9809805625
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 02-05-1998 At 02:56 pm.
DEC COV RES 71.00

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, LIENS AND RESERVATIONS OF EASEMENTS FOR KINGSBOROUGH

Prepared by:

P. Thomas Murray, Jr., Esq.
7351 Shadeland Station, Suite 185
Indianapolis, IN 46256
(317) 842-8550

TABLE OF CONTENTS

Article 1 - Definitions PAGE

1.1 Additional Property 2
1.2 Articles and Articles of Incorporation 2
1.3 Assessments 2
1.4 Association 2
1.5 Board 2
1.6 Builder 2
1.7 By-Laws 2
1.8 Common Expenses 3
1.9 Common Area 3
1.10 Community Area 3
1.11 Declaration 3
1.12 Default 3
1.13 Developer 3
1.14 Director 3
1.15 Drainage Board 3
1.16 Drainage System 3
1.17 Dwelling Unit 4
1.18 Entry Ways 4
1.19 Kingsborough 4
1.20 Lake 4
1.21 Lake Control Structures 4
1.22 Lot 4
1.23 Member 4
1.24 Owner 4
1.25 Phase or Section 4
1.26 Plat 4
1.27 Property 4
1.28 Roadway 5

Article 2 - Association Members and Voting

2.1 Members 5
2.2 Classes and Voting Rights 5
2.3 Administration by Association 5
2.4 Compliance by Owners 6

Article 3 - Assessments

3.1 Covenant of Payment; Creation of Lien 6
3.2 Initial Assessment 6
3.3 Annual Assessment 6
3.4 Calculation of Annual Assessment 7
3.5 Interest & Late Charges 7
3.6 Purpose of Annual Assessment 7
3.7 Special Assessment (Operating Shortfalls) 7
3.8 Individual Assessment 7
3.9 Creation of Lien and Personal Obligation of Assessments 8

3.10 Enforcement of Lien 8
3.11 Purchaser at Foreclosure Sale 8

Article 4 - Covenants and Restrictions

4.1 Real Covenants 9
4.2 Residential 9
4.3 Activity Restrictions 9
4.4 Right of Association to Remove or Correct Violations 11

Article 5 - Community Area

5.1 Rights of Enjoyment in Common Area 11
5.2 Subordination to Mortgage or Other Lien 12
5.3 Community Area 12
5.4 Maintenance and Management of Community Area 13
5.5 Use of Community Area by Developer 14
5.6 Warranty 14

Article 6 - Lot Maintenance

6.1 General Maintenance 14
6.2 Maintenance of Common Drives 14
6.3 Private Sewer Line 14
6.4 Private Drainage Easements and Private Storm Sewer Easements 15

Article 7 - Easements and Licenses

7.1 Utility and Support Easements 15
7.2 Community Area Easement 15
7.3 Owner License 15
7.4 Encroachment Areas 15
7.5 Drainage 15
7.6 Self-Help Easement 16
7.7 Prohibition 16
7.8 Easement to Run with the Land 16
7.9 Drainage Easement 16
7.10 Sewer Easements 17
7.11 Utility Easements 17
7.12 Landscape Maintenance Access Easements 17
7.13 Non-Access Easements 17
7.14 Sign Landscape Easements 17
7.15 Community Area Access Easement 17
7.16 General Easement 17
7.17 Public Health and Safety Easements 18
7.18 Drainage Board Easement 18
7.19 Crossing Underground Easements 18
7.20 Developer's Easement to Correct Drainage 18
7.21 Water Retention 19

Article 8 - Architectural Control

8.1 Architectural Control 19
8.2 Enforcement 19
8.3 Fees 19
8.4 Approval of Plans by Developer 20
8.5 Handicap Accessibility 20

Article 9 - Annexation and Alterations to the Property

Article 10 - Insurance

10.1 Maintenance of Liability Insurance 20
10.2 Other Insurance 21
10.3 Insurance Limitation 21
10.4 Dwelling Unit Insurance 21
10.5 Premiums 21
10.6 Insurance Proceeds 21
10.7 Casualty 21

Article 11 - Real Estate Taxes and Assessments

11.1 Real Estate Taxes 21
11.2 Allocation 22
11.3 Common Area 22

Article 12 - Miscellaneous

12.1 Duration 22
12.2 Assignment by Developer 22
12.3 Amendment 22
12.4 Personal Liability 23
12.5 Notices 23
12.6 Enforcement 23
12.7 Severability 24
12.8 Conflicts 24
12.9 Rights of Mortgage Holders 24
12.10 Condemnation 24
12.11 Annexation 25
12.12 Non-Liability of Developer 25

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, LIENS AND RESERVATIONS OF EASEMENTS FOR KINGSBOROUGH

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, LIENS AND RESERVATIONS OF EASEMENTS FOR KINGSBOROUGH ("Declaration") is made this 19TH day of JANUARY, 1998, by Zaring Homes of Indiana, LLC, an Indiana limited liability company ("Developer"), under the following circumstances:

WHEREAS, a certain "Declaration of Covenants and Restrictions--Kingsborough" was executed by Kingsborough, LLC, an Indiana limited liability company (hereafter, the "Original Declarant"), on December 20, 1996, and filed with the Hamilton County Recorder on December 24, 1996, as **Instrument No. 9609653688** (hereafter, the "Original Declaration").

WHEREAS, through the recording of the Original Declaration, the Original Declarant established a residential community in Hamilton County, Indiana known as Kingsborough.

WHEREAS, as more fully described in the Original Declaration, the Original Declaration pertained to the real estate which is more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein by reference.

WHEREAS, the Original Declarant assigned to Zaring Homes of Indiana, LLC (the "Developer" herein) all of the Original Declarant's rights in and to the Original Declaration and the real estate described in Exhibits "A" and "B" attached hereto through a certain "Assignment of Interest" executed on August 13, 1997, and filed with the Hamilton County Recorder on August 19, 1997, as **Instrument No. 9709734105**.

WHEREAS, pursuant to the Assignment of Interest, the Developer herein has succeeded to all of the right, title and interest in and to Kingsborough Community Association, Inc. ("Association"), and all rights as Declarant under the Original Declaration.

WHEREAS, Developer is now the owner of certain real property located in Hamilton County, Indiana, more particularly described in Exhibit A attached to this Declaration (the "Property").

WHEREAS, Developer desires to declare that the Property shall be held, sold and conveyed subject to the provisions of this Amended and Restated Declaration.

WHEREAS, the Kingsborough Community Association, Inc. has been formed as an Indiana nonprofit corporation (the "Association"), which shall be responsible for the administration and enforcement of the provisions of this Declaration.

WHEREAS, Developer owns or may acquire other real property in the vicinity of the Property that may be annexed to the Property and subjected to this Declaration (the "Additional Property").

WHEREAS, the Developer deems it desirable to amend and restate the Original Declaration.

WHEREAS, pursuant to Article 20 of the Original Declaration, the Developer, as sole owner of the Property and the Additional Property, hereby amends and restates the Original Declaration pursuant to the terms and conditions below.

NOW, THEREFORE, for the purposes of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer declares that the Property shall be held, occupied, sold and conveyed subject to this Declaration and be binding on all parties having any right, title and interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

In addition to any definitions contained elsewhere in this Declaration, the following terms used in this Declaration shall have the meanings set forth in this Article 1.

