations, or repairs to the storm sewers, sanitary sewers, telephone, water, gas, electric and other utility facilities lying within and servicing the Residences.

Section 12. Declarant hereby declares nonexclusive, irrevocable and perpetual easements for the benefit of each lot located within the Real Estate that connect to storm sewers now or hereafter constructed on the Real Estate for the purpose of transmitting storm and surface water to the detention/retention basins, now or hereafter constructed on all outlots.

It is understood that no owner of all or any of the portion of the Real Estate, by either act or omission, will do or refrain from doing any act, the effect of which will impair the function of the detention/retention facility now or hereafter constructed on all outlots or any of the appurtenances in connection therewith.

Declarant may, at its election, transfer title to all outlots to the Association or a local governmental agency as approved by the Porter County. Notwithstanding whether or not any such transfer of title is made, it is hereby declared that the cost of maintenance, repair and replacement of the improvements, and any and all

appurtenances in connection therewith, and the maintenance of the entranceway monuments will be borne by the Association.

It is further understood that if any time any municipal corporation is willing to accept the dedication or conveyance of all or any part of all outlots and improvements, that each owner of any portion thereof hereby agrees to execute any and all documentation required to effectuate such transfer.

#### ARTICLE IX COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. Each Residence Owner, exclusive of the Declarant, whose share for assessments is computed in Section 9 of this Article as hereinafter set forth for each Residence owned within the Property, hereby covenants, by acceptance in such deed of conveyance, whether or not it will be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (I) annual assessments and charges representing his proportionate share of the expenses of maintenance, repair, replacements, taxes, administration and operation of the Common Area and certain expenses applicable to all Residences ("Common Expenses"); and (II) special assessments for any purpose, including capital improvements and unforeseen expenses to be collected from time to time as hereinafter provided. Certain expenses such as utility charges for Residences, will not be deemed to be "Common Expenses," and will be the responsibility of Residence Owners. Payments of assessments will be in such amounts and at such times as provided below. The annual and special assessments, together with such interest, costs and reasonable attorney's fees, will be a charge on the land and will be a continuing lien upon the Residence against which each assessment is made. Each such assessment will be the personal obligation that was the Owner of such Residence at the time when the assessment fell due. Such personal obligation will pass to his successors in title and will also constitute a lien on the land effected thereby until fully paid.

Section 2. Purpose of Assessment. The assessment levied by the Association will be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property and in particular for the improvement and maintenance of the Common Areas, including, but not limited to, the payment of all taxes, insurance, repair, replacement and maintenance relating to the Common Areas and for services and facilities devoted to this purpose and related to the use and enjoyment thereof.

The foregoing assessments will be used exclusively for the reasonable expenses of the maintenance and repair of the entranceway monuments, the improvements and landscaping necessitated by said maintenance of the improvements, in order to effectuate the health, safety, and welfare of the owners of the Real estate shown on exhibit "A" as well as for reasonable insurance. The Association will maintain the improvements in accordance with the regulations of the Porter County, as amended from time to time. The entranceway monuments, and the improvements will remain in compliance with the County approved landscaping and engineering plans.

Section 3. Assessments.

(j) On or before December 1 of each year, the Board will estimate the total amount

necessary for the next calendar year to pay the cost of taxes, wages, materials, insurance, services and supplies relating to the maintenance of the Common Areas and applicable expenses for the Residences, for the rendering of all services, together with a reasonable amount specifically provided in (e) below, and will, on or before December 15, notify each Owner in writing as to the amount of such estimate, with reasonable itemization thereof, including itemization for the Common Areas. Such annual budget will also take into account any estimated net accruable cash income for the year from operation or use of the Common Areas according to the funds available in the accounts established for the Common Areas according to the funds available in the accounts established for all the Residences. Said "estimated cash requirement" will be assessed equally to each Owner, except Declarant, according to the number of Residences owned by each Owner, and will be due and payable in equal installments upon such dates as will be established by the Board from time to time. On or before the date of the annual meeting of each calendar year, the Board will supply all Owners with an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid for the Common Areas and other applicable expenses for all the Residences, together with a tabulation of the amounts collected pursuant to the Estimates provided, and showing the net amount over and under actual expenditures plus reserves. In any given year, the amount accumulated in excess of the amount required for actual expenses and reserves will be credited equally to each Owner by applying any such expenses and/or reserves for the subsequent year. On or before January 1 of the ensuing year, and on the first day of every month thereafter, each Residence Owner will be obligated to pay to the Board of directors or as it may direct, one-twelfth (1/12th) of the estimated assessment made pursuant to this paragraph.

- (k) If said "estimated cash requirements" as hereinabove set forth proves inadequate for any reason, to defray the operating expenses and costs during the year, then the Board will be authorized to adopt a supplemental assessment budget or budgets and will determine the amount of a supplemental assessment. The Board will serve notice of such supplemental on all Owners by a statement in writing giving the amount and reasons therefor, and such supplemental assessment will become due at such time as the Board may determine. All Owners will be obligated to pay the supplemental assessment.
- (l) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments applicable to that year only for the Common Areas for the purposes of defraying, in whole or in part, the cost of any taxes, improvement upon said Common Areas, provided that such assessments in any assessment year will have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such assessment will be levied equally against each affected Owner deemed to be responsible for said assessment. Declarant and each subsequent owner of all or any of the aforescribed lots, by the acceptance of the deed thereof, whether or not it will be so expressed in any such deed or other instrument of conveyance, will be deemed to covenant and agree to pay to the Association, within ten (10) days of a written notice from said Association demanding payment, any and all special assessments, and charges which are designated pursuant to this Declaration.

Such special assessment will include, but will not be limited to, the costs of any and all of the repair, maintenance or other obligations provided for in this Declaration,

including but not limited to costs of repair and maintenance of: the entranceway monuments and the improvements, and the repair to any paved areas, storm sewer lines and landscaping necessitated by said maintenance. In addition, such assessment will include the cost of real estate taxes imposed on and assessed against all outlots, as well as the cost of the Association's existence.

- (m) Written notice of any meeting called for the purpose of taking action authorized under Section 3 (b) or above will be sent to all affected Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast sixty per cent (60%) of all votes of the membership affected by said special assessment will constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting will be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting will be held more than sixty (60) days following the preceding meeting.
- (n) The Board will establish and maintain reasonable reserves for the contingencies and replacements as it will deem necessary, and for extraordinary expenditures not included in the "estimated cash requirements" will be first charged against such reserves in the year of such expenditure. If such reserves are depleted or, in the opinion of the Board, significantly reduced, then any supplemental budget, or the next regular "estimated cash requirements" will provide for the reestablishment of such reserves as the Board will deem reasonably appropriate.
- (o) The failure or delay of the Board to prepare or serve the annual or adjusted estimate or the itemized accounting or other documents on the Owners will not constitute a waiver of release in any manner of such Owner's Obligation to pay their annual assessments as herein provided, whenever the same will be determined and the absence of an annual estimate to the Owner will constitute an obligation to pay the then existing estimated assessment until notified otherwise.
- (p) The Board will keep full and correct books of account in chronological order of the receipts and expenditures affecting the Property specifying and itemizing the maintenance and repair expenses of the Property and any other expenses incurred. Such records will be available for inspection by an Owner or first mortgagee of record, at such reasonable time or times during normal business hours as may be requested by the Owner or mortgagee. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Owner will be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.
- (q) No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or abandonment of his Residence. Except as otherwise provided elsewhere herein for one-twelfth (1/12th) of the annual assessment payable in such month; and the Owner as of the date of any levy of a special assessment will be personally liable for such assessment.

