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2006000013476
Filed for Record in
BOONE COUNTY, INDIANA
MARY ALICE "SAM" BALDWIN
12-15-2006 At 03:09 pm.
COVENANTS 87.00

Cross References

This instrument burdens certain real estate located in Boone County, Indiana. The last deeds conveying the burdened real estate was recorded in the Office of the Recorder of Boone County, Indiana, as Instrument No. ²⁰⁰⁵⁻00508198 on July 19, 2005 and as Instrument No. 200500513836 on November 21, 2005. This instrument also encumbers the real estate depicted in the recorded plats of the Brookhaven Subdivision heretofore recorded in the Office of the Recorder of Boone County, Indiana on July 17, 2006, at Plat Book 17, Pages 28-35, as Instruments Nos. 200600007390 and 200600007391, and the recorded plat of the Fieldstone Subdivision recorded in the Office of the Recorder of Boone County, Indiana on May 31, 2006, at Plat Book 17, Pages 10-14, as Instrument No. 200600005770. This instrument also supplements, and to the extent inconsistent, supersedes, those Declarations of Covenants, Conditions, and Restrictions of Fieldstone recorded in the Office of the Recorder of Boone County on May 31, 2006, as Instrument No. 200600005771.

Declaration of Covenants, Conditions and Restrictions of the Brookhaven-Fieldstone Master Homeowners Association, Inc.

This Declaration of Covenants, Conditions and Restrictions of the Brookhaven-Fieldstone Master Homeowners Association, Inc. (hereinafter referred to as "the Declaration" or "this Declaration"), made this 12th day of December, 2006, by Drees Premier Homes, Inc. ("Drees") and Fieldstone, LLC ("Fieldstone") (hereinafter referred to collectively as "Declarants"),

WHEREAS, the following facts are true:

A. Drees is the owner of that certain real estate located in Boone County, Indiana, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Brookhaven Real Estate"). The deed conveying the Real Estate to Declarant was recorded in, as ²⁰⁰⁵⁻Instrument No. 00508198 on July 19, 2005 in the office of the Recorder of Boone County, Indiana;

B. Fieldstone is the owner of that certain real estate located in Boone County, Indiana, which is more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Fieldstone Real Estate"). The deeds conveying the Real Estate to Declarant were recorded in as Instrument Nos. 200500513836 on November 21, 2005 and 20040041503 on December 7, 2004 respectively, in the Office of the Recorder of Boone County, Indiana.

C. Drees, for its part, desires and intends to subdivide the Brookhaven Real Estate into residential lots in order to create a residential community to be known as "Brookhaven", and to this end, on or about July 17, 2006, recorded plats on a portion of the Brookhaven Real Estate in the Office of the Recorder of Boone County, Indiana at Plat Book 17, Pages 28-35, as Instruments Nos. 200600007390 and 200600007391 (the "Brookhaven Plats"). Drees also anticipates that additional portions of the Brookhaven Real Estate may be hereinafter laid out and platted, and such additional future plats, and any

amendments to the Brookhaven Plats and any such additional future plats, shall for all purposes be considered as part of the "Brookhaven Plats" as defined herein.

D. Fieldstone, for its part, desires and intends to subdivide the Fieldstone Real Estate into residential lots in order to create a residential community to be known as "Fieldstone", and to this end, on or about May 31, 2006 has recorded a plat on the Fieldstone Real Estate in the Office of the Recorder of Boone County, Indiana at Plat Book 17, Pages 10-14, as Instrument No. 200600005770 (the "Fieldstone Plat"). Fieldstone also anticipates that additional portions of the Fieldstone Real Estate may be hereinafter laid out and platted, and such additional future plats, and any amendments to the Fieldstone Plat and any such additional future plats, shall be all purposes be considered as part of the "Fieldstone Plat" as defined herein. Fieldstone has also recorded that certain Declaration of Covenants, Conditions and Restrictions for Fieldstone recorded in the Office of the Recorder of Boone County, Indiana as Instrument No. 200600005771 (the "Fieldstone Neighborhood Declaration").

E. Pursuant to the terms of this Declaration, Drees desires and intends to construct certain improvements and amenities within the Brookhaven community, more specifically, pool facilities and other amenities to be located on Common Area "B" shown on that certain plat recorded in the Office the Recorder of Boone County on July 17, 2006, at Plat Book 17, Page 28, as Instrument No. 200600007390 (the "Brookhaven-Fieldstone Pool Site") for the benefit of both the Brookhaven community and the Fieldstone community;

F. Before so subdividing the Brookhaven Real Estate and the Fieldstone Real Estate, Declarants, respectively, desire to subject the Brookhaven Real Estate and Fieldstone Real Estate to certain easements, covenants, restrictions, reserved rights, assessments, charges, and liens as provided herein for the benefit of the respective communities and each owner of all or any part thereof;

G. Declarants, respectively, desire to provide for the preservation and enhancement of the property values, amenities, and opportunities in their respective communities and the common areas therein contained, and, to this end, Declarants, respectively, desire to subject the Brookhaven Real Estate and the Fieldstone Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the respective communities and each owner of all or part thereof;