1.1 Additional Property. "Additional Property" means other real property in the vicinity of the Property which is owned and/or may be acquired by Developer which may be annexed to Kingsborough, the legal description for which is attached hereto as Exhibit "B".

1.2 Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, as the same may be amended from time to time, filed with the Secretary of the State of Indiana, incorporating Kingsborough Community Association, Inc. as a nonprofit corporation under the provisions of the Indiana Nonprofit Corporations Act of 1991, as amended, codified at Indiana Code Sec. 23-17-1-1, *et seq.*

1.3 Assessments. "Assessments" means the charges established by Article 3 of this Declaration.

1.4 Association. "Association" means Kingsborough Community Association, Inc., an Indiana nonprofit corporation, which will own, operate and/or maintain the Community Area, and any successor organization that owns, operates and/or maintains the Community Area.

1.5 Board. "Board" means the Board of Directors of the Association.

1.6 Builder. "Builder" means any person or entity, other than the Developer, who, in the ordinary course of business, constructs a Dwelling Unit with or without accessory structures (i) for resale to, or on behalf of, a third party, or (ii) for their own use or the use of their family. A Builder may or may not be an Owner.

1.7 By-Laws. "By-Laws" means the Code of By-Laws of the Association, as the same may be amended from time to time.

1.8 Common Expenses. "Common Expenses" means those expenses described in Article 3.6 hereof.

1.9 Common Area. "Common Area" means any land shown as such on the Plat.

1.10 Community Area. "Community Area" means all real and personal property owned by, leased to or under the control of the Association and landscaping, berm mounds, garden walls or any monumentation located within any easement area or dedicated right of way as set forth on any subdivision plat of Kingsborough for the common use and enjoyment of the Owners.

Community Areas also means to include (i) the Lakes and Lake Control Structures, (ii) the improvements in the Drainage System, (iii) the recreational center which is located in Common Area No. 3 as delineated on the Secondary Plat for Kingsborough, Section One, (iv) the Entry Ways, (v) the rights-of-way/Roadways and improvements therein to the extent not maintained by public authority, (vi) fences serving as amenities located in either the Common Areas or the Landscaping Easements, (vii) sidewalks as described in Article 5.3(f) below, and (viii) any area of land (1) shown on the Plat as a Common Area, (2) described in any recorded instrument prepared by Developer or its agents, or (3) conveyed to or acquired by the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

1.11 Declaration. "Declaration" means this instrument as the same may be amended from time to time as hereinafter provided.

1.12 Default. "Default" means any violation, breach or any failure to comply with, this Declaration or the By-Laws, or other standards, rules or regulations adopted pursuant to this Declaration.

1.13 Developer. "Developer" means exclusively Zaring Homes of Indiana, LLC, an Indiana limited liability company, its successors and assigns.

1.14 Director. "Director" means any person elected or appointed to the Board.

1.15 Drainage Board. "Drainage Board" means the Hamilton County Drainage Board, Hamilton County, Indiana, its successors or assigns.

1.16 Drainage System. "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in Kingsborough and designed for the purpose of controlling, retarding or expediting the drainage of surface and subsurface waters from, over and across Kingsborough, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

1.17 Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by persons or a family.

1.18 Entry Ways. "Entry Ways" means the structures constructed as an entrance to Kingsborough or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Property.

1.19 Kingsborough. "Kingsborough" means all phases or sections of the record plat for Kingsborough, a subdivision in Hamilton County, Indiana, and consisting of all the property from time to time made subject to the provisions of this Declaration.

1.20 Lake. "Lake" means any lake as depicted on the Plat and "Lakes" means all such lakes.

1.21 Lake Control Structures. "Lake Control Structures" means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all a part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.

1.22 Lot. "Lot" means any parcel of the Property shown as such on the Secondary Plat of Kingsborough. Unless the context otherwise requires, the term "Lot" shall be deemed to include both the parcel of land and the Dwelling Unit on that land, if any.

1.23 Member. "Member" means any Owner who is a member of the Association as provided herein, in the Articles of Incorporation and/or in the By-Laws.

1.24 Owner. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including purchasers on land installment contracts and including contract sellers on other forms of executory contracts for the sale of a Lot, but excluding those having such interest merely as security for the performance of an obligation.

1.25 Phase or Section. "Phase" or "Section" shall mean all of the land area encompassing a group of Lots as designated on a recorded subdivision Secondary Plat, including streets and Community Area.

1.26 Plat. "Plat" means the final Secondary Plat of the Property and, if applicable, the Additional Property, recorded in the Office of the Recorder of Hamilton County, Indiana. The Plat for Kingsborough Section 1 was filed with the Office of the Recorder of Hamilton County, Indiana on December 24, 1996, as **Instrument No. 9653689.** The Plats are incorporated herein by reference.

1.27 Property. "Property" means that real property located in Hamilton County, Indiana, more particularly described in Exhibit A to this Declaration.

1.28 Roadway. "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not been accepted for maintenance by a public authority.

ARTICLE 2 - ASSOCIATION MEMBERS AND VOTING

2.1 Members. Every Owner shall be a member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of a Lot. Developer shall be a member of the Association so long as it qualifies as a Class A or Class B member as defined in Article 2.2.

2.2 Classes and Voting Rights. The Association shall have two (2) classes of voting memberships:

A. CLASS A – Class A members shall be all the Owners, except the Developer. Except as provided below, Class A members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, the vote for such Lot shall be exercised as the majority of such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot notwithstanding the number of persons who may own an interest therein. The Board shall be entitled to suspend the voting rights of a Member in the Association during the time period in which the Member has breached the provisions of this Declaration or any of the By-Laws, rules or regulations of the Association.

B. CLASS B – The Class B member shall be the Developer, and such member shall be entitled to such number of votes as will constitute seventy-five percent (75%) of the total voting power of the Association, so long as the Class B membership continues to exist. The Class B membership shall continue to exist, and shall be converted to Class A membership upon the "Applicable Date", which shall be the first to occur of:

(a) Upon the annexation to this Declaration of the Property described in Exhibit A and the Additional Property by Developer and the closing of the sale of seventy-five percent (75%) of the Lots included therein to individual Lot owners;

(b) Upon the expiration of seven (7) years after the date this Amended & Restated Declaration is filed for record. Provided, further, that nothing herein shall be construed to prohibit the Class B member from converting its Class B membership to Class A membership with the results set forth above at any time earlier by written statement executed by Developer and delivered to the Association.

2.3 Administration by Association. Subject to the rights retained by Developer pursuant to this Declaration, the ownership, operation and maintenance of the Community Area and of the administration and enforcement of this Declaration shall be by the Association in accordance with the terms and provisions of this Declaration.

2.4 Compliance by Owners. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, By-Laws, rules and regulations of the Association and the decisions and resolutions of the Association or its representatives, all as lawfully amended from time to time. Failure to comply with any such provisions, rules and regulations, decisions and resolutions shall be grounds for an action to recover sums due and for damages and injunctive and other appropriate relief.

ARTICLE 3 - ASSESSMENTS

3.1 Covenant of Payment; Creation of Lien. Each Owner of a Lot (other than Developer, except as hereinafter provided), by acceptance of a deed or other instrument of conveyance for a Lot, agrees to pay to the Association the Assessments provided in this Article 3. The Assessments (including interest, late charges, costs of collection and attorneys fees, as provided below) shall be a charge and a continuing lien on each Lot and shall also be the personal obligation of the Owner of each Lot, to the extent and for the period provided in this Article 3.