Section 4. Uniform Rate of Assessment. Annual supplemental and special assessments must be fixed at a uniform rate for all Residences affected by said assessments, except as provided in Section 9 as hereinafter set forth. Whenever two (2) or more contiguous lots in the Development will be owned by the same person, and such Owner will desire to use two (2) of said lots as a site for a single dwelling house, he will apply in writing to the Committee for permission so to use said lots. If permission for such a use will be granted, the lots constituting the site for such single dwelling house will be treated as a single lot for the

purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single dwelling house; provided however, that said lots will continue to be assessed as two (2) lots.

**Section 5. Commencement and Payment of Annual Assessments.** The assessments provided for herein will commence for all Residences subject to such assessments on the first day of the month following the recording of this Declaration.

**Section 6. Association's Lien subordinate to Mortgages.** The lien for assessments as herein provided, and any fees, fines, interest, late charges or penalties levied in connection with unpaid assessments, will be subordinate to the lien of any first mortgage (or equivalent security interest) on any Residence, provided that such subordination will apply only to assessments provided for herein which have become due and payable prior to the time a sale or transfer of such property by foreclosure of the lien of the first mortgage against such Residence has occurred or any other proceeding in lieu of foreclosure. Such sale or transfer will not relieve such property and the transferee from liability for any assessments thereafter becoming due, not from the lien of any such subsequent assessment.

**Section 7. Effect of Nonpayment of Assessments- Remedies of the Association.** The amount of each assessment will constitute a lien on the interest of such Owner. If the assessment is not paid within thirty (30) days after the due date, the assessment will bear interest allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against his Residence; and interest, costs and reasonable attorneys' fees of any such action will be added to the amount of such assessment.

Upon the recording of notice of lien by the Board of Directors, it will be a lien upon such property prior to any other liens or encumbrances, recorded or not recorded, subject only to:

- (A) Taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other state or federal taxes which by law are a lien on the interest of such Owner prior to preexisting recorded encumbrances thereon; and
- (B) Encumbrances on the interest of such Owner recorded prior to the date such notice is recorded, which by law would be a lien thereon prior to subsequently recorded encumbrances.

Notwithstanding anything in this Declaration to the contrary, no amendment or change or modification of this Section 7 of Article IX will be effective unless the same will be first consented to in writing by all first mortgagees of record of each Residence which is subject to this Declaration.

The lien for Common expenses will be in favor of the Association for the benefit of all other Owners whom may have the right to bring any action authorized under this Declaration, By-Laws or otherwise in law or equity. In the event an Owner's interest is sold at a public or private sale pursuant to this Declaration or the By-Laws because of the failure to pay the Common Expenses, the Board and their successors in office, acting on behalf of the other Owners, will have the power to bid in the interest so foreclosed and to acquire and hold, lease, mortgage and convey the same.

The Board will also have the power and right to assess additional fines and penalties



against any Residence Owner for non-payment of assessments, as long as said fines and penalties are uniformly applied.

Section 8. Forcible entry and Detainer- further remedies. In the event of any default by an Owner in the performance of his obligations under this declaration, By-Laws, or rules or regulations of the Board, the Board, or its agents, will have such rights and remedies in addition to those provided or permitted by law, including the right to take possession of such Owner's interest in the Property for the benefit of all other Owners by an action for possession in the manner prescribed in the Forcible Entry and Detainer Act (Indiana Revised Statutes, Chapters 57 and 110).

Section 9. Assessments Against Declarant. For the Declarant's share of the assessments, the Declarant will pay any deficit or shortage that may arise after payment of estimated assessments by the Owners in connection with the aggregate actual operating expenses (meaning all costs and expenses incurred in operation of the Common Area) which are required to be paid from time to time in connection with the operation of the Property, until such time that Declarant conveys fifty percent (50%) of the Residences to first purchasers. The Declarant's liability set forth under this Section will be its only liability.

Section 10. Exempt and Partially Exempt Property. The following Property subject to this Declaration will be exempt from the assessments created herein: a) all properties granted to or used by a utility company; b) the Common Areas; and c) each of the Residences prior to the time that said Residence is conveyed by the Declarant to the purchaser. Once an exemption is created pursuant to this Section, it will continue until such time as the Declarant conveys said Residence to a purchaser, at which time the exemption created hereunder will cease and said Residence will be subject to all of the terms and conditions of this Declaration. The assessments due for the year of sale of a Residence will be prorated as of the closing date.

Section 11. Mechanic's Liens. The Board may cause to be discharged any Mechanic's Lien or other encumbrance which in the opinion of the Board may constitute a lien against the Common Areas. Where less than all of the Owners are responsible for the existence of said lien, such Owners are responsible for the existence of said lien, such Owners responsible for the severally liable for the amount necessary to discharge the same, and for all costs and expenses, including attorney's fees and court costs, incurred by reason of the lien.

Section 12. Declarant's Right. Anything contained herein to the contrary notwithstanding, Declarant and its successors and assigns will have the right, at any time and from time to time to mortgage or otherwise encumber any portion of the Property not previously conveyed, and any lien created thereby will at all times be superior to the lien of assessments established by this Article XI, regardless of whether such lien is recorded prior to the commencement of assessments against such Property.

#### Article X INSURANCE

Section 1. Acquisition of Insurance Coverage. The Association will have the authority to and will obtain insurance for the improvements in or upon the Common Areas against loss or damage by fire and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost thereof. The insurance will be for

the full insurable value (based upon current replacement cost) of the Common areas and the insurance premiums will be a Common Expense. Such insurance coverage for the Common Areas will be written in the name of losses under such policies will be adjusted by and the proceeds if such insurance will be payable to the Association. The insurance coverage will, if possible, provide that the insurance as to the interest of the Association will not be invalidated by any act or neglect of any Owner. The Board will name the County and its agents and employees as additional named insureds on any and all liability insurance policies obtained and maintained by the Board.