E. Declarants, respectively, deem it desirable, for the efficient preservation of the values and amenities in the respective communities, to create a master agency to which shall be delegated and assigned the powers of owning, maintaining and administering the Brookhaven-Fieldstone Pool Site, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and

disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the recreation, health, safety and welfare of the owners of the respective communities, and all parts thereof; and

F. Declarants have caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Brookhaven-Fieldstone Master Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW THEREFORE, Declarants hereby declare that the Brookhaven Real Estate and the Fieldstone Real Estate and any additional real estate which is hereafter made subject to this Declaration by Supplemental Declaration (as defined herein) is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Brookhaven Real Estate and the Fieldstone Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Brookhaven Real Estate and Fieldstone Real Estate as a whole and of each of the Lots situated therein. The restrictions shall run with the land and shall be binding upon Declarants, their successors and assigns, and upon the parties having or acquiring any interest in the Brookhaven Real Estate and the Fieldstone Real Estate, respectively, or any part or parts thereof subject to such restrictions, and shall inure to the benefit of Declarants and their successors in title to the Brookhaven Real Estate and Fieldstone Real Estate, respectively or any part or parts thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Indiana Horizontal Property Law, Indiana Code § 32-25-1, et seq.

ARTICLE I

Definitions

Section 1.1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

1.1.1 "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act of 1971, as amended.

1.1.2 "Articles" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time.

1.1.3 "Board" or "Board of Directors" shall be the elected body having its normal meaning under Indiana corporate law.

1.1.4 "Brookhaven Applicable Date" shall mean the date which is the earlier of (a) Drees shall own less than one-quarter of all the platted Lots within the Brookhaven community or (b) December 31, 2015.

1.1.5 "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time.

1.1.6 "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, improvement, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Corporation, the performance of any other responsibilities and duties of the Corporation provided herein, assessments imposed by the Master Declaration with respect to the Real Estate, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

1.1.7 "Corporation" shall mean and refer to The Brookhaven-Fieldstone Master Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarants have caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.

1.1.8 "Declarants" shall mean and refer to Drees Premier Homes, Inc. an Indiana corporation, and Fieldstone, LLC, an Indiana limited liability company, respectively, and each of their respective successors, successors-in-title or assigns that take title to any portion of the Real Estate for the purpose of development and sale and are designated as the Declarants hereunder in a recorded instrument executed by the immediately preceding Declarant. For purposes of this Declaration, an "affiliate" of the Declarant shall be any entity which has executed a power of attorney authorizing Declarant to exercise control over any portion of the Real Estate, or any part thereof, owned by such entity for the purpose of exercising any of the rights granted to the Declarant under this Declaration or the By-Laws. Notwithstanding any other provision of this Declaration to the contrary, prior to the Brookhaven Applicable Date or Fieldstone Applicable Date, as applicable, all rights and powers vested in Declarant by this Declarant shall remain vested in the respective Declarant, notwithstanding that Declarant may sell or otherwise transfer any or all Lots, or any or all Lots in a section, to a person or entity engaged in and responsible for the original construction of single-family residences on a Lot.

1.1.9 "Dwelling Unit" shall mean and refer to any building, structure or portion thereof designed and intended for use and occupancy as a residence by one (1) family.

1.1.10 "Fieldstone Applicable Date" shall mean the date which is the earlier of (a) Fieldstone, or a designated successor Declarant as provided in Section 1.1.8, shall own less than one-quarter of all the platted Lots within the Fieldstone community or (b) December 31, 2015.

1.1.11 "Lot" shall mean any numbered parcel of land shown and identified as a Lot on any Plat including any portion of the Brookhaven Real Estate or the Fieldstone Real Estate.

1.1.12 "Maintenance Costs" means all of the costs necessary to keep the facilities to which the terms applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

1.1.13 "Member" shall mean and refer to a Person entitled to membership in the Corporation, as provided herein.

1.1.14 "Mortgage" shall mean and refer to the holder of a recorded first mortgage lien on any Lot.

1.1.15 "Mortgagee" shall mean and refer to the holder of a recorded mortgage lien on a Lot or Dwelling Unit.

1.1.16 "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

1.1.17 "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Corporation. The term "Owner" as used herein shall include Declarant so long as Declarant shall own any Lot.

1.1.18 "Permitted Title Holder" shall mean (a) the Corporation, (b) a public or private educational institution, (c) the County of Boone, Indiana, or (d) a governmental entity or political subdivision located in Boone County, Indiana.

1.1.19 "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

1.1.20 "Regular Assessment" shall mean and refer to assessments levied against all Lots in the Real Estate to fund Common Expenses.

1.1.21 "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.

1.1.22 "Special Assessment" shall mean and refer to assessments levied in accordance with Section 9.5 of this Declaration.

1.1.23 "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant or its successors, and recorded in the public records of Boone County, Indiana, which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Corporation pursuant to Section 2.2 of this Declaration to subject additional property to this Declaration.

ARTICLE II

Declaration of Restriction and Statement of Property Rights

Section 2.1. Declaration. Declarants hereby expressly declare that the Brookhaven Real Estate and the Fieldstone Real Estate, respectively, shall be held, transferred and occupied subject to these Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, (i) by acceptance of a deed from Declarants, or their successors, conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarants or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarants and of the Corporation with respect to these Restrictions, and also, for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarants, the Corporation, and the Owners and Subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2.2. Easements of Enjoyment.