3.2 Initial Assessment. Upon the initial conveyance of a Lot by the Developer or a Builder to the Owner, the Owner shall pay an initial assessment of Three Hundred Dollars ($300.00). The initial assessment shall be used as working capital for the Association and not collected in lieu of any installments of the annual assessment. The initial assessment is non-refundable. No initial assessment shall be due on any Lot purchased from an Owner other than the Developer or a Builder, nor shall any initial assessment be due on any Lot purchased from the Developer by a Builder. The initial assessment may be waived at the Board's sole discretion.

3.3 Annual Assessment. The Association shall be entitled to collect from all Owners an annual assessment for Common Expenses and other purposes described in Articles 3.6 and 5.3 below. The annual assessment or prorated portion thereof for each Lot Owner in each respective Phase or Section of Kingsborough shall commence on the first day of the month following the conveyance of the first Lot from Developer to an Owner in that Phase or Section of Kingsborough. Upon the initial conveyance of a Lot in a Phase or Section to an Owner, the Developer shall convey all Common Area within that specific Kingsborough Phase or Section to the Association. The annual assessment shall be due and payable on such date or dates as determined by the Board. That portion of the annual assessment allocated to Lots owned by the Developer or a Builder may, at the Developer's discretion, be paid in equal monthly installments. It shall be the duty of the Board to determine the amount of the annual assessment allocated to each Lot. Notwithstanding anything herein to the contrary, the annual assessment allocated to Lots owned by the Developer, if they are not occupied, shall be equal to fifty percent (50%) of the annual assessment allocated to Lots owned and occupied by others. The Board shall make reasonable efforts to determine the assessment amount for the following year, by the first day of December of each year, and shall at that time, prepare a roster of the Lots and the portion of the assessment allocated thereto, which shall be open for inspection by any Owner upon reasonable notice to the Board. Written notice of the assessment shall thereupon be sent to the Owner within seven (7) days after a billing therefor. The Board shall be entitled to change the method of collection of assessments as it may, from time to time, elect.

Failure to act within any time period established in the Declaration shall not affect the rights of the Board to collect assessments as provided herein.

3.4 Calculation of Annual Assessment. Each Owner shall be responsible for and shall pay that portion of the annual assessment allocable to the Owner's respective Lot as determined by the Board. The Board shall have the right to require the annual assessment to be paid in periodic installments during the year or in a single installment as determined by the Board. Each calendar year, the Board will establish a budget setting forth the estimate by the Board of the Common Expenses for the upcoming year. The annual assessment shall equal the estimate of the Common Expenses for the year, together with a reasonable addition to the reserves of the Association. The Board during any calendar year shall be entitled to increase the annual assessment for that year if it should determine that the estimated or current assessment is insufficient to cover Common Expenses for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. In the event that the annual assessment is less than the Common Expenses incurred for said year, the Board shall notify the Owners and furnish the Owners with a statement of the additional sums due and owing by the Owners, and the same shall be immediately due and payable.

3.5 Interest & Late Charges. Delinquent assessments shall bear interest at such interest rates as are from time to time established by the Board (which interest rate shall not exceed the maximum legal interest rate allowed to be charged to an individual under the laws of the State of Indiana). The Board shall have the right to establish a late charge for delinquent payments in addition to, or in lieu of, interest charges.

3.6 Purpose of Annual Assessment. The annual assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses; the operation, maintenance, and repair of Community Area; other portions of the Property that the Association is obligated to maintain or repair under this Declaration; and the performance of all other duties and obligations to be performed by the Association under this Declaration. The Common Expenses may include, but are not limited to, the costs of employees' wages, materials, equipment, supplies, insurance premiums for the insurance of Community Area, officers and Directors liability insurance, the cost of reasonable reserves for contingencies, replacements, and working capital, taxes and assessments on the Community Area, management fees, legal and accounting fees, capital improvements and additions for Community Area, and all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration or the By-Laws.

3.7 Special Assessment (Operating Shortfalls). If in any year the Common Expenses exceed the income from the annual assessment, the amount of any operating deficit may, at the Board's sole option, be charged to the Owners by means of a special assessment.

3.8 Individual Assessment. If any portion of the Community Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of an Owner or Owner's guest or invitee, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair and replacement is in the sole discretion of the Board. The cost so incurred by the Board shall be assessed as an individual assessment against all Lots owned by the Owner responsible for the damage. No such assessment may be levied against Lots owned by the Developer without the written consent of Develõper.

3.9 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, shall be deemed to have covenanted and agreed to pay to the Association the Assessments. The Assessments, together with interest, late charges and costs, and reasonable attorney's fees for collection, shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment was made. The personal obligation for a delinquent Assessment shall not pass to a successor in title, unless expressly assumed by such successor.

The Association shall also have the authority, through the Board, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any provisions of this Declaration, which breach shall require the expenditure of time or money, or both, by the Association for the repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each Assessment levied by the Association on his Lot within ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to the Owner at the address of the Lot, the amount of such charge shall become a lien upon said Owner's Lot and shall continue to be such lien, until fully paid.

Assessments becoming due and payable during the period the Owner owns a Lot, together with any related penalties and costs of collection, shall constitute the personal obligation of that Owner until paid. This personal obligation shall not pass to an Owner's successor in title unless the obligation is perfected pursuant to Article 3.10 or expressly assumed by the successor in title. If the obligation is so assumed by a successor in title, the successor and the former Owner shall be jointly and severally liable for payment of the amount due and payable. The Association may perfect the lien by recording a notice of lien with the Recorder of Hamilton County, Indiana.

The lien shall be prior to all other liens and encumbrances whatsoever, except real estate taxes and assessments, liens of record in favor of the United States of America, the State of Indiana, or other governmental instrumentalities to the extent made superior by applicable law, and all bona fide recorded first mortgages.

3.10 Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage. In any enforcement proceeding, the amount that may be recovered by the Association shall include all costs of the proceeding, and, to the extent permitted by law, reasonable attorney's fees. In any foreclosure sale, the Association may purchase the Lot.

3.11 Purchaser at Foreclosure Sale. Any purchaser of a Lot at a foreclosure sale shall automatically become a member of the Association and shall be subject to all of the provisions of this Declaration. When the purchaser of a Lot acquires title to the Lot as a result of a foreclosure action, the purchaser shall not be solely liable for the share of the Assessments chargeable to the acquired Lot that became due prior to the acquisition of title to that Lot. Instead, any unpaid

share of the Assessments that became due and payable prior to the date of purchase shall be deemed to be part of the Assessments collectible from all of the Lots, including that of the purchaser.

ARTICLE 4 - COVENANTS AND RESTRICTIONS

4.1 Real Covenants. The provisions of this Declaration are for the benefit of Developer and Owners as provided herein, and run with the land and shall be binding on all parties and all persons claiming ownership under them, except as otherwise specifically provided herein.

4.2 Residential. All of the Lots shall be used for private residential purposes exclusively, and for no other purpose. No professional or custom home industry shall be conducted in or on any part of any Lot or improvement thereon without the written approval of the Board. These restrictions shall not apply to Developer in connection with model improvements, use and sales offices.

