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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MUIRFIELD**

**AN ADDITION TO THE  
CITY OF NEW ALBANY  
FLOYD COUNTY, INDIANA**

**August 10, 2004**

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR MUIRFIELD**

STATE OF INDIANA     §  
                                  §  
COUNTY OF FLOYD    §

KNOW BY ALL THESE PRESENT:

This Declaration is executed and effective as of August 10, 2004 by MAINSTREAM DEVELOPMENT, INC., an Indiana Corporation (“Declarant”).

**RECITALS:**

1. Declarant is the owner of certain real property in Floyd County, Indiana, described on Exhibit “A” attached hereto and made a part hereof, that is the subject of this Declaration (“Property”).
2. Declarant has subdivided and improved the real property in accordance with the New Albany City Plan Commission Docket C-08-03, otherwise known as the Muirfield Subdivision, the Plat of which is recorded in the Office of the Floyd County Recorder as Plat No. 1254.
3. Declarant desires to construct upon the Property single-family detached residences, and accordingly, has executed this Declaration to impose the covenants, conditions, restrictions, and easements herein described upon the Property.

**SECTION A  
ESTABLISHMENT**

**A.1 Establishment of Covenants, Conditions and Restrictions.** Declarant hereby imposes upon the Property the covenants, conditions, restrictions, liens and easements set forth in this Declaration (“Covenants”) for the purposes of establishing a general scheme for development of the Property, enhancing the value of the Lots and Residences (defined below), and establishing restrictions for residential use for the benefit of Declarant and the Owners (defined below). Declarant does not guarantee that all of these purposes will be accomplished through the creation and imposition of the Covenants. The Covenants touch and concern title to the Property, run with the land and shall be binding upon all persons hereafter acquiring any portion of the Property.

**A.2 Definitions.** The terms set forth below shall have indicated meanings when used in this Declaration; other terms are defined elsewhere herein and shall have the meaning given to them in this Declaration.

“**Assessments**” means the Maintenance Assessments and Special Assessments provided for herein.

**Association** means the Muirfield Homeowners' Association, its Board of Directors, or any person or entity acting in an official capacity on behalf of the Association.

**Board** means the Board of Directors of the Association.

**Builder** means any homebuilder constructing the initial Residence upon a Lot in the normal course of conducting its business for profit.

**City** means the City of New Albany, Indiana.

**Common Area** means those portions of the Property as described in or on the Plat that do not constitute Lots or Streets or any portion thereof. The Common Area also includes: (i) any areas within the Property owned by the City, the Association, or any other governmental entity, but which are required to be maintained by the Association; and (ii) those areas, if any, which are owned by an Owner, but on which are located monuments, signs, fences, landscaping, berms, sidewalks, irrigation systems, drainage structures and basins or other improvements installed by the Declarant that may be maintained by the City or the Association. The Common Area shall also include all improvements on or to any portion of any of the areas described in the preceding sentence. Declarant shall at all times have and retain the right, but without the obligation, to effect minor redesigns or reconfigurations of the Common Area and to execute any declarations applicable to the Common Area for the express benefit of the Declarant or Association.

**Declarant** means MAINSTREAM DEVELOPMENT, INC. including any affiliate of any Partner thereof and any other person or entity who is designated as a successor Declarant in writing pursuant to the provisions of this Declaration.

**Design Guidelines** shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to all aspects of construction, placement, location, alteration, maintenance and design of any improvements within the Property, and all amendments, modifications, supplements and interpretations thereof.

**Lot** means any of the individual platted building lots reflected on the Plat that are to be used for residential purposes as herein described.

**Managing Agent** means any Person who has been engaged and designated by the Declarant or Association to manage the daily affairs and operations of the Association.

**Owner** means any Person owning fee simple title to any Lot.

**Person** means any individual, corporation, limited liability company, partnership or other entity of any kind or type whatsoever.

**Phase** means a particular phase developed upon the Property. Declarant may impose additional or different restrictions on each Phase. If Declarant annexes additional real estate into the Property, it may designate the area annexed as a particular Phase, and may impose additional or different restrictions on such area.