2.2.1 Owners. No Person shall have any right or easement of enjoyment in or to the Brookhaven-Fieldstone Pool Site except to the extent granted by, and subject to the terms and provisions of this Declaration. Drees hereby declares creates, and grants to every Owner within both the Brookhaven community and the Fieldstone community a right and nonexclusive easement of use, access and enjoyment in and to the Brookhaven-Fieldstone Pool Site which shall be appurtenant to and shall pass with the title to every Lot within the respective Brookhaven and Fieldstone communities.

2.2.2. Additional Rights of Use. The members of the family of every Person who has a right of enjoyment to all or part of the Brookhaven-Fieldstone Pool Site may use the Brookhaven-Fieldstone Pool Site (or part thereof) on the same terms and subject to the same limitations as such Person subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation. Except as otherwise provided herein, the Corporation may restrict use of the Brookhaven-Fieldstone Pool Site by guests of Persons whose use is authorized herein.

Section 2.3. Extent of Easements. The easements enjoyment created hereby shall be subject to the following:

2.3.1 this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Corporation;

2.3.2 the right of the Corporation to limit the number of guests who may use any recreational facilities within the Brookhaven-Fieldstone Pool Site, and to establish reasonable rules regulating the use

and enjoyment of the Brookhaven-Fieldstone Pool Site (including, but not limited to, the use of identification cards);

2.3.3 the right of the Corporation to suspend the right of an Owner to use recreational facilities within the Brookhaven-Fieldstone Pool Site (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed sixty (60) days for violations of this Declaration, By-Laws, or rules of the Corporation after notice and a hearing pursuant to the By-Laws;

2.3.4 the right of the Corporation to suspend the right of an Owner or any Person claiming through an Owner to sue the Brookhaven-Fieldstone Pool Site for a period not to exceed sixty (60) days for any other infraction of this Declaration.

2.3.5 the right of the Corporation to mortgage any or all of the Brookhaven-Fieldstone Pool Site and/or the facilities constructed thereon for the purposes of improvements to, or repair of, the Brookhaven-Fieldstone Pool Site pursuant to approval of a three-fourths supermajority of the votes of the Members voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose.

2.3.6 any other easements declared, created, granted or reserved elsewhere in this Declaration or in any Plat.

Neither Declarants nor the Corporation shall be responsible for any loss, damage, or injury to property or injury or death to persons arising out of the use of the Brookhaven-Fieldstone Pool Site and any equipment and facilities installed by Declarant or the Corporation therein or thereon. The Common Areas and all such equipment and facilities shall be used at the sole risk of the user.

Section 2.4. Conveyance of Title of the Brookhaven-Fieldstone Pool Site. Drees may retain legal title to the Brookhaven-Fieldstone Pool Site until the Brookhaven Applicable Date, but notwithstanding any provision herein, Drees hereby covenants that it will convey all of its right, title, and interest in and to the Brookhaven-Fieldstone Pool Site to the Corporation free and clear of all liens and other financial encumbrances exclusive of liens for taxes not yet due and payable not later than Brookhaven Applicable Date and such Brookhaven-Fieldstone Pool Site shall thereafter be the property of the Corporation. Notwithstanding any provision of this Declaration to the contrary, neither Drees, nor the Corporation, may convey legal title to the Brookhaven-Fieldstone Pool Site to any person or entity other than a Permitted Title Holder. No Dwelling Unit may be constructed upon the Brookhaven-Fieldstone Pool Site, and the Brookhaven-Fieldstone Pool Site may not be used for any other purpose other than a recreational amenity for the benefit of the Owners within the Brookhaven and Fieldstone Communities, rights-of-way, public utilities, or other public purposes. Notwithstanding any provision of this Declaration to the contrary, the Brookhaven-Fieldstone Pool Site shall remain private, and neither the Declarants' nor the Corporation's execution or recording of an instrument portraying the Brookhaven-Fieldstone Pool Site,

nor the doing of any other act by either of the Declarants is, or is intended to be, or shall be construed as, a dedication to the public of the Brookhaven-Fieldstone Pool Site.

Section 2.5. Density of Use. Declarants expressly disclaim any warranties or representations regarding the density of use of the Brookhaven-Fieldstone Pool Site or any facilities located thereon.

Section 2.6. Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Brookhaven-Fieldstone Pool Site and all improvements thereon and, except as otherwise provided herein, shall keep the Brookhaven-Fieldstone Pool Site in good, clean, attractive and sanitary condition, order and repair.