4.3 Activity Restrictions. Except for the activities of Developer prior to the date on which the Developer has sold and conveyed all Lots in Kingsborough:

A. No noxious or offensive trade shall be carried on or upon any Lot or within any improvement situated upon the Property, nor shall anything be done thereon which may or may become an annoyance or nuisance to the neighborhood or the Owners.

B. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot, except that this shall not prohibit the keeping of dogs, cats, caged birds or aquarium fish or other domestic pets provided they are not kept, bred, or maintained for commercial purposes, and provided they are kept according to the rules and regulations of the Association. No Owner shall permit or conduct an activity which may violate any applicable law affecting any Lot.

C. No burning of any trash, accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

D. Except as provided herein, no commercial vehicle, trailer, trucks of more than one ton, motorcycle, camper, camp truck, horse trailer, boat or the like shall be kept or used on the Property unless totally enclosed within an improvement or garage, so as not to be visible from the exterior thereof. No junk vehicle, inoperative or unlicensed motor vehicle, structure of a temporary character, mobile home, tent, shack, barn, or other outbuilding shall be kept or used upon any Lot, nor (except for bone fide emergencies) shall the major repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon.

E. Trash and garbage containers shall not be permitted to remain in the public view except on days of trash collection.

F. No signs of any character shall be erected, posted, or displayed upon any Lot, except street and identification signs installed by the Association or the Developer and excepting one (1) temporary real estate sign not to exceed six (6) square feet in area erected upon any Lot, and which advertises the same upon the market for sale or rent. This restriction shall not apply to Builders. Builders may erect such signs as are authorized by the Developer.

G. No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with an easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction of flow of any drainage channels.

H. The placement, installation, use and maintenance of antennas, including satellite dishes, shall be subject to rules and regulations promulgated by the Board of Directors.

I. No vegetable garden shall be larger that 300 square feet and must be maintained so as not to be unsightly. No Owner shall be allowed to store more than two cords of firewood on any Lot. Firewood must be neatly stacked and free of unsightly debris.

J. No oil drilling, quarrying, or mining operation shall be permitted on any Lot.

K. No above-ground swimming pools shall be permitted on any Lot.

L. Swingsets, jungle-gyms, playhouses or similar yard equipment, basketball goals and/or courts, or any other recreational facilities may not be placed, installed or maintained on any Lot without prior approval of the Board, except for one-piece "tot pools" of less than one and one-half feet (1 1/2') in height. Tennis courts shall not be permitted.

M. Mailboxes shall be black galvanized steel, rural mailbox, medium model 1 - 1 ½, mounted on a 4x4 rough sawn cedar post or such other uniform design as approved by the Board. Mailboxes may be located within the signage, entrance way and landscaping easement.

N. (i) No fence or any portion thereof may be installed on that part of any Lot which is closer to the street than the primary rear wall of the Dwelling Unit on the Lot. The "primary rear wall" shall be determined by lineal feet of wall area at the rear of the Dwelling Unit, and garage walls shall not be included in the calculation of the primary rear wall if the garage extends further to the rear of the Dwelling Unit than does the living area of the Dwelling Unit.

(ii) No fence may be installed on any Lot in the rear yards of any Dwelling Unit unless constructed of wood in a "split rail" or "post and board" design; provided that any fence enclosing a swimming pool and located entirely within thirty (30) feet of such pool may be of a design and construction as is from time to time required by applicable government authorities for enclosure of swimming pools.

Notwithstanding the foregoing, Lexington "post and board" fences, identical to that installed in the Community Areas, is permissible.

(iii) No fencing shall be erected in a Landscape Easement, Drainage Easement, Sign Easement, or in a Common Area except by the Developer. Any fencing along 141st Street or Ditch Road shall be constructed of the same material, and be substantially the same height, the same color and the same design and the same appearance as the Entry Way fencing and shall be constructed only with the advance approval of the Association's Board of Directors.

O. There shall be no violation of any rule or regulation for the use of any Community Area which may from time to time be adopted by the Board. The Board is hereby in this Declaration authorized to adopt such rules.

P. The Owner of a Lot upon which a portion of the Community Area is located shall not alter the Community Area and shall not otherwise adversely affect or interfere with the intended use of the Community Area.

Q. There shall be no violation of any additional restrictions which may be, from time to time, reasonably imposed on the Owners by the Association in their use and enjoyment of the Lots.

4.4 Right of Association to Remove or Correct Violations. The Association and/or Developer may, in the interest of the general welfare of the Owners, and after reasonable notice to an Owner, enter upon any Lot within reasonable hours on any day for the purpose of directing Owner to correct any violations or breach or any attempted violation of any of the covenants and restrictions contained in Article 4, or violation of the rules and regulations of the Board, or for the purpose of directing an Owner to abate anything herein defined as a prohibited use or nuisance; provided, however, that no such actions shall be taken without a resolution of the Board. Before any improvements constructed may be altered or demolished pursuant to this Article, judicial proceedings must be brought against the Owner, except any signs may be removed which are prohibited per Article 4.3 (F) and except as set forth above.

ARTICLE 5 - COMMUNITY AREA

5.1 Rights of Enjoyment in Common Area. Each Owner shall have a right and a nonexclusive easement for the use and enjoyment of the Common Area. This right and easement shall be appurtenant to, and shall pass with the title to the Lot. Each Owner shall have a perpetual right of ingress and egress across the Common Area to that Owner's Lot, which shall be appurtenant to the ownership of the Lot. These rights and privileges shall be subject, however, to the following:

A. The right of the Board to levy the Assessments.

B. The right of the Board to adopt, enforce and amend reasonable rules and regulations pertaining to the use of the Common Area.

C. The right of the Board to suspend the right of any Owner to use any of the Common Area that is recreational in nature for any infraction of the rules and

regulations relating to the Common Area, which period of suspension shall not exceed 60 days per infraction.

D. The right of the Board to suspend the right of any Owner to use any of the Common Area that is recreational in nature for the nonpayment or delinquency of any Assessments until paid.

E. All other easements, restrictions, and rights to which the Property is subject, including, but not limited to, any easements granted or reserved pursuant to Article 8.

F. The right of the Board to convey such Common Area to eliminate any existing setback violation, encroachment or zoning violation created by the original construction of Developer, free, clear and unencumbered from any and all easements and/or licenses granted pursuant to the Declaration.

5.2 Subordination to Mortgage or Other Lien. The rights and privileges provided in this Article shall be subordinate to any mortgage or other lien given by the Association for purposes of acquiring, improving or maintaining the Community Area.

5.3 Community Area. The Community Area, including, but not limited to, the following portions of Kingsborough, shall be maintained, managed and regulated as provided below:

(a) The Lakes. Developer shall convey title to the Lakes to the Association. The Association shall be responsible for maintaining the Lakes. Each Owner of a Lot which abuts a Lake shall be responsible at all time for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of a Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structure may be extended into a Lake without the prior written consent of the Board of Directors and such governmental authority as may have jurisdiction thereover. No swimming or ice skating will be permitted in a Lake except if and to the extent authorized by the Board of Directors. Except as otherwise provided herein, no individual using a Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Developer, the Association and their employees, agents and assigns as set forth in the Declaration. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Developer, the Association and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owner's Lot. Developer shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

(b) The Lake Control Structures. Developer shall convey title to the Lake Control Structures to the Association. The Association shall be responsible for maintaining the

Lake Control Structures to the extent not maintained by the Drainage Board, with such costs being a Common Expense of the Association.