The coverage will contain an endorsement to the effect that said coverage will not be terminated for nonpayment of premiums without at least thirty (30) days written notice and at least ten (10) days' prior written notice of termination or modification for any other reason to the Association and the first mortgagee of record who specifically request such notice. The insurance policies will contain waivers of subrogation with respect to the Board, its employees and agents, Residence Owners, members of their household and mortgagees and, if available, will contain a replacement clause endorsement. Except as hereinabove provided, each Owner will be responsible for obtaining fire and casualty and other types of insurance as such Owner will deem necessary on his own Residence and the contents of his own Residence, and his additions and improvements thereto, as well as his personal liability.

Section 2. Reconstruction of the Property. The insurance will be applied by the Board on behalf of the Association for the repair, reconstruction, or restoration of the Common Area. If such insurance proceeds are insufficient to cover the costs of the repair or replacement of the property damaged or destroyed the Association may make a reconstruction assessment against all Residence Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds.

Section 3. Board of Acceptance of Insurance Proceeds. Payment by an insurance company to the Board of any insurance proceeds coupled with the receipt and release from the Board of the company's liability under said policy will constitute a full discharge of said insurance carrier and said carrier will not be under any obligation to inquire into the terms of any trust under which the proceeds may be held pursuant hereto.

Section 4. Other Insurance. The Board, and the Declarant for the Board until formation of the Association as set forth hereinabove in Article IV, will also obtain comprehensive public liability insurance including liability for injuries or death to persons, and property damage, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and such other liability insurance as it may deem desirable, insuring the Association, its officers, members of the Board, the Declarant, Developer and their respective employees, beneficiaries and agents, if any, and the Porter County, as its interest may appear, from liability in connection with the Common Area. Said insurance will also contain at least ten (10) days' notice of termination or modification clause. The Board will also obtain insurance insuring the officers of the Association and members of the Board from liability for good faith actions in such limits, as the Board deems advisable. The Board will also obtain, when needed, workers' compensation and employer's liability insurance for work on the Common Areas or the Property. The premiums for all such insurance will be a Common Expense.

Section 5. Annual Review of Policies. All insurance policies will be reviewed at least

annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Property which may have been damaged or destroyed.

## ARTICLE XI GENERAL PROVISIONS

### Section 1. Board Liability.

The Directors from time to time constituting the Board, and the officers thereof, will not be liable to the Members of the Association for any mistake of judgement or for any actions or omissions to acts made in good faith as such Directors or Officers.

Section 2. Enforcement. The Association, or any Residence Owner, will have the right to enforce, by any proceeding at law or in equity (not to be mutually exclusive), all restrictions, conditions, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Residence Owner to enforce any covenant or restriction herein contained will in no event be deemed a waiver of the right to do so thereafter. Breach of any of the covenants will not defeat or render invalid the lien of any mortgage or deed or trust made in good faith and for value as to said Residences, Lots or Property, or any part thereof, but such provisions, restrictions, or covenants will be binding and effective against any Owner of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise. Any Owner found to be in violation by a court of competent jurisdiction of any foregoing will also be liable for reasonable attorney's fees incurred by an Owner in prosecuting such action. The amount of such attorney's fees together with court costs, if unpaid, will constitute an additional lien against the defaulting Owner's Residence.

Section 3. Management. The Association, through its Board of Directors, will have the power to employ a manager (managing agent), an independent contractor, or such other employees as it deems necessary, and to prescribe their duties and fix their compensation, and/or enter into a management agreement with a professional management company for the purpose of managing the Association. Any agreement entered into by the Association with a management company will be for a period of not more than two (2) years, renewable by agreement of the parties for successive periods of not more than two (2) years each, and will provide for the Association's right to cancel said agreement for cause by the Association's upon thirty (30) days written notice to the management company of its intent to do so.

Section 4. Notices. Notices provided for in this Declaration or the By-Laws will in writing and will be addressed to the Association at such address as may from time to time be designated by the Board. Notices to an Owner may also designate a different address at which he is to be notified. Further, any mortgagees may from time to time designate an address to which notices required pursuant to the provisions of this Declaration will be sent. All notices will be deemed to have been properly served when mailed by registered mail, return receipt requested, postage prepaid, to the last known address of the addressee, or when delivered in person with written acknowledgment of the receipt thereof.

Section 5. Land trusts. In the event title to any Residence should be conveyed to a land title-holding trust, under which all powers of management, operation and control of the premises remain vested in the trust beneficiary or beneficiaries, then the trust estate

under such trust, and the beneficiaries thereunder, from time to time, will be liable for payment of any obligation, lien or indebtedness chargeable or created under this Declaration against such Residence. No claim will be made against any such title-holding trustee personally for payment of any claim, liens, or obligations hereby created, and the trustee will not be obligated to sequester funds or trust property to apply in whole or in part against any such lien or obligation, but the amount thereof will continue to be a charge or lien upon the premises notwithstanding any transfers of the beneficial interest in the title to such real estate.

Nothing in this Section will be deemed to alter or diminish the rights or remedies of the Association relating to the failure to pay maintenance assessments as such rights or remedies apply to the trust estate under such trust and the beneficiaries thereunder.

Section 6. Rights and Obligations to Bind the Land. The covenants and restrictions of this Declaration will run with and bind the land, and will inure to the benefit of and be enforceable by the Owner of any Residence subject to this Declaration, their respective legal representatives, heirs, mortgagees, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded after which time said covenants will be automatically extended for successive periods of ten (10) years unless seventy-five percent (75%) of the Owners, consented to by the Porter County, by formal resolution, and property recorded in Porter County, Indiana.

Section 7. Severability and the Rule Against Perpetuities. If any provisions of this Declaration or the By-Laws will be held invalid it will not affect the validity of the remainder of the declaration or the By-Laws. If any provision of the Declaration or By-Laws is deemed to violate the rule against perpetuities, rules restricting restraints on alienation, or any other rule, statute or law imposing time limitations, then such provisions will be deemed to remain in effect until the death of the last survivor and now living descendants of the President of the United States, William Clinton, plus twenty-one (21) years thereafter.

Section 8. Real Estate Taxes. Real estate taxes and general and special assessments levied upon the Common Areas will be a Common Expense paid by the Association through assessments received from the Owners, pursuant to Article IX as hereinabove set forth. Real estate taxes will be separately taxed to each Owner for his Residence as soon as feasible after the first sale of such Residence by Declarant and will be paid directly to the taxing authority by such Owner as and when so separately taxed. In the event that such taxes for any year with respect to any Residence are not separately taxed to the Owner thereof, but rather are taxed on any part of parts of the Property being more than one (1) Residence containing the Residence of such Owner (the "Undivided Tax Bill"), respect to each Residence he owns which will consist of: (a) that portion of the Undivided Tax Bill applicable to land covered by said Residence bears to the number of square feet of land on the Undivided Tax Bill; plus (b) a portion of the Undivided Tax Bill applicable to townhouse improvements covering said Residences, which portion will be determined by applying the ratio which the number one (1) bears to the number of all Residences covered by such portion of the Undivided Tax Bill. These figures will be determined by the Association and will be binding upon Residence Owners. Each Owner will pay the amount to the Association Board within ten (10) days after demand therefor and such payee will pay such taxed to the appropriate collecting authority. The Association Board will have authority to advance funds in payment of all or a portion of such taxes pending receipt from each of the respective Owners of their proportionate share thereof.