Section 2.7. Damage or Destruction by Owner. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

ARTICLE IV

Corporation; Membership; Voting; Functions

Section 4.1. Membership in Corporation. Declarants and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 4.2. Voting Rights. The Corporation shall have the following classes of membership, with the following voting rights:

4.2.1 Class A. Class A members shall be all Owners within the Brookhaven community except Class C members (unless the Class C membership has been converted to Class A membership as provided in the following Section 4.2.3, in which event Declarant shall then be a Class A member). Until the

Brookhaven Applicable Date, except for each matter which this Declaration expressly provides shall be approved by all classes of members of the Corporation, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Corporation. From and after the Brookhaven Applicable Date, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

4.2.2 Class B. Class B members shall be all Owners within the Fieldstone community except Class D members (unless the Class D membership has been converted to Class B membership as provided in the following Section 4.2.4, in which event Declarant shall then be a Class B member). Until the Fieldstone Applicable Date, except for each matter which this Declaration expressly provides shall be approved by all classes of members of the Corporation, the Class B membership shall have no votes with respect to any matter submitted to a vote of the members of the Corporation. From and after the Fieldstone Applicable Date, each Class B member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class B members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Corporation, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

4.2.3 Class C. Class C members shall be Drees and all successors and assigns of Drees as Declarant with respect to the Brookhaven Real Estate and which have been designated by Drees as Class C members in a written notice mailed or delivered to the resident agent of the Corporation. Until the Brookhaven Applicable Date, the Class C members shall be entitled to three (3) Class C memberships equating to three (3) votes on every matter submitted to the Corporation for every Lot owned by such Class C member and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein. The Class C membership shall cease and terminate as of the Brookhaven Applicable Date. Upon termination of Class C memberships, Class C memberships shall be converted to Class A memberships, and each former Class C member shall be entitled to one (1) Class A membership for each Lot owned and for each individually

identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

4.2.4. Class D. Class D members shall be Fieldstone and all successors and assigns of Fieldstone as Declarant with respect to the Fieldstone Real Estate and which have been designated by Fieldstone as Class D members in a written notice mailed or delivered to the resident agent of the Corporation. Until the Fieldstone Applicable Date, the Class D members shall be entitled to three (3) Class D memberships equating to three (3) votes on every matter submitted to the Corporation for every Lot owned by such Class D member and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein. The Class D membership shall cease and terminate as of the Fieldstone Applicable Date. Upon termination of Class D memberships, Class D memberships shall be converted to Class B memberships, and each former Class D member shall be entitled to one (1) Class B membership for each Lot owned and for each individually identified parcel of land shown upon, and identified as a Block on, any recorded subdivision plat of the Real Estate of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

4.2.5. Equivalency of Class A and Class B Members. Except with respect to the election of Directors as provided in Sections 5.5-5.7 hereof, Class A members shall be entitled to vote on every matter which a Class B member is entitled to vote upon, and visa versa, and, except as provided herein in Section 5.5-5.7, such Class A and Class B memberships shall be equivalent for every other purpose under this Declaration.

4.2.5 Equivalency of Class C and Class D Members. Except with respect to the election of Directors as provided in Sections 5.5-5.7 hereof, Class C members shall be entitled to vote on every matter which a Class D member is entitled to vote upon, and visa versa, and, except as provided herein in Section 5.5-5.7, such Class C and Class D memberships shall be equivalent for every other purpose under this Declaration.

4.2.6 Special. Until the Brookhaven Applicable Date, Drees, or any successor Declarant designated by Drees, may appoint three (3) additional Special members of the Corporation to serve on the "Initial Board" pursuant to Section 5.2 hereof. Until the Fieldstone Applicable Date, Fieldstone, or any successor Declarant of Fieldstone, may appoint two (2) additional Special members of the Corporation to serve on the "Initial Board" pursuant to Section 5.2 hereof. Persons who are Special members shall not be

deemed or considered members of the Corporation nor Owners of Lots for any purpose other than to qualify to act as members of the Initial Board. Special members shall have no voting rights on any matters submitted to a vote of the members (unless such Special member is also a Class A or Class B member, in which event his voting rights shall be governed by Section 4.2.1 or Section 4.2.2, respectively).

Section 4.3. Functions. The Corporation has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Brookhaven-Fieldstone Pool Site as and to the extent provided herein, to pay taxes and other charges assessed against and payable with respect to the Brookhaven-Fieldstone Pool Site, to pay insurance premiums and any other necessary expenses and costs in connection with the Brookhaven-Fieldstone Pool Site and to serve any purpose described in the Articles of Incorporation filed for such corporation with the Secretary of State and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE X

Board of Directors

Section 5.1. Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 5.2 hereof.

Section 5.2. Initial Board of Directors. The initial Board of Directors shall be composed of persons designated or to be designated by Declarants (herein referred to as the "Initial Board"), with three members of the Initial Board being appointed by Drees, or a successor Declarant designated by Drees (the "Brookhaven Initial Board Members"), and two members of the Initial Board being appointed by Fieldstone, or a successor Declarant designated by Fieldstone (the "Fieldstone Initial Board Members"). Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Brookhaven Initial Board Members shall hold office until the first meeting of the members of the Corporation occurring on or after the Brookhaven Applicable Date, and the Fieldstone Initial Board Members shall hold office until the first meeting of the members of the Corporation occurring on or after the Fieldstone Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior the times specified in the foregoing Section 5.2(a), every such vacancy shall be filled by a person appointed by respective Declarant who initially appointed the original member, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof

appointed by a Declarant to fill a vacancy, shall be deemed a Special member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation or an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

Section 5.3. Additional Qualifications. Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee, shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 5.4. Number of Board Members. The Board of Directors of the Corporation shall at all times consist of five (5) members.