(c) Drainage System. The Association shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the date the Drainage System is accepted as a legal drain by the Drainage Board. The costs thereof shall be a Common Expense of the Association. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board, and each Owner shall maintain any drainage swale located upon his or her Lot which is part of a neighborhood drainage system.

(d) Maintenance of Entry Ways, Landscape Easements and Common Area Easements and Common Area. The Association shall maintain the Entry Ways and the Landscaping Easements and all improvements and plantings thereon, and the costs thereof shall be assessed as a Common Expense of the Association. Grass, trees, shrubs, and other plantings located on an Entry Way or a Landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Kingsborough, or a part thereof, or a planting area within Kingsborough. All entrance signs located on an Entry Way shall be maintained at all times in good condition.

(e) Landscaping. All landscaping within the road right-of-way is subject to the approval of the appropriate governmental authority which, initially, is the Hamilton County Board of Commissioners. All such landscaping shall be maintained by the Association.

(f) Sidewalks. Community Area includes only those sidewalks which either: (1) abut Common Area; (2) are located within Common Area; or (3) run along 141st Street or Ditch Road. All other sidewalks shall not be considered part of the Community Area, and shall be maintained by the Owners of the Lots which abut the sidewalks.

(g) Recreational Facilities. All recreational facilities situated in the Common Areas shall be maintained by the Association.

5.4 Maintenance and Management of Community Area. The Association shall provide for the maintenance, repair, replacement and management of all Community Area as provided in Article 3.6 and in Article 5.3 above. The Association may fulfill this responsibility and any other duties and obligations of the Association under this Declaration by contracting with any professional management company upon such terms and conditions as shall be agreed upon by the Board and the management company.

Until such time as the Developer has sold and conveyed all Lots within Kingsborough, the design of landscaping and plant, shrub and tree varieties installed on and/or comprising part of the Community Area shall be maintained as initially installed unless otherwise approved by the Developer. Thereafter, modifications to landscaping design and plant, shrub and tree varieties shall be approved by the Board.

5.5 Use of Community Area by Developer. In addition to the rights described in Article 5.1, Developer and its affiliates shall have the right during the period Developer owns Lots to use the Community Area, free of charge, for promotional, construction, management, maintenance, repair, remodeling, rental and sales purposes.

5.6 Warranty. Developer warrants, in accordance with industry standards, its construction of improvements located on or comprising part of the Community Area. Developer makes no warranty, expressed or implied, for landscaping, seeding and sod, painting and caulking, expansion cracks in concrete, radon levels, shrinkage of wood and drywall nail pops, if applicable. In the case of equipment or appliances installed as part of the Community Area (including but not limited to furnaces, air conditioners, heat pumps, dishwashers, water filters, water softeners, water pumps, refrigerators, freezers, trash compactors, disposals, alarm systems, fire extinguishing systems, and irrigation systems, if any), the express or implied warranty of the manufacturer of supplier shall satisfy the Developer's obligations, and Developer's warranty established by this Article shall be limited to installation of such equipment or appliances.

Any warranty or warranties given pursuant to this Article shall be in effect for a period of one year, and shall commence on the date upon which the construction of Community Area in issue is completed, or upon which the Community Area in issue is submitted to the provisions of this Declaration or upon which the Community Area in issue is conveyed to the Association, whichever occurs first.

ARTICLE 6 - LOT MAINTENANCE

6.1 General Maintenance. Subsequent to transfer of a Lot to an Owner, the Owner thereof shall keep the Lot well-landscaped and in a good and well-maintained condition. Each Lot Owner shall maintain the sidewalk which abuts his or her Lot.

6.2 Maintenance of Common Drives. All Owners who share a common driveway for ingress and egress to their Lots shall participate in the cost and maintenance, repair or replacement of said common driveway based on their allocable use thereof. An Owner's allocable use shall be calculated by taking the longest distance within the common driveway which is being used for access by the Owner and dividing that distance by the sum of all the longest distances of every Owner's use of the common driveway. The maintenance, repair or replacement of a common driveway shall be agreed upon by the Owners of said Lots. In the event Owners fail to agree on the manner in which such maintenance, repair or replacement of the common driveway is to be performed, or the amount of each Owner's allocable share thereof, then the same shall be determined by the Board upon application by any interested Owner. The decision of the Board shall be final and non-appealable. No parking shall be permitted on any portion of the common driveway which serves another Lot.

6.3 Private Sewer Line. The maintenance, repair or replacement of utility distribution lines and connections or private sewer laterals (which connect a Lot to sewer main) and are located on or exclusively service the Lot shall be the responsibility of the Owner using the line, connections or laterals. If more than one Owner is using a line, connection or lateral and the Owners fail to agree on a formula to determine their share of the cost or in the event the Owners fail to agree on the manner in which such maintenance, repair or replacement shall be done, then the Board shall

make such determination upon application by an interested Owner. The decision by the Board shall be final and non-appealable.

6.4 Private Drainage Easements and Private Storm Sewer Easements. The Association shall be responsible for the care and maintenance of all storm water control improvements located on the Community Area and/or within private drainage easements and/or private storm sewer easements (including detention basin structures, outlet structures, paved channels, headwalls and any and all other storm drainage structures, but not including lawn maintenance) which are located outside the public right of way and as referred to on any record Plat of Kingsborough except for those specifically assumed by the applicable municipality. If applicable, all such care and maintenance shall comply with and confirm to the requirements, standards and specifications of the applicable municipality.

ARTICLE 7 - EASEMENTS AND LICENSES

7.1 Utility and Support Easements. Developer hereby grants, coveys, and reserves non-exclusive easements over the Property as indicated on any record Plat of Kingsborough for the purpose of (i) the construction, reconstruction, alteration, and maintenance of all facilities necessary to provide utility services, including without limitation, telephone, water, gas, sanitary and storm sewer services to each Lot and the Community Area, and (ii) the cutting, grading and maintaining of slopes, retention walls and other supports, both for the benefit of each Lot and the Community Area. Developer further reserves the right to grant easements or modify existing easements over any portion of the Property for any of the purposes set forth in this Article 7.1.

7.2 Community Area Easement. Developer hereby grants, conveys, establishes and reserves an exclusive easement for the benefit of the Developer and Association over the Community Area for the purpose of the construction, reconstruction, alteration, maintenance and use thereof by Developer and the Association. Developer further grants, conveys, establishes and reserves a non-exclusive easement over that portion of the property not defined as the Community Area for the temporary occupation thereof in order to facilitate the exercise of any of the foregoing easements by either Developer or Association.

7.3 Owner License. Developer hereby grants, conveys and reserves unto each Owner a non-exclusive license over the Community Area designated by Developer, or the Association upon the termination of the Class B membership therein, as defined in Article 2 for the use and enjoyment of the individual Owners and of the Lots, including without limitation, utilities, and sidewalks, roadways and similar amenities, if any.

7.4 Encroachment Areas. Each Owner is hereby declared to have an easement, and the same is hereby declared, granted and reserved by the Developer, on behalf of itself, its successors and assigns, over all adjoining Lots, and the Common Area for the purpose of errors, errors in original construction, settlement or shifting of a building, or any other similar cause. There shall be a continuing easement for the maintenance of said encroachment. In no event shall an easement for encroachment be created in favor of an Owner, if said encroachment occurred as part of the construction other than original construction on the Lot by Developer or a Builder.