Section 9. Conflicts. In the event of any conflict between this Declaration and the By-Laws or Articles of Incorporation, this Declaration will control.

Section 10. Governing Law. The laws of the State of Indiana will govern the construction, interpretation, application, and enforcement of this Declaration and the Association formed pursuant thereto.

Section 11. Miscellaneous General. Any notices required to be sent hereunder will be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the record addressee as shown on the records of the County of Porter at the time of such mailing or at such address for receipt of notices given the Association in writing by any such individual or entity entitled to notice.

The Association may, in its discretion, establish a reasonable reserve fund for unexpected contingencies and expenses.

Invalidation of any one of these covenants or restrictions by judgement or court order will in no way effect other provisions which will remain in full force and effect.

The terms, conditions and provisions of the By-Laws attached hereto as Exhibit "B" are specifically incorporated by reference herein.

The Association will indemnify, hold harmless and defend the County from any and all actions, proceedings or damages arising from these covenants and the County will also be entitled to recover all of its damages, costs and attorneys' fees incurred as a result of being or being made a party to any action brought regarding these covenants.

In the event that the Detention/Retention basins provided for herein are not maintained as required, the Porter County may in its discretion cause the maintenance to be performed and all costs therefore, including engineering, legal and consultants, will be paid for by the Association. Any entry upon the property by the Porter County, its agents, officers, employees, or contractors, for purposes of inspection or maintenance of the basins is hereby authorized, permitted and consensual.

Section 12. Declarant reserves the right and power, without the consent, approval or signature of the Board, the Association, any Lot Owners or any mortgagee, 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 Department of Veteran's Affairs or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lot Ownerships, (iii) to bring this Declaration into compliance with the Act, or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to a Special Amendment on behalf of each Lot Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof will be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record Special Amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section will terminate at such time as the Declarant no longer holds or controls title to a

Lot.

ARTICLE XII  
RIGHTS OF FIRST MORTGAGE HOLDERS

Anything in this Declaration to the contrary notwithstanding, the following will be applicable with respect to any institutional holder of a first mortgage lien of record, including an insurer or guarantor, on any Residence which is subject to the terms hereof.

Section 1. Notice. The Association will, if so requested by any first mortgagee of record or holder, insurer and guarantor, on any Residence which is subject to the terms hereof.

- (A) Notice of any default (including any delinquency in the payment to assessments) of the Owner of a Residence which is the subject of such mortgage if such default is not cured within sixty (60) days after its occurrence.
- (B) Five (5) days' prior written notice of any annual or special meeting of the Association. The mortgagee may designate a representative to attend any such meeting.
- (C) Timely notice of substantial damage or destruction of any portion of the Common Areas (in excess of \$10,000.00).
- (D) Notice of any condemnation or eminent domain proceeding affecting any portion of the Common Areas.
- (E) Notice of the decision of the Owners to make any material amendment to this Declaration.
- (F) The effectuation of any decision by the Association to terminate professional management and assume self-management of the Common Area.
- (G) Notice to terminate the Association.
- (H) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (I) Any proposed action that would require the consent of a specified percentage of eligible mortgage holders as specified hereinabove in Section 1 of Article XIII.

Section 2. Claims for Assessments. Any first mortgagee of record who takes title to a Residence or comes into possession of a Residence pursuant to remedies provided in such mortgage (including foreclosure, or a deed or assignment in lieu thereof) will take title free of any claims for unpaid assessments or charges which may have accrued prior to the date of such possession or date title is transferred, whichever is first to occur; provided, however, that such mortgagee will be liable for a prorated share of such assessments and charges if the Board will elect to reallocate them amongst all the remaining Residence.

Section 3. Sale of Common Areas. Except for dedication of any part of the Common Areas for public streets or for public utility easements, the Association will not, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any of the Common Areas or improvements thereon, owned by it, directly or indirectly, without the express written consent of all holders of first mortgages recorded against any of the residences. Grants of easements for utilities and other public purposes will not be considered a sale or encumbrance for purposed of this section.

Section 4. Books and Records. Any first mortgagee of record of a Residence or any holder, insurer or guarantor of a first mortgage, his authorized agent or representative, will have

the right, upon twenty-four (24) hours' notice, to examine any and all books and records of the Association at any time during normal business hours, and will be entitled to receive at its written request, and without charge, a copy of any and all annual, existing financial statements within ten (10) days from the date of such request or the date of preparation of such statement (which will be not later than ninety (90) days following the end of any fiscal year), as the case may be.

ARTICLE XIII  
AMENDMENTS TO DECLARATION

Section I. Approval of amendments. Except as provided below, provisions of this Declaration may be amended by an instrument in writing setting forth the amendments and executed by the Owners representing not less than sixty-seven percent (67%) of the total number of holders of the first mortgages on Residences:

- (A) Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, which is not performed substantially in accordance with the Declaration and the original plan and specifications.
- (B) Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the Property.
- (C) Any act or omission to seek to abandon, partition, subdivide, or encumber, sell or transfer the common property owned directly or indirectly, by the Association or any other party for the benefit of the Owners.
- (D) Any act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Residences, their exterior maintenance, and the maintenance and upkeep of all the Common Areas.
- (E) Any decisions to add or amend any material provisions (an addition or amendment will not be considered material if it is for the purpose of correcting technical errors or for clarification only ) of this Declaration and the By-Laws which establish, provide for, govern or regulate any of the following:
  - (a) Voting;
  - (b) Assessments, assessment liens or subordination of such liens;
  - (c) Reserve for maintenance, repair and replacement of the Common Areas;
  - (d) Insurance or Fidelity Bonds;
  - (e) Rights to use of the Common Areas;
  - (f) Responsibility for maintenance and repair of all phases of the project;
  - (g) Boundaries of any Residences;
  - (h) The interest in the general Common Areas;
  - (i) Convertibility of Residences into Common Areas or of Common Areas into Residences;
  - (j) Leasing of Residences;
  - (k) Imposition of any right of first refusal or similar restriction on the right of a Residence Owner to sell, transfer, or otherwise convey his or her Residence;
  - (l) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages Residences;
- G) Sixty-seven percent (67%) of the total number of holders of first mortgages on Residences will also be required to terminate the legal status of the project and

use hazard insurance proceeds for loss to the Common areas for other than repair, replacement or reconstruction of Common Areas. First mortgagees may also, jointly or severally, pay any taxes or together charges which are in default and which may have already become a charge or lien against any of the Common Areas, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for said Common Area. Said first mortgages making said payments will be entitled to immediate reimbursement from the Association thereafter.

Notwithstanding anything in this Section to the contrary, any eligible mortgage holder who receives a written request to amend the Declaration and who does not deliver or post to the requesting party a negative response within thirty (30) days will be deemed to have approved such request to amend.