Section 5.5. Classification of Board. Except as provided with respect to the Initial Board in Section 5.2 hereof, of the five members of the Corporation's Board of Directors, three (3) shall at all times be Owners within the Brookhaven community and shall be elected solely by a majority of the Class A members (the "Brookhaven Directors"). Except as provided with respect to the Initial Board in Section 5.2 hereof, of the five members of the Corporation's Board of Directors, two (2) shall at all times be Owners within the Fieldstone community and shall be elected solely by a majority of the Class B members (the "Fieldstone Directors").

Section 5.6. Term of Office and Vacancy. Subject to the provisions of Section 5.2, the entire membership of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first meeting of the members occurring on or after the Brookhaven Applicable Date and Fieldstone Applicable Date, respectively, as provided in Section 5.2. Each member of the Board of Directors, other than the Initial Board, shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 5.2 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board, provided that the replacement so selected for a Brookhaven Director shall also be an Owner within the Brookhaven community and the replacement so selected for a Fieldstone Director shall also be an Owner within the Fieldstone community, or by vote of the Owners in accordance with Section 5.7 if a Director is removed in accordance with

Section 5.7. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 5.7. Removal of Directors. A Brookhaven Director(s), except the members of the Initial Board, may be removed with or without cause only by vote of a majority vote of the Class A members entitled to vote at a special meeting of the Owners duly called and constituted for such purpose. A Fieldstone Director(s), except the members of the Initial Board, may be removed with or without cause only by a vote of the majority vote of the Class B members entitled vote at a special meeting of the Owners duly called and constituted for such purpose. In such cases, the successor shall be elected at the same meeting from eligible Owners nominated at the meeting, and shall be elected in the manner provided in Section 5.5 hereof. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 5.8. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Brookhaven-Fieldstone Pool Site and the management, maintenance, repair, upkeep and replacement thereof (unless the same are otherwise the responsibility or duty of the Owners), and the collection and disbursement of the Common Expenses. The Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary.

Section 5.9. Reserve for Replacements. The Board of Directors shall establish and maintain a fund to meet the cost of periodic maintenance, repairs, renewal and replacement of the Brookhaven-Fieldstone Pool Site (the "Reserve for Replacements") by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to met the cost of periodic maintenance, repair, renewal and replacement of the Brookhaven-Fieldstone Pool Site. In determining the amount, the Board shall take into consideration the expected useful life of the Brookhaven-Fieldstone Pool Site, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of such consultants as the Board may employ or otherwise consult. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Brookhaven Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the discretion Drees to meet the costs of periodic maintenance, repairs, renewal or replacement of the Brookhaven-Fieldstone Pool Site.

Section 5.10. Insurance, Taxes and Utilities. The Corporation shall maintain public liability and casualty insurance in prudent amounts insuring against risk of loss to the Corporation on account of injury to person or property and damage to property owned by the Corporation and shall pay all taxes assessed against such property and all utility charges incurred with respect to the Brookhaven-Fieldstone Pool Site.

Section 5.11. Powers of the Board of Directors. The Board Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

5.11.1 to employ a Managing Agent to assist the Board in performing its duties;

5.11.2 to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

5.11.3 to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

5.11.4 to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Brookhaven-Fieldstone Pool Site and to perform all other maintenance, upkeep, repair and replacement duties of the Corporation and the Board;

5.11.5 to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

5.11.6 to open and maintain a bank account or accounts in the name of the Corporation;

5.11.7. to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Brookhaven-Fieldstone Pool Site (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and

5.11.8 to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Brookhaven-Fieldstone Pool site with facilities for utility and similar services, including but not limited to cable television facilities and service.

Section 5.12. Limitation on Board Action. After the Brookhaven Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

5.12.1 contracts for replacing or restoring portions of the Brookhaven-Fieldstone Pool Site damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

5.12.2 proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

5.12.3 expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 5.13. Compensation and Expenses. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the Owners.

Section 5.14. Non-Liability of Directors and Officers. The Directors and officers of the Corporation shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 5.15. Additional Indemnity of Directors and Officers. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Corporation against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director or officer relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant,

attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

ARTICLE VI

Management

Section 6.1. Duties of Managing Agent. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

6.1.1 protection, surveillance and replacement of the Brookhaven-Fieldstone Pool Site, unless the same are otherwise the responsibility or duty of the Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

6.1.2 procuring of utilities used in connection with the Brookhaven-Fieldstone Pool Site (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

6.1.3 landscaping and maintenance and upkeep of the Brookhaven-Fieldstone Pool Site;

6.1.4 surfacing, paving and maintaining all streets and parking areas in the Brookhaven-Fieldstone Pool Site;

6.1.5 maintenance, repair and replacement of all signs, walls, pipes, lines, cables, conduits, pumps, gates, valves, grates, inlets, swales, equipment, structures, fixtures, and personal property of any type or description located in the Brookhaven-Fieldstone Pool Site;

6.1.6 assessment and collection from the Owners of the Owner's respective shares of the Common Expenses;

6.1.7 preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

6.1.8 preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with the delivery of the proposed annual budget for the current year;

6.1.9 keeping a current, accurate and detailed record of receipts and expenditures affecting the Brookhaven-Fieldstone Pool Site and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

6.1.10 procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board the insurance coverage required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

6.1.11 paying taxes and assessments levied and assessed against, and payable with respect to, the Brookhaven-Fieldstone Pool Site and paying any other necessary expenses and costs in connection with the Brookhaven-Fieldstone Pool Site; and

6.1.12 all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws, the Act, or any recorded subdivision plat of the Brookhaven-Fieldstone Pool Site, whether heretofore or hereafter recorded.