7.5 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue,

without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Kingsborough may be included in a legal drain established by the Drainage Board. In such event, each Lot in Kingsborough will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains, downspout and water softeners, shall be connected whenever feasible into a subsurface drainage tile. Downspout and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

7.6 Self-Help Easement. In the event that an Owner should violate any of the provisions of the Declaration, the Association and the Developer are hereby granted a non-exclusive easement over the Lot of the violating Owner so as to permit the Association to occupy the same and to rectify such breach as set forth in Articles 4.4 or 12.6 hereof.

7.7 Prohibition. No Owner, other than Developer, shall grant an easement, right of way or license over a Lot, without the prior consent of the Association's Board of Directors.

7.8 Easement to Run with the Land. All easements and rights described in this Declaration shall run with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, the Association, and any Owner, purchaser, mortgagee or other person now or in the future having an interest in any part of the Property.

7.9 Drainage Easements (D.E.) are created and designated on the Plat to provide paths and courses for area and local storm drainage either overland or in adequate underground conduit, to serve the needs of Kingsborough and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Within these areas, any Owner whose Lot abuts the Lake in Common Area No. 2 hereby grants to the Drainage Board, the Clay Township Regional Waste District, the Developer and the Association the right to enter this easement area for the limited purpose of maintaining the Lake and Lake Control Structures. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Developer, and by the Association, but neither Developer nor the Association shall have any duty to undertake any such construction or reconstruction. In the event the Developer or the Association undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no circumstances shall the Developer or the Association be liable for any damage or destruction to any fences, structures, or the improvements which are damaged, destroyed or remodeled by Developer or the Association, or

their agents or employees as a result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

7.10 Sewer Easements (S.E.) are created and designated on the Plat for the use of the local government agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Kingsborough for the purpose of installation and maintenance of sewers that are a part of said system.

7.11 Utility Easements (U.E.) are created and designated on the Plat for the use of Developer, the Association and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

7.12 Landscape Maintenance Access Easements (L.M.A.E.) or Landscape Easements (L.E.) are created for the use by Developer, the Board of Directors and the Association for the planting and maintenance of trees, shrubs and other plantings.

7.13 Non-Access Easements (N.A.) are depicted on the Plat and are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Developer during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements.

7.14 Sign Landscape Easements (S.L.E.) There are strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. Developer hereby reserves unto itself during the time when it owns any Lots, and thereafter unto the Association, such easements for the purposes of providing signs which either (i) advertise Kingsborough, and the availability of Lots, the identity of participating builders, or events, or (ii) identify Kingsborough. Developer reserves unto itself during the time when it owns any Lots, and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping. mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Developer or the Association. No fences shall be erected or maintained in the area of such easements, except as may be installed by the Developer.

7.15 Community Area Access Easement The Developer and the Association shall have an undefined easement over any and all Lots for the purpose of gaining access to any Community Area in order to maintain or repair said Community Area. All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer, landscape or utility easement, but a paved driveway necessary to provide access to a Lot from a public street or Roadway shall not be deemed a "structure" for the purpose of this Restriction.

7.16 General Easement. There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to

water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if Developer or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and Developer shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in Kingsborough except as proposed and approved by Developer prior to the conveyance of the first Lot in the Property to an Owner or by the Board of Directors thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, Developer or the Association shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Dwelling Unit has been constructed.

7.17 Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

7.18 Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter Kingsborough and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any legal drain.

7.19 Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways or Lake Access Easements, and neither Developer nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

7.20 Developer's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Property, Developer reserves a blanket easement and right on, over and under the ground within Kingsborough to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. If such grading or cutting of trees, bushes or shrubbery is in an area designated on the Plat as a Drainage Easement, then Developer's obligation to restore the affected real estate shall be limited to re-grading and re-seeding, and neither the Developer nor its agents, employees or assignees shall be liable for any damage or destruction to any improvements, structures or fencing located on or in such existing Drainage Easement. If such grading or cutting of trees, bushes or shrubbery is not in an area already designated on the Plat as a Drainage Easement, Developer will restore the affected Property to its original condition as nearly as practicable. Developer shall give reasonable notice

of its intention to take such action to all affected Owners, unless in the opinion of Developer an emergency exists which precludes such notice.

7.21 Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (D.E.) on such Owner' Lot.

ARTICLE 8 - ARCHITECTURAL CONTROL

8.1 Architectural Control. Except for initial construction of Dwelling Units and improvements by a Builder or the Developer prior to the time Developer has sold and conveyed all Lots in Kingsborough, which construction and improvements shall be under the exclusive control of Developer, no building, fence, wall or other structure or improvement of any kind shall be commenced, erected or maintained upon the Property, nor shall any exterior addition or change (including any change in color) or alteration thereof be made until a detailed set of plans and specifications showing the nature, shape, and heights, shall be submitted to and approved by the Board. Such plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to any or all of the following: a site plan; proposed landscaping; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; evidence of conformity with building codes; the exterior design, color and the location of the proposed improvements in relation to the surrounding improvements and topography of the surrounding Property. The Board's review of the plans and specifications shall include the following considerations: the continued maintenance of Kingsborough as a residential community of high aesthetic quality; the promotion of the health, safety and welfare of all Owners; the preservation, beautification and maintenance of the Property and all structures thereof; the preservation and promotion of environmental quality; and the assurance of adequate water, sewer and drainage facilities and other utilities and services. The Board shall either (i) approve the plans and specifications or (ii) disapprove them or (iii) approve them with conditions or qualifications. The approval of the plans and specifications by the Board shall not constitute a representation or warranty by it as to the quality of the workmanship, materials or architectural or engineering design covered thereunder, or the proposed work's feasibility or compliance with any applicable laws. In the event the Board fails to approve or disapprove such design and location within thirty (30) days after plans and specifications have been submitted to it, approval will not be required and this Article 8 will be deemed to have been fully complied with. Such submission to the Board shall be in person, or by registered or certified mail, with return receipt, directed to the Association manager, or if there is no manager, to its President.

8.2 Enforcement. In the event of a violation of the provisions of this Article 8, the Association shall have the right to enforce this Article by any proceedings authorized in this Declaration, the By-Laws, or by law.

8.3 Fees. The Board may charge reasonable fees for the processing of said plans and specifications and any inspections. Any modifications to be undertaken to the exterior of a Dwelling Unit and Lot or the Community Area shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract, the terms, conditions and specifications of which shall be approved by the

Board. The approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members, the Board is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Dwelling Unit and Lot, including the Community Area.

8.4 Approval of Plans by Developer. Each Builder, prior to initial construction of a Dwelling Unit and/or accessory structures on a Lot, shall secure the Developer's approval of plans and specifications (as defined in Article 8.1, above). Approval of plans and specifications by the Developer shall be conducted in the same manner and in the same time frame as set forth in Article 8.1, above. The Developer shall have all legal and equitable remedies available under this Declaration to enforce its decision against Builders, Owners, or their successors.

8.5 Handicap Accessibility. Notwithstanding the other provisions herein, an Owner of any Dwelling Unit and Lot may, at his expense, have such reasonable modifications made to the interior and exterior of his Dwelling Unit and Lot and the Community Areas as may be necessary to afford the physically handicapped access thereto.