If said Declaration is so modified by the Association, a notice of said modification will be given to all first mortgage lien holders of record by certified mail, return receipt requested.

Section 2. Compliance with Governmental Authority. Declarant reserves the right and power to record any special amendments to this Declaration at any time and from time to time, to amend this Declaration to comply with requirements of the Department of Housing and Urban Development, the First National Mortgage Association, the Veterans Administration and any other governmental agency or public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities.

Section 3. Approval of Mortgagee. Notwithstanding the provisions of section 1 above, no amendment of Sections 1 and 2 of Article V, Sections 1,3 and 4 of Article IX, Article XII or this Article XIII will be effective without the express written consent of all of the institutional holders of the first mortgage liens recorded against the residences which are subject to this Declaration

Section 4. Restrictions on Alienation. Anything herein contained to the contrary notwithstanding, no amendment to the Declaration, Articles of Incorporation or By-Laws which will seek to vest a right of first refusal as to the sale or lease of a Residence, or any similar restriction in favor of the Association, other Owners or related entities, will be of any force or effect.

Section 5. Rights of Declarant. The foregoing notwithstanding, no amendment which will adversely affect the rights of Declarant and its successors and assigns (including, but not limited to, the right to maintain sales facilities, signs and access for construction storage set forth in this Declaration) will be effective without Declarant's express written consent thereto. Declarant further reserves the right and power to record any amendments to this Declaration to correct clerical typographical errors in this Declaration or any exhibit supplement or amendments thereto.

Section 6. Validity of Amendments. No amendments approved pursuant to this Article XIII will become valid until a copy of same, certified by the Secretary of the Association to be true and correct, will be placed in record and, to the extent that it affects the Porter County unless the County Manager otherwise waives said approval.





HEREBY CERTIFY, that Anthony C. Floramo, President of FLORAMO PARTNERS

And Of said Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and assistant Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as Trustee as aforesaid, or the uses and purposes therein set forth; and the said Assistant Trust Officer then and there acknowledged that she, as custodian of the corporate seal of said Company to said instrument as his own free and voluntary act of said Company, as Trustee, as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this        day of        2003.



*Frances Kay Birchfield*  
Notary Public  
Frances Kay Birchfield

My commission expires: 5/8/04

ARTICLE I

Office

- (a) Principal Office. The principal office of the Association will be maintained at the office of the developer.
- (b) Place of Meetings. All meetings of the Association will be held at its principal office unless otherwise stated in the call.

ARTICLE II

Association of Property Owners

- (a) Annual Meeting. The annual meeting of the Association will be held on the first Tuesday in August each year for the purpose of electing directors and the transaction of such other business as may come before the meeting. If such day is a legal holiday, the meeting will be held at the same hour on the next succeeding business day.
- (b) Special Meetings. Special meetings may be held at any time upon the call of the President, the Board of Directors, or upon the call of any six members of the Association (the Members of the Association, including Class A members and Class B members, as applicable, or any subgroup thereof, are hereinafter referred to as the "Members") Upon receipt of such call, the Secretary will send out notices of the meeting to all Members.
- (c) Notice of Meetings. A written or printed notice of every meeting of the Association stating whether it is an annual meeting or a special meeting, the authority for the call of the meeting, the place, day, and hour thereof, and the purpose therefor in the case of a special meeting or when required by statute, will be given by the Secretary of the person or persons calling the meeting not less than five nor more than forty days before the date set for such meeting. Such notices will be given to each Member in any of the following ways: a) by leaving the same with him personally, or b) by leaving the same at the residence or usual place of business of such Member, or c) by mailing it, postage prepaid, addresses to such member at his address as it appears on the records of the association, or d) if such Member cannot be located by reasonable efforts, by publishing such notice in any newspaper of general circulation in Porter County, such notice to be published thereof to be not less than three days nor more than ten days prior to the day assigned for the meeting. If notice is given pursuant to the provisions of this Section, the failure of any Member to receive actual notice of the meeting will in no way invalidate the meeting or any proceedings thereat.
- (d) Waiver of Notice. The presence of all the Members, in person, or by proxy, at any meeting will render the same a valid meeting, unless any Member will, at the opening of such meeting, object to the holding of the same for noncompliance with the provisions of Section 3 of this Article II. Any meeting so held without objection will, notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken.

- (e) **Informal Action by Members.** Any action required to be taken at a meeting of the Members of the Association, or any other action which may be taken at a meeting of Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, will be signed by all of the Members entitled to vote with respect to the subject matter thereof.
- (f) **Quorum.** At any meeting of the Association, Members present or by proxy, whose aggregate interest in the Association constitutes a majority of the aggregate interest of all the Members present or by proxy will constitute a quorum, and the occurring vote of such majority will be valid and binding upon the Association except as otherwise provided by law or these By-Laws.
- (g) **Voting.** Any person, firm, association, trust, or other legal entity or a combination thereof, except the Declarant, as that term is defined in the Declaration of Covenants, Conditions and Restrictions for Falling Waters of Porter County dated as of ("The Declaration"), owning any residence in Falling Waters, as described in the Declaration (a "Residence"), the Membership whereof will be determined by the records of the Porter County Recorder's Office, will be a Class A Member of the Association, and either in person or by proxy entitled to one vote per Residence at all meetings of the Association. The Declarant will be a Class B Member entitled to three votes for each Residence owned, provided that Declarant will be entitled to only one vote per Residence upon the happening of the earlier to occur of the following: When seventy-five percent (75%) of the Residences have been sold and conveyed by Declarant; or five years after the date the first Residence is conveyed by Declarant; or upon written notice of election by Declarant sent to the Association as of the date specified in said notice. Class B Members will cease once Declarant has closed the sale of the last Residence and, from and after that date, Class A Members will constitute all Members of the Association and will be known as the "Member." Any provisions to the contrary notwithstanding, Co-Members of joint Members will be deemed one Member. The authority given by a Member to another person to represent such Member at meetings of the Association will be in writing, signed by such Member, or if a Residence is jointly owned, then by all joint members, or if such member is an association, by the proper officers thereof, and will be filed with the Secretary, and unless limited by its terms, such authority will be deemed good until the earlier of eleven months from the date thereof or its written revocation. An executor, administrator, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any Residence owned or held by him in such a capacity, whether or not the same will have been transferred to his name by a duly recorded conveyance. In case such Residence will not have been so transferred to his name, he will satisfy the Secretary that he is the executor, administrator, guardian, or trustee holding such Residence in such capacity. Whenever any such Residence is owned by two or more jointly, the vote therefor may be exercised by any one of the Members present.
- (h) **Adjournment.** Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the Members present, whether a quorum by present or not, without notice other than the announcement at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