Section 6.2. Compensation of Managing Agent. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense. Any Director may be reimbursed for expenses incurred on behalf of the Corporation upon approval of a majority of the other Directors.

Section 6.3. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

ARTICLE VII

Real Estate Taxes; Utilities

Section 7.1. Real Estate Taxes. Any real estate taxes or other assessments against the Brookhaven-Fieldstone Pool Site shall be paid by the Corporation and treated as a Common Expense.

Section 7.2. Utilities. Utilities for the Brookhaven-Fieldstone Pool Site shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VIII

Maintenance, Repairs and Replacements

Section 8.1. By the Corporation. Maintenance, repairs, replacements and upkeep of the Brookhaven-Fieldstone Pool Site shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Brookhaven-Fieldstone Pool Site as it deems necessary,

provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Brookhaven-Fieldstone Pool Site, if, due to the willful, intentional or negligent acts or omissions of an Owner or any of his guests, tenants, contractors, subcontractors, licensees, agents, members of his family, or any other Person having or gaining access to the Owner's Lot with the knowledge and consent of such Owner, damage shall be caused to the Brookhaven-Fieldstone Pool Site, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner, upon demand by the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements the Brookhaven-Fieldstone Pool Site for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purpose.

ARTICLE IX

Assessments and Budget

Section 9.1. Creation of Assessments. There are hereby created assessments for Corporation expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in Section 9.7. There shall be three (2) types of assessments: (a) Regular Assessments to fund Common Expenses for the benefit of all Members of the Corporation; and (b) Special Assessments as described in Section 9.5 below. Declarants, for each Lot now or hereafter owned by them, hereby covenant, and each Owner of a Lot by acceptance of a deed or recorded contract of sale therefore, whether or not it shall be so expressed in such deed contract of sale, is deemed to covenant and agree to pay these assessments.

Section 9.2. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 9.3. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Corporation at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall such meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Brookhaven-Fieldstone Pool Site, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Brookhaven-Fieldstone Pool Site. Such replacement reserve fund for capital expenditures and replacement and repair of the Brookhaven-Fieldstone Pool Site shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Boone County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the meeting of the Corporation at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, Regular based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 9.4. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of

the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final budget, including reserve funds as herein above provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

9.4.1 if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion or such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

9.4.2 if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers

his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 10.2 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Section 9.5. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on a given Lot, and, in the case of multiple Lots, such Assessment shall be prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

Section 9.6. Failure of Owner to Pay Assessments.

9.6.1 No Owner may exempt himself from paying Regular Assessments or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Brookhaven-Fieldstone Pool Site, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Brookhaven-Fieldstone Pool Site or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the

Corporation as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover any Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Corporation, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly quoted or published by Huntington Bank, of Boone County, Indiana (or if said Bank is no longer in existence, then such rate charged by another national bank in Boone County, Indiana selected by the Board).

9.6.2 Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectable from all Owners (including the party acquiring the subject Lot from which it arose).

Section 9.7. Initial Budgets and Assessments. Upon the first conveyance of a Lot in the Fieldstone community to an Owner other than Fieldstone, a successor Declarant designated by Fieldstone and/or a builder intending to initially construct a Dwelling Unit upon the Lot, the Owner shall pay to the Corporation an initial working capital assessment of Four Hundred Fifty (\$450) (the "Initial Assessment"). Upon the first conveyance of a Lot in the Brookhaven community to an Owner other than Drees, the Owner shall also pay to the Corporation the Initial Assessment. The Initial Assessment shall be a one-time charge and shall be payable by the applicable Owner within three (3) business days after closing at which such Owner first acquires title to the Lot. The Initial Assessments shall be considered Regular Assessments for all other purposes under this Declaration. Except for the Initial Assessment, notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, the Regular Assessments as to any Lot may not exceed \$125 per Lot for the first calendar year following the recordation of this Declaration, \$150 per Lot for the second calendar year following the recordation of this Declaration, and \$175 per Lot for the third calendar year following recordation of this Declaration; provided, however, that Regular Assessments for any Lot within the Fieldstone community may also not exceed the Regular Assessments for Lots within the Brookhaven community. Regular Assessments within the Brookhaven community and the Fieldstone community shall be made on a uniform basis without regard to the limitations set forth in the preceding sentence, and no Lot in the Fieldstone community shall be assessed more in Regular Assessments than any Lot in the Brookhaven community and visa versa. Notwithstanding any provision in this Declaration to the contrary, in the event that any Regular Assessments (including, without limitation, as so capped during the first three years pursuant to first sentence of this Section 9.7) shall in any manner be insufficient to fund the Common Expenses of the Corporation and the Maintenance Costs of the Brookhaven-Fieldstone Pool Site, until the Brookhaven Applicable Date, Drees shall fund any such shortfall. Further, notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise until the Fieldstone Applicable Date, no Regular Assessments or Special Assessments or other charges shall be owed or payable by Fieldstone, or any successor Declarant designated by Fieldstone, with respect to any Lot or other portion of the Real Estate owned by Fieldstone, or any successor Declarant designated by Fieldstone, while the same is owned by Fieldstone or any successor Declarant designated by Fieldstone, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Fieldstone Real Estate owned by Fieldstone, or any successor Declarant designated by Fieldstone. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Fieldstone, or a successor Declarant designated by Fieldstone, to an Owner other than Fieldstone, or a successor Declarant designated by

Fieldstone, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Corporation against each Lot so conveyed by Fieldstone, or a successor Declarant designated by Fieldstone, shall be paid by each purchaser upon such conveyance.