ARTICLE 9 - ANNEXATION AND ALTERATIONS TO THE PROPERTY

The provisions of this Declaration are imposed upon the Property, the Lots and the Dwelling Units thereon. Developer shall have the right at any time to remove any portion of the Property from the scope of this Declaration or to subject the Additional Property to the provisions of the Declaration by the execution and recording a supplement to the Declaration.

The Developer may annex to this Declaration the Additional Property without the consent of the members of the Association, within seven (7) years after the date this Amended and Restated Declaration is filed for record. However, the Developer is not bound to annex any of said property to this Declaration, and until such time as any of said property is annexed, the same shall not be subject to the provisions of this Declaration.

Any annexations made pursuant to this Article 9 through a supplement to this Declaration filed with the Recorder of Hamilton County, Indiana, shall extend this Declaration to such annexed property. The Supplementary Declaration may contain additional covenants, conditions, restrictions, easements and liens as the Developer shall deem appropriate for the purpose of completing the development of the Property.

ARTICLE 10 - INSURANCE

10.1 Maintenance of Liability Insurance. The Association, as a Common Expense, shall insure itself, the Board, Developer, the professional management company (if any), the Association's professional management company (if any), all Owners and members of their respective families and other persons residing with them in the residence, their tenants, and all persons lawfully in possession or control of the Lots, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from, the Common Area and the portions of the Lots to be maintained by the Association, such insurance to afford

protection with limits of not less than $500,000.00 with respect to bodily injury, disease, illness or death suffered by any one person and of not less that $1,000,000.00 with respect to bodily injury, disease, illness or death suffered by more than one person in any one occurrence, and not less than $500,000.00 with respect to damage to or destruction of property arising out of one accident.

10.2 Other Insurance. The Association shall have a right to maintain property insurance on both real and personal property, officers and Directors liability insurance and such insurance or extended coverage insurance insuring the Community Area in such amounts, against such perils, for such time periods and under such circumstances as the Association through its Board determines, in their sole discretion, is appropriate and in the best interest of Kingsborough.

10.3 Insurance Limitation. Except as otherwise provided in Article 10.1, the policies of insurance maintained by the Association pursuant to this Article 10 shall not insure against liability for personal injury or property damage arising out of or relating to the Lots. Each Owner shall be responsible for obtaining insurance with respect to any Lot and improvements thereon and the contents thereof and any personal liability to the extent not covered by insurance provided in this Article 10. All insurance procured by the Association shall have such deductibles as the Board shall, from time to time, determine necessary and appropriate.

10.4 Dwelling Unit Insurance. The Association shall have no responsibility or liability to obtain or maintain any type of insurance upon any Dwelling Unit constructed on Lots and such insurance shall be the sole responsibility of the Owner.

10.5 Premiums. All premiums paid for any insurance procured by the Association hereunder shall be deemed to be a Common Expense.

10.6 Insurance Proceeds. Any and all insurance proceeds received by the Association shall be held by the Association and used for the benefit of the Owners, the Common Area and the Lots as the Board shall, from time to time, determine. No Owner shall have any right in or to the proceeds of any such insurance.

10.7 Casualty. In the event that any portion of the Community Area is damaged or destroyed, the Association shall restore the affected portion of the Community Area to substantially its condition existing immediately prior to such damage or destruction to the extent reasonably practicable. If such damage or destruction is not covered by insurance maintained by the Association or the proceeds are insufficient to fully restore the affected portion of the Community Areas as a result thereof, then the Association shall effect the restoration thereof in such a manner as the Association may determine appropriate in its sole judgment and shall levy a special assessment against each Owner for any deficiency in a proportion to its respective share thereof.

ARTICLE 11 - REAL ESTATE TAXES AND ASSESSMENTS

11.1 Real Estate Taxes. The Owners shall be responsible for and pay all taxes and assessments, general and special, levied or imposed upon the Lot and its improvements.

11.2 Allocation. Prior to the time the Auditor or Assessor of Hamilton County, Indiana establishes separate tax parcels for each Lot, Developer shall allocate the real estate taxes and assessments upon the Property among and against the Lots and against the remainder of the Property in a fair and equitable manner so as to allocate the real estate taxes and assessments charged in common to the various Lots as well as the remainder of the Property within Kingsborough. The allocation by Developer made in accordance with the terms hereof shall be binding upon all Owners.

11.3 Common Area. Taxes and assessments, general and special, charged against the Common Area shall be deemed a Common Expense. Assessments, general and special, charged against Kingsborough shall be paid by the Owners as set forth in Article 3 hereof.

ARTICLE 12 - MISCELLANEOUS

12.1 Duration. Except where permanent or perpetual easements or other permanent rights or interests are herein created, the terms and provisions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument signed by the Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate this Declaration.

12.2 Assignment by Developer. Developer shall be entitled to assign to any party by a separate recorded instrument or instruments all or a portion of the rights and benefits contained in this Declaration which are reserved to the Developer. In the event of any assignment, said party shall be deemed to be a "Developer" to the extent of the rights and benefits hereunder which are assigned. Any such rights and benefits of the Developer contained herein shall not be assignable or transferable without an express assignment hereof by Developer. Such assignments may transfer rights and benefits exclusively or non-exclusively.

12.3 Amendment. The Declaration may be amended, from time to time as follows:

A. Developer:

(i) Developer hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2015. Such amendments shall be in writing, executed by Developer, and recorded with the Recorder of Hamilton County, Indiana. Developer shall give notice in writing to such Owners. Except to the extent authorized elsewhere in this Declaration, Developer shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Developer has previously conveyed without the consent of the Owner of such Lot.

(ii) Developer reserves the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does grant to the Developer a Power of Attorney coupled with an interest which shall run with the title to the Lot, and shall be

irrevocable except by Developer for a period of seven (7) years from the date of recording hereof, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lot Owners, or to the extent necessary to enable Developer to meet any other reasonable need or requirement including those associated with completion of the development of the Property and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall be effective upon recording.

B. General. This Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Association acting pursuant to the authority granted by not less than seventy-five percent (75%) of the votes of the Class A members cast at a meeting duly called for the purpose of amending the Declaration and, (ii) the Developer, so long as the Developer still owns at least one (1) Lot. Any amendment must be recorded and shall be effective upon recording.

12.4 Personal Liability. Nothing in this Declaration, the Articles, the By-Laws, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any Director or any officer of the Association acting in their capacity as such, for the maintenance, repair or replacement of any Dwelling Unit or part of the Community Area or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an officer or Director, or both, from any liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.

12.5 Notices. Any notice required to be sent to a Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage prepaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

12.6 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain and/or to enjoin violation and/or to recover damages, and against the Property to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation of the provisions of the Articles or By-Laws, the Association shall have the right to enforce any covenant or restriction by proceedings authorized in this Declaration, the Articles, By-Laws or by law.

12.7 Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.

12.8 Conflicts. In the case of any conflict between this Declaration and either the Articles or By-Laws of the Association, this Declaration shall control.

12.9 Rights of Mortgage Holders. Any mortgagee of a Lot may pay any taxes or other charges which are in default and which may or have become a charge against the Common Area or any part thereof any may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for such Common Area, and such mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.