### ARTICLE III

#### BOARD OF DIRECTORS

- (a) **Number and Qualification.** The affairs of the Association will be governed by a Board of Directors initially composed of three persons, as increased or decreased at any annual meeting by a majority vote, subject to the provision regarding the intent and purpose expressed in Section 5 of this Article, and all such directors will be members of the Association.
- (b) **Powers and Duties.** The Board of Directors will have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the members.
- (c) **Other Duties.** In addition to duties imposed by these By-Laws or by resolutions of the Association, the Board of Directors will be responsible for the following:
  - (A) Care and upkeep of the Common Area and facilities of the property owned by the Association (the "Subdivision");
  - (B) Collection of monthly assessments from the Members;
  - (C) Designation and dismissal of the personnel necessary for the maintenance and operation of the common elements and facilities of the Subdivision.
- (d) **Manager or Management Agent, Employees, Generally.** The Board of Directors may employ for the Association a management agent or manager, at a compensation established by the Board, to perform such duties and services as the Board will authorize including, but not limited to, the duties listed in Section 3 of this article. The duties conferred upon the management agent or manager by the Board of Directors may be at any moment revoked, modified, or amplified by the majority of Members in a duly constituted meeting. The Board of Directors may employ any other employee or agent to perform such duties and at such salaries as the Board of Directors may establish.
- (e) **Election and Term of Office.** The directors will be elected by a majority of the Members. At the first annual meeting of the Association, the term of office of one director will be fixed for three years, one director for two years and one director for one year. At the expiration of the initial term of office of each representative director, his successor will be elected to serve a term of three years. The directors will hold office until their successors have been elected and hold their first meeting.
- (f) **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the association, will be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, and each person so elected will be a director until a successor is elected at the next annual meeting of the Association.
- (g) **Removal of Directors.** At any regular meeting or special meeting duly called, any one or more of the directors may be removed with or without cause by a majority of the Members and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members will be given an opportunity to be heard at the meeting.
- (h) **Compensation.** No compensation will be paid to directors for their services as directors. No enumeration will be paid to a director for services performed by him for the Association in any other capacity, unless a resolution authorizing such enumeration will have been unanimously adopted by the Board of Directors before the services are undertaken. A director may not be an employee of the Association.

- (i) Committees of Directors. The Board of Directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which will consist of two or more directors, which committees, to the extent provided in said resolution and not restricted by law, will have any exercise the authority of the Board of Directors in the management of the Association, but the designation of such committees and the delegation thereto of authority will not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed upon it or him by law.
  - (A) Other committees, not having and exercising the authority of the Board of Directors in the Association, may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee will be members of the Association, Any member thereof may be removed by the Board of Directors whenever in their judgement the best in interest of the Association will be served by such removal.
  - (B) Each member of a committee will continue as such until the next annual meeting of the Members and until his successor is appointed, unless the committee will be sooner terminated, or unless such member be removed from such committee, or unless such member will cease to qualify as a member thereof.
  - (C) One member of each committee will be appointed chairman.
  - (D) Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.
  - (E) Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee will constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present will be the act of the committee.
  - (F) Each committee may adopt rules for its own government not inconsistent with these By-laws or with rules adopted by the Board of Directors.
- (g) Organization Meeting. The first meeting of a newly elected Board of Directors will be held within thirty (30) days of election at such place as will be fixed by the directors at the meeting at which such directors were elected, and no notice will be necessary to the newly elected directors in order legally to constitute such meeting, provided a majority of the whole Board will be present.
- (h) Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as will be determined, from time to time, by a majority of the directors. Notice of regular meetings of the Board of Directors will be given to each director, personally or by mail, addressed to his residence, or be telephoned, at least five (5) days prior to the day named for such meeting.
- (i) Special Meetings. Special meetings of the Board of Directors may be called by the President of five (5) days' notice to each director, given personally or by mail, addressed to his residence, or by telephone, which notice will state the time, place (as hereinabove provided), and purpose of the meeting.

Special meetings of the Board of Directors will be called by the President or Secretary in like manner and on like notice on the written request of at least three directors.

- (j) Waiver of Notice. Before or at any meeting of the Board of Directors, any director may,

in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board will be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice will be required and any business may be transacted at such meeting.

- (k) Board of Director's Quorum. At all meetings of the Board of Directors, a majority of the directors will constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present will be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting.
- (l) Bonds of Officers and Employees. The Board of Directors will require that all officers and employees of the Association handling or responsible for corporate funds will furnish adequate bonds. The premiums on such bonds will be paid by the Association.

#### ARTICLE IV OFFICERS

- (a) Designation. The principal officers of the Association will be a President, a Vice-President, a Secretary, and a Treasurer, all of whom will be elected by and from the Board of Directors. The directors may appoint an Assistant Treasurer, and an Assistant Secretary, and such other officers as in their judgment may be necessary.
- (b) Election of Officers. The officers of the Association will be elected annually by the Board of Directors at the organization meeting of each new Board and will hold office at the pleasure of the Board.
- (c) Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.
- (d) President. The President will be the chief executive officer of the Association. He will preside at all meetings of the association and of the Board of Directors. He will have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.
- (e) Vice President. The Vice President will take the place of the President and perform his duties whenever the President will be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors will appoint some other member of the Board to do so on an interim basis. The Vice President will also perform such other duties as will from time to time be imposed upon him by the Board of Directors.
- (f) Treasurer. The Treasurer will have the responsibility for Association funds and securities and will be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He will be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.
- (g) Secretary. The Secretary will attend and keep the minutes of all meetings of the Board of Directors or of the Association, will give all notices as provided by these By-laws, and will have other powers and duties as may be incidental to the office of Secretary, given him by these By-laws or assigned to him from time to time by the Directors. If the Secretary will not be present at the meeting, the presiding officer will appoint a

secretary pro tempore who will keep the minutes of such meeting and record them in the books provided for that purpose.

- (h) Auditor. The Association may at any meeting appoint some person, firm, or association engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested of him by the Association.