ARTICLE X

Mortgages

Section 10.1. Notice to Corporation. Any Owner, who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

Section 10.2. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 9.4 hereof.

Section 10.3. Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 10.4. Right of First Refusal. The Corporation DOES NOT have the “right of first refusal” to purchase any Dwelling Unit. Any right of “right of first refusal” subsequently granted to the Corporation through amendment of the Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any “right of first refusal” subsequently added in any Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate must not impair the rights of a first mortgagee to:

10.4.1 Foreclose or take title to a Lot pursuant to the remedies in the mortgage;

10.4.2 Accept a deed assignment in lieu of foreclosure in the event of default by a mortgagor; or

10.4.3 Sell or lease a unit acquired by default by the mortgagee.

ARTICLE XI

Insurance

Section 11.1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Brookhaven-Fieldstone Pool Site in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Brookhaven-Fieldstone Pool Site. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain “all risk” coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby). All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection

with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 11.2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover the Brookhaven-Fieldstone Pool Site and shall insure the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Brookhaven-Fieldstone Pool Site, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 11.3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of

Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 11.4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice (accompanied by copies of such policies or any changes thereto, or certificates indicating the coverages included therein) shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation, to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 11.5. Insurance by Owners. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XII

Casualty and Restoration

Section 12. In the event of damage to or destruction of any part of the Brookhaven-Fieldstone Pool Site due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Brookhaven-Fieldstone Pool Site, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Brookhaven-Fieldstone Pool Site so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Brookhaven-Fieldstone Pool Site to as near as possible the same condition as it existed immediately prior to the damage or destruction.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary. Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Brookhaven-Fieldstone Pool Site shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Brookhaven-Fieldstone Pool Site was originally constructed.

ARTICLE XIII

Amendment

Section 13.1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

13.1.1 Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

13.1.2 Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owner having in the aggregate at least a majority of the votes of all Owners.

13.1.3 Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

13.1.4 Adoption. Prior to the Brookhaven Applicable Date, any proposed amendment to this Declaration must be approved separately by (a) the Class C Member, **and** (b) the Class D Member, if prior to the Fieldstone Applicable Date, or if after the Fieldstone Applicable Date, seventy-five percent (75%) of

the Class B Members. Prior to the Fieldstone Applicable Date, any proposed amendment to this Declaration must be approved separately by (c) the Class D Member, and (d) the Class C Member, if prior to the Brookhaven Applicable Date, or if after the Brookhaven Applicable Date, seventy-five percent (75%) of the Class A Members. After both the Brookhaven Applicable Date and the Fieldstone Applicable Date, any proposed amendment to this Declaration must be approved by a separate vote of not less than seventy-five percent (75%) of the Class A Members and not less than seventy-five percent (75%) of the Class B Members. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

13.1.5 Special Amendments. No amendments to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Section 11.1 of this Declaration with respect to casualty insurance to be maintained by the corporation, or (3) the provisions of Section 12.1 of this Declaration with respect to reconstruction or repairs of the Brookhaven-Fieldstone Pool Site in the event of fire or any other casualty or disaster, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

13.1.6 Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Boone County, Indiana, and such amendment shall not become effective until so recorded.

ARTICLE XIV

Acceptance and Ratification

Section 14. All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or the Brookhaven Real Estate or the

Fieldstone Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or any part of the Brookhaven Real Estate or Fieldstone Real Estate in any manner shall be subject to this and guidelines applicable thereto as each may be amended or supplemented from time to time.

ARTICLE XV

Negligence

Section 15. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

ARTICLE XVI

Benefit and Enforcement

Section 16. This Declaration and the Restrictions shall run with and bind the Brookhaven Real Estate and the Fieldstone Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Boone County, Indiana and expiring December 31, 2026, after which time they shall be automatically extended for successive periods of ten (10) years each, unless by vote of separate vote both (a) a majority of the then Class A Members and (b) a majority of the then Class B Members it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Corporation, the Owners, the Committee, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

ARTICLE XVII

Miscellaneous

Section 17.1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 17.2. HUD Amendment Approval. All other provisions of the Declaration, Corporation Articles, Corporation By-Laws or any other document governing the development and administration of the Real Estate notwithstanding, so long as there is a Class C or Class D membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Urban Housing and Urban Development:

20.2.1 Annexation of additional properties other than the Additional Real Estate;

20.2.2 Dedication of the Brookhaven-Fieldstone Pool Site; and

20.2.3 Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 17.3. Assignment. Declarants may assign or otherwise transfer any and all of their rights as Declarants in whole or in part.

Section 17.4. Condemnation, Destruction or Liquidation. The Corporation shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Brookhaven-Fieldstone Pool Site, or from the termination of the development. Each Owner, by his acceptance of a deed, appoints the Corporation as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Corporation for the benefit of the Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

Section 17.5. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any the Brookhaven-Fieldstone Pool Site or by abandonment of his Lot.