The holder, insurer or guarantor of the first mortgage on any Lot shall be entitled to timely written notice of the following:

A. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
B. Any sixty (60) days delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
C. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
D. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.
E. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

A mortgage holder, insurer or guarantor shall send a written request to the Association, stating both its name and address and the Lot number or address upon which it holds a mortgage, in order to obtain the foregoing notices.

12.10 Condemnation.

A. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Owner and the holder of the first mortgage, to the extent of their respective interests. Each Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

B. In the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgages, as their first interests appear.

12.11 Annexation. Each Owner of a Lot in Kingsborough by the acceptance of a deed thereto, shall be deemed to have waived such owner's right to remonstrate against annexation of all or any portion of Kingsborough by the City of Carmel at any time.

12.12 Non-Liability of Developer. Developer shall not have any liability to an Owner or to any other person with respect to drainage on, over, or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Dwelling Unit is constructed and of the Builder of such Dwelling Unit, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Developer free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Developer shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Developer, and no duty of, or warranty by, Developer shall be implied by or inferred from any term or provision of this Declaration.

IN WITNESS WHEREOF, Developer has executed this instrument at the time and place set forth above.

Signed and acknowledged
in the presence of:

ZARING HOMES OF INDIANA, LLC

Name: _____

Print Name: RONALD G. GRATZ

Title: SECRETARY-TREASURER

STATE OF Ohio)
) SS:
COUNTY OF Hamilton)

The foregoing instrument was acknowledged before me this 19th day of January, 1998, by Ronald G. Gratz and _____, the Secretary-treasurer and _____, respectively, of Zaring Homes of Indiana, LLC, an Indiana limited liability company, on behalf of the company.

Witness my hand and Notarial Seal this 19th day of January, 1998.

Stuart B. Frankel
Notary Public

NOTARIAL SEAL
STUART B. FRANKEL, Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03

Signature

My Commission Expires:

Residence County: Hamilton

s:\kingsbor\declar.doc
printed January 13, 1998

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., Eads & Murray, P.C., Attorneys at Law, 7351 Shadeland Station, Suite 185, Indianapolis, IN 46256. (317) 842-8550.

KINGSBOROUGH
"PROPERTY"

A part of the Northwest Quarter of Section 22. Township 18 North, Range 3 East in Hamilton County, Indiana being more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section thence North 90 degrees 00 minutes 00 seconds West (assumed bearing) along the South line thereof 525.00 feet to the POINT Of BEGINNING of this description; thence continuing North 90 degrees 00 minutes 00 seconds West along said South line 450.25 feet; thence North 00 degrees 00 minutes 00 seconds East 361.29 feet; thence North 35 degrees 45 minutes 42 seconds West 165.22 feet; thence North 46 degrees 39 minutes 45 seconds West 157.10 feet; thence North 26 degrees 57 minutes 10 seconds East 10.16 feet; thence South 61 degrees 22 seconds 03 minutes East 103.03 feet; thence North 34 degrees 40 minutes 01 seconds East 135.00 feet to a point on a nontangent curve concave southwesterly the radius point of said curve being South 34 degrees 40 minutes 01 seconds West 625.00 feet from said point; thence northwesterly along said curve 26.32 feet to a point on said curve the radius point of said curve being South 32 degrees 15 minutes 15 seconds West 625.00 feet from said point; thence North 32 degrees 15 minutes 15 seconds East 50.00 feet, thence North 10 degrees 39 minutes 26 seconds East 177.36 feet; thence North 00 degrees 59 minutes 47 seconds East 366.55 feet; thence North 38 degrees 59 minutes 47 seconds East 12.17 feet; thence North 89 degrees 58 minutes 52 seconds East 600.00 feet; thence South 33 degrees 15 minutes 34 seconds East 44.52 feet; thence North 53 degrees 37 minutes 10 seconds East 193.52 feet to a point on a nontangent curve concave southwesterly the radius point of said curve being South 57 degrees 17 minutes 59 seconds West 125.00 feet from said point; thence northwesterly along said curve 5.10 feet to a point on said curve the radius point of said curve being South 54 degrees 57 minutes 44 seconds West 125.00 feet; thence North 54 degrees 57 minutes 44 seconds East 258.33 feet; thence South 00 degrees 59 minutes 36 seconds West 1,132.73 feet; thence South 89 degrees 49 minutes 12 seconds West 514.20 feet; thence South 02 degrees 38 minutes 11 seconds West 377.46 feet to the place of beginning of this description containing 26.009 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

EXHIBIT "A"

KINGSBOROUGH
"ADDITIONAL PROPERTY"

A part of the Northwest Quarter of Section 22, Township 18 North, Range 3 East in Hamilton County, Indiana being more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence North 90 degrees 00 minutes 00 seconds West (assumed bearing) along the South line thereof 975.25 feet to the POINT OF BEGINNING; thence North 00 degrees 00 minutes 00 seconds East 361.29 feet; thence North 35 degrees 45 minutes 42 seconds West 165.22 feet; thence North 46 degrees 39 minutes 45 seconds West 157.10 feet; thence North 26 degrees 57 minutes 10 seconds East 10.16 feet; thence South 61 degrees 22 minutes 03 seconds East 103.03 feet; thence North 34 degrees 40 minutes 01 seconds East 135.00 feet to a point on a nontangent curve concave southwesterly the radius point of said curve being South 34 degrees 40 minutes 01 seconds West 625.00 feet from said point; thence northwesterly along said curve 26.32 feet to a point on said curve the radius point of said curve being South 32 degrees 15 minutes 15 seconds West 625.00 feet from said point; thence North 32 degrees 15 minutes I 5 seconds East 50.00 feet; thence North 10 degrees 39 minutes 26 seconds East 177.36 feet; thence North 00 degrees 59 minutes 47 seconds East 366.55 feet; thence North 38 degrees 59 minutes 47 seconds East 12.17 feet; thence North 89 degrees 58 minutes 52 seconds East 600.00 feet; thence South 33 degrees 15 minutes 34 seconds East 44.52 feet; thence North 53 degrees 37 minutes 10 seconds East 193.52 feet to a point on a nontangent curve concave southwesterly the radius point of said curve being South 57 degrees 17 minutes 59 seconds West 125.00 feet from said point; thence northwesterly along said curve 5.10 feet to a point on said curve the radius point of said curve being South 54 degrees 57 minutes 44 seconds West 125.00 feet; thence North 54 degrees 57 minutes 44 seconds East 258.33 feet to a point on the East line of said Quarter Section; thence North 00 degrees 59 minutes 36 seconds East along said East line 90.04 feet; thence South 89 degrees 58 minutes 52 seconds West 1312.43 feet; thence South 00 degrees 59 minutes 47 seconds West 611.08 feet; thence North 90 degrees 00 minutes 00 seconds West parallel with the aforesaid South line 1312.45 feet to a point on the West line of said Quarter Section; thence South 00 degrees 59 minutes 58 seconds West along said West line 660.00 feet; thence South 90 degrees 00 minutes 00 seconds East parallel with the aforesaid South line 924.00 feet; thence South 00 degrees 59 minutes 47 seconds West 330.00 feet to a point on the aforesaid South line; thence South 90 degrees 00 minutes 00 seconds East along said South line 725.74 feet to the place of beginning, containing 68.407 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

EXHIBIT "B"