#### ARTICLE V OBLIGATIONS OF MEMBERS

- (a) Expenses, Assessments. Every member of the Association will contribute pro rata toward the expense of administration of the Association, including but not limited to all types of insurance, the cost of operation, maintenance, repair, and replacement of the common elements thereof, according to the percentage interest appurtenant to the respective Member as stated in the Declaration. The Association will have a monthly charge for each Residence in an amount sufficient to provide for its pro rate will of all such current expenses, reasonable reserves for future expenses of administration, and such other expenses as the Association may deem proper, subject to adjustment from time to time as the Association may deem necessary. Such monthly charge will be due and payable in advance on the first day of every month, will bear interest at the rate of ten (10) percent per annum or the maximum legal rate, whichever is lower, from due date until paid, and with such interest will be a lien on the Residence, assessed prior in right to all other charges whatsoever, except amounts and liabilities secured by mortgage instruments duly record.
- (b) Use of Residences. All Residences will be utilized in accordance with the provisions of the By-laws, Declaration and House Rules.
- (c) House Rules. In order to assure the peaceful and orderly use and enjoyment of the common elements of said Association, the Association may from time to time adopt, modify, and revoke in whole or in part by a vote of the Members present in person or represented by proxy, whose aggregate interest in the common elements constitutes eighty percent (80%), at any meeting duly called for the purpose, such reasonable rules and regulations, to be called House Rules, governing the conduct of persons on said project as it may deem necessary. Such House Rules upon adoption, and every amendment, modification, and revocation thereof, will be delivered promptly to each Member and will be binding upon all Members of the Association.
- (d) Foreclosure of Lien. In any suit to foreclose the lien against any Member, the Association may represent itself through its manager or Board of Directors in like manner as may mortgagee or real property. The manager of Board of Directors acting on behalf of the Members will have the power to bid and acquire such Residence at a foreclosure sale. The delinquent Member will be required to pay to the Association a reasonable rent for subject Residence until sale or foreclosure, together with all costs and reasonable attorney's fees. Suite to recover a money judgment for unpaid common expenses will be maintainable with all costs and reasonable attorney's fees without foreclosing or waiving the lien securing the same.
- (e) Title. Every home Member will promptly cause to be duly recorded with the Porter County recorder of Deeds the deed, lease, assignment, or other conveyance to him of his Residence or other evidence of his title thereto and file such evidence of this title with the Board of Directors through the manager, and the Secretary will maintain such information in the record or Membership of the Association.
- (f) Mortgages. Any mortgagee of a Residence may file a copy of its mortgage with the Board of Directors through the manager, and the Secretary will maintain such



information in the record of Members of the association. After the filing of the mortgage, the Board of Directors through its manager will be required to notify the mortgagee of any Member who is in default in the expenses for the administration of the Association, and the mortgagee at its option may pay the delinquent expenses.

#### ARTICLE VI EXECUTION OF INSTRUMENTS

(10 Instruments Generally. All checks, drafts, notes, bonds, acceptance, contracts, and all other instruments except conveyances will be signed by such person or persons as will be provided by general resolution applicable thereto. Such instruments will be signed by the President or the Vice President and by the Treasurer or Secretary or Assistant Treasurer or Assistant Secretary.

#### ARTICLE VII LIABILITY OF OFFICERS

- (a) Exculpation. No Director or officer of the Association will be liable for acts or defaults of any other officer or member or for loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or negligence.
- (b) Indemnification. Every director, officer, and member of the association will be indemnified by the Association against all reasonable costs, expenses, and liabilities (including counsel fees) actually and necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding investigation, or inquiry of whatever nature in which he may be involved as a party or otherwise by reason of his having been an officer or Member of the Association, whether or not he continues to be such director, officer, or Member of the Association, at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he will be finally adjudges in such action, suit, proceeding, investigation, or inquiry to be liable for willful misconduct or negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal council selected by the Association. The foregoing right of indemnification will be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and will inure to the benefit of the legal representatives of such person.

#### ARTICLE VIII CONTRACTS, CHECKS, DEPOSITS AND FUNDS

- (a) Contracts. The Board of Directors may authorize any officer or officers, agent, or agents of the Association, in addition to the officers so authorized by these By-laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.
- (b) Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association, will be signed by such officer or officers, agent or agents of the Association and in such manner as will from time to time be determined by resolution of the Board of Directors. In absence of such determination by the Board of Directors, such instruments will be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice President of the Association.

(c) Deposits. All funds of the Association will be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board of Directors may select.

ARTICLE IX  
FISCAL YEAR

The fiscal year of the Association will be such as may from time to time be established by the Association.

ARTICLE X  
BOOKS AND RECORDS

The Association will keep correct and complete books and records of account and will also keep minutes of the proceedings of its Members, Board of Directors, and committees having any of the authority of the Board of Directors, and will keep at the registered or principal office a record giving the names and addresses of the Members entitled to vote. All books and records of the Association may be inspected by any Member, or his agent or attorney for any proper purpose at any reasonable time.

ARTICLE XI  
AMENDMENTS

The power to alter, amend, or repeal these By-laws or adopt new By-Laws will be vested in the Board of Directors unless otherwise provided in the Articles of Incorporation or the By-Laws. Such action may be taken at a regular or special meeting for which written notice of the purpose will be given. The By-Laws may contain any provisions for the regulation and management of the affairs of the Association not inconsistent with law, the Declaration or the Articles of Incorporation.

EXHIBIT C: FALLING WATERS ARCHITECTURAL CONTROL COMMITTEE

A. POWER OF COMMITTEE.

Generally, no dwelling, building structure or improvement of any type or kind will be constructed or placed on any lot of Common area in the Development without the prior approval of the Committee. Such approval will 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 will be in the manner and form prescribed in the Architectural Design Guidelines of Falling Waters, attached to these Restrictions as Exhibit "C" and, adopted and incorporated herein by reference. There will also be submitted, where applicable, the permits or reports required under paragraph 3 of these Restrictions.

The Committee may refuse to grant permission to construct place or make the requested improvement, when:

1. The plans, specifications, drawings or other material submitted are themselves inadequate or in or incomplete, or show the proposed improvement to be in violation of these Restrictions; or
2. The design 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 other Owners.

The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment will be granted in conformity with the general intent and purposes of these Restrictions, and no variance or adjustment will be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee will approve or disapprove all applications of lot Owners for permission to build improvements, in accordance with the procedures and criteria set forth in the Architectural Design Guidelines. One (1) copy of all submitted material will be retained by the Committee for its permanent files. All notifications to applicants will be in writing, and, in the event that such notification is one of disapproval, it will specify the reason or reasons. The Committee may charge and collect reasonable fees for said Applications.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, nor the Association, will be responsible in any way for any defects in any plans, specifications or other material submitted to it, nor for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

GENERAL DESIGN CONCEPTS

Great care has been taken in the planning, design and construction phases to insure aesthetic harmony between the natural beauty of Falling Waters and its developed

amenities. It is of the utmost importance that this special character be further enhanced by housing design which are creatively conceived, environmentally sensitive and architecturally compatible with the natural setting.

A strong emphasis is placed on landscaping in the architectural review process. Quality landscaping is important to both the appearance of each individual home and the overall continuity of the community. Falling Waters has been designed utilizing the natural elements as much as possible. Various hardwoods and pine trees are prolific within the community and it is the intent of the Architectural Control Committee to maintain this landscape integrity.

The determining factor of good landscape design should always be the architecture and location of the residence. The Architectural Control Committee will take into account the various relationships between the home, the site, and adjacent homes, views and vistas, prevailing winds and solar exposure, and other amenities in making decisions regarding specific landscape plans.