Section 17.6. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 17.7. Indemnity. The Owner of each Lot shall indemnify and hold Declarant 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 be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

Section 17.8. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 17.9 Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, Drees Premier Homes, Inc. and Fieldstone, LLC, Declarants herein, has executed this Declaration of Covenants, Conditions and Restrictions as of the date first above written.

DREES PREMIER HOMES, INC, an Indiana corporation

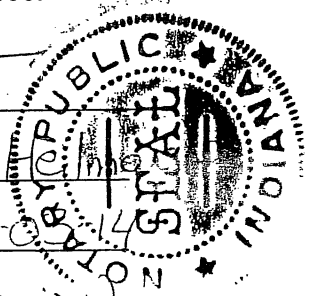
By: [Signature]
Printed: John Talbot
Title: Land Acquisition and Development Manager

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared John Talbot, known to me to be the Land A&D Manager of Drees Premier Homes, Inc., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions as such officer acting for and on behalf of said limited partnership, and who having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 15th day of December, 2006.

[Signature]
Printed: Vickey L
My Commission Expires: 11-03-14
County of Residence: Marion



FIELDSTONE, LLC, an Indiana corporation

By: [Signature]

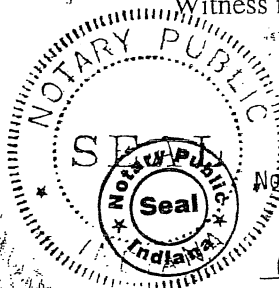
Printed: Thomas R. McHaffie

Title: Member

STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

Before me, a Notary Public in and for said County and State, personally appeared Thomas R. McHaffie known to me to be a Member of Fieldstone, LLC, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions as such officer acting for and on behalf of said limited partnership, and who having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 15 day of December, 2006.



[Signature]

Printed: LAURA A. REICHOLD

My Commission Expires: 6-22-07

County of Residence: HAMILTON

I affirm, under the penalty of perjury, that I have taken reasonable care to redact each Social Security number in this document.

[Signature]

This instrument prepared by MELISSA R. GARRARD, Attorney at Law
222 West South Street, Suite 120, P.O. Box 478, Lebanon, Indiana 46052

EXHIBIT A
BROOKHAVEN
"REAL ESTATE"

PART OF THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 18 NORTH,
RANGE 2 EAST, BOONE COUNTY, INDIANA, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID QUARTER; THENCE NORTH
00 DEGREES 44 MINUTES 59 SECONDS WEST ALONG THE WEST LINE OF
SAID QUARTER A DISTANCE OF 1541.45 FEET; THENCE NORTH 88
DEGREES 17 MINUTES 40 SECONDS EAST PARALLEL WITH THE SOUTH LINE
OF SAID QUARTER A DISTANCE OF 2658.35 FEET TO THE EAST LINE OF
SAID QUARTER; THENCE SOUTH 00 DEGREES 37 MINUTES 44 SECONDS
EAST ALONG SAID EAST LINE A DISTANCE OF 1541.50 FEET TO THE
SOUTHEAST CORNER OF SAID QUARTER; THENCE SOUTH 88 DEGREES 17
MINUTES 40 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF
2655.11 FEET TO THE POINT OF BEGINNING, CONTAINING 94.00 ACRES,
MORE OR LESS.

FIELDSTONE
EXHIBIT B - LEGAL DESCRIPTION

LAND DESCRIPTION

Part of the Southeast Quarter of Section 13, Township 18 North, Range 2 East, Boone County, Indiana, being more particularly described as follows:

Beginning at the Southwest Corner of the Southeast Quarter of said Section 13; thence North 00 degrees 37 minutes 44 seconds West (assumed bearing) along the West Line of said Southeast Quarter a distance of 1273.85 feet; thence North 89 degrees 22 minutes 16 seconds East a distance of 67.15 feet; thence North 70 degrees 43 minutes 19 seconds East a distance of 200.00 feet; thence South 19 degrees 16 minutes 41 seconds East a distance of 24.67 feet; thence North 70 degrees 43 minutes 19 seconds East a distance of 150.00 feet; thence North 19 degrees 16 minutes 41 seconds West a distance of 100.00 feet; thence South 88 degrees 01 minutes 30 seconds East a distance of 126.39 feet; thence North 88 degrees 12 minutes 05 seconds East a distance of 419.58 feet; thence South 19 degrees 48 minutes 53 seconds East a distance of 46.77 feet; thence North 69 degrees 35 minutes 02 seconds East a distance of 155.92 feet to a curve having a radius of 175.00 feet, the radius point of which bears South 78 degrees 13 minutes 55 seconds West; thence Northerly along said curve an arc distance of 2.29 feet to a point which bears North 77 degrees 28 minutes 55 seconds East from said radius point; thence North 89 degrees 24 minutes 28 seconds East a distance of 243.67 feet; thence South 00 degrees 35 minutes 32 seconds East a distance of 1445.98 feet to the South Line of said Southeast Quarter; thence South 88 degrees 18 minutes 13 seconds West along the South Line of said Southeast Quarter a distance of 1325.04 feet to the BEGINNING POINT, containing 42.636 acres more or less.