Grading and Landscape plans will be fully detailed and accurately drawn to an appropriate scale on a full-sized site plan. The plans should show contours and elevations clearly, as well as drainage provisions, and all pertinent site and architectural information including an accurate outline of the building with doors, windows, stoops, decks and other features accurately located and drawn. If spas or retaining walls are to be installed, architectural drawings of the installation should be provided with specifications of the materials to be used. The landscape plan should also include a list of plant materials selected, including plant nomenclature for positive identification of these proposed materials. The sizes, in standard nursery "range of size" description, should be given as well as the quantities of plants of each type proposed to be used in each planting group. Certain indigenous plant materials are generally recommended because of their traditional influence in Indiana and their desirable characteristics for the entire Falling Waters community. Fundamental to the design criteria is the need for gardens and lawn to harmonize with the native terrain and natural beauty of the community. Owners are encouraged by the Committee to landscape their homesites with plant material which is indigenous to the existing area.

Fine mature trees exist throughout Falling Waters. Many are located in prominent view of Common Areas and roads, giving them special significance. The developer has taken a positive step toward the recognition and protection of such trees by requiring any tree with a trunk diameter over six (6) inches at four feet above natural grade on any building lot is identified for preservation unless it lies within the footprint of the residence or driveway.

The design and development concepts of Falling Waters call for the maintenance of the existing grades, as much as possible. The Architectural Control Committee is particularly conscious of site utilization and desires not to disrupt the natural terrain in most cases. The Committee is keenly aware that, whenever possible, structures should be designed around the specific homesite. Grading approval must be obtained from the Committee before earth is moved or removed from a specific homesite. Absolutely no grading whatsoever will be permitted without first obtaining this authorization. All grading review will be subject to the jurisdiction of the Committee and will be considered individually for each lot. Recommendations or demands will be based upon individual homesite location, terrain, soil conditions, drainage cut and fills, and whatever other conditions the Committee feels impact upon the grading design of a particular site. Adherence to the approved grading plan is required.

Drainage considerations for individual sites play an important part in the overall ecological balance of the site. Water run-off for each individual building site must be handled by adequately sloping all areas so that run-off can be directed to the natural

drainage areas or to storm drainage facilities. Site drainage must be detailed on the grading plan. All sheet flow should be channeled into swale, retention and ditch areas. Piped discharges from sump pumps and downspouts may be connected directly to storm sewers. Although the Committee will review drainage plans, the homesite owner is fully responsible for water run-off and drainage control of his homesite.

The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-off Associated with Construction Activity. Each Owner will undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Developer's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures will be performed by personnel trained in erosion control practices and will meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

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

#### ARCHITECTURAL REVIEW PROCESS

The following summary of procedural steps is applicable to home construction, remodeling or construction of additions in the Falling Waters Subdivision:

1. The Architectural Control Committee will review the floor plans, elevations and specifications to verify the structure's conformance to these guidelines and specific requirements. The Committee will review the Site Plan, which will depict the Existing and Proposed grades, Drainage Plan, Property Lines, mailbox location, Setbacks, House Location, Driveways, Walks, Patios, tree preservations, landscaping, erosion controls, etc. House plans will be prepared by an architect. Site plans will be prepared by an engineer. Both professionals will be licensed.
2. Upon written approval, the builder will obtain from Porter County a building permit which addresses conformance to building codes and public health and safety concerns.
3. A location Survey is required at completion of foundation and an As-built survey showing all improvements, their location and elevation is required at the county's issuance of a Certificate of Occupancy.

#### OTHER REQUIREMENTS OF CONTRACTORS

1. A \$1,000.00 refundable construction deposit must be submitted by the homesite owner prior to requesting a site inspection for authorization to begin cleaning and construction. These funds will be utilized to repair any damage caused by construction personnel or equipment to adjacent property or amenities. The deposit may also be utilized to clean the construction site if necessary "checks should be made payable to "Falling Waters Construction Deposit".
2. It is requested that a realistic Construction schedule be provided as start and finish dates of construction. This should be submitted when final plan approval is obtained.

3. Construction sites must be kept clean. No stockpiling of dirt or debris is allowed. Weekly clean-up is required. The street right-of-way is also to be maintained. If sites are not kept up or any damage to adjoining property or Falling Waters property occurs through the construction process, owners will be notified by phone of the violations by the Property Owner's association. Owners will have three days to respond before the work is performed by the Property Owner's Association, the cost of which will be deducted from the construction deposit. If the \$1,000.00 deposit is not sufficient to cover the cost of clean-up, the additional balance will be collected from the homesite owner.
4. Contractors are responsible for providing on-site parking for their work crews' vehicles. Driveways and parking areas will be covered with 6' of crushed stone or gravel to permit workers' cars to be parked to afford easy ingress and egress for material deliveries and to improve the appearance of the development and its sites. Care should be taken to preserve and restore the finished grades of the road shoulders and drainage ditches as needed.

#### FEEES AND DEPOSITS

The lot owner may be charged a processing fee for the review of the design submittal. The Architectural Control Committee will have the right to increase this amount from time to time. This fee has been established to partially cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, engineers, urban designers, inspectors or attorneys retained by the Committee.

The owner or the contractor will place a cash deposit with the Architectural Control Committee at the time of submittal for final design approval. This deposit, as established by the Committee, is \$1,000.00. This deposit will be fully refunded upon completion of all improvements, including landscaping, clean-up and acceptance by the Committee provided there is no damage by the owner and/or his contractors to the public and private improvements, common areas, or other lots with the community. Re-submittals may require an additional processing fee. Fees and deposits noted above are subject to change by the Architectural Control Committee. The application for approval, fee, damage deposit, and all other material necessary for the Committee to approve a residence must be sent to: The Architectural Control Committee, Falling Waters Development, in care of the developer.

**FLORAMO PARTNERS PROUDLY PRESENTS:  
FALLING WATERS OF PORTER COUNTY**

**Exhibit "D"**

**HOME RESTRICTIONS SUMMARY:**

- 1.) All ranch homes to be at least 2200 sq. ft., excluding basement, unless home is a walkout and homeowner uses 100% masonry, then the total square footage may be 2000 sq. ft.
- 2.) All 2 story homes to be at least 2600 sq ft excluding basement.
- 3.) Front elevation facing the street must be all masonry on ranch, 1<sup>st</sup> floor on 2 story home.
- 4.) Exterior siding must be cedar or upgraded vinyl. (Or approved product by architectural review committee).
- 5.) The Falling Waters Homeowner Association will be established for common area (Gates Ect). Fees will be \$600 per year on occupied homes and \$350 per year on vacant lots. A \$150.00 initial reserve funding will be charged at closing to establish the account.
- 6.) Assessment starts at closing or when water and sewer are to site.
- 7.) Only rear yard fences allowed, no chain link type permitted. Due to rolling nature of land, all fence installation must be approved by architectural review committee.
- 8.) All garages must be attached.
- 9.) No outside storage of recreational vehicles.
- 10.) Purchasers acknowledge and accept the creation and or the formation of the Falling Waters Conservancy District, which will operate and maintain various infrastructure with in the development, including the waste water treatment facility.