**“Plat”** means (i) initially, the Preliminary Plat, and thereafter the Final Plat, for any Phase of the Property submitted to and approved by the City, or any other applicable governmental entity; (ii) after recordation thereof, the Final Plat for any Phase of the Property as recorded in the Records of Floyd County, Indiana; and, (iii) any replat of, or amendment to, the foregoing made by Declarant in accordance with this Declaration. The term “Plat” shall also include the final recorded plat of any additional property annexed into the Property.

**“Residence”** means a single-family detached home, house, or residence constructed upon a Lot in conformance with this Declaration.

**“Street”** means any paved road that is typically within a fifty foot (50') right-of-way and serves the front of a Lot upon which a Residence is constructed.

**“Structure”** means any structure (other than a Residence), such as a fence, driveway, sidewalk, patio, wall, outbuilding (mini-barn), detached garage, playground equipment, or other improvement of any kind or type.

**“Vehicle”** means any vehicle of any kind or type whatsoever, including any automobile, truck, motorcycle, all-terrain vehicle, golf cart, boat, mobile home, motor home, boat trailer, or other kind of trailer.

## **SECTION B** **USE PROVISIONS**

**B.1 Lots Limited to Residential Use.** All Lots shall be used only for single-family residential purposes and activities reasonably related thereto, and shall at all times be in conformance with applicable zoning and subdivision regulations of the City.

**B.2 Common Area Uses.** The Common Area, if any, shall be used only for drainage, utilities, and recreational purposes as approved by the Declarant or the Association.

**B.3 Sales and Construction Offices.** Declarant may maintain one or more signs, sales offices, or trailers on Lots for the purpose of facilitating sales and construction of Residences on the Property (i.e., model home).

**B.4 No Further Subdivision.** No lot may be further subdivided to create an additional lot without the written consent of the Declarant or Association, and the City. However, lots may be combined for the purpose of constructing a single residence on more than one Lot.

**B.5 Parking and Vehicle Restrictions.** All Vehicles shall be parked, stored or placed only in the driveway or in the garage on each Lot, except that boats, trailers, campers, motor homes, motorcycles, and similar recreational vehicles shall be parked, stored, or placed only within an enclosed garage. On-Street parking shall be limited to temporary parking of guests or invitees of Owners during social gatherings, service delivery, and similar limited (no more than twenty-four (24) hours) time periods. No inoperative or unlicensed Vehicles may be parked or stored, other than in an enclosed garage, within the Property. All work on Vehicles, including routine maintenance, shall be performed only in an enclosed garage. The foregoing provisions shall not restrict the parking of trucks and other vehicles as necessary in connection with construction of Residences or other Structures on Lots.

**B.6 Specific Use Restrictions.** The Property is restricted solely to residential and related uses as defined herein; accordingly, no industrial, business, commercial, religious, professional, or other similar use shall be permitted on any part of the Property. This Section shall not be construed so as to prohibit the conduct of a reasonable amount of in-home work, such as computer work or similar activities, provided that such work or activity does not involve the parking of vehicles of employees, consultants, or other parties other than the occupants of the Residences in question.

**B.7 Pet and Animal Restrictions.** Only regular household pets such as cats, dogs, and birds shall be permitted on the Property and then only for personal use and not for any business use such as breeding, kennel operations and the like. No other animals shall be permitted to be maintained upon the Property, including the following: cows, horses, bees, hogs, sheep, goats, poultry, skunks, or exotic pets of any kind such as snakes, lizards, spiders, alligators, and the like. No more than three (3) domesticated household pets are permitted in any Residence. All pets shall be kept indoors and within the area of an Owner's Lot and shall not be permitted to run free through the Property. Additionally, all pets must be kept on a leash and observed by the Owner at all times when outdoors.

**B.8 Outdoor Burning Restrictions.** Outdoor burning of trash, leaves, and other items is prohibited. This restriction shall not be construed as prohibiting outdoor cooking on barbecue grills in connection with use of a Residence.

**B.9 Trash/Garbage Disposal.** Trash, garbage and other waste shall at all times be kept in clean, well maintained, sanitary containers for regular scheduled pickup for removal of such items. Trash, garbage or other waste shall not be dumped on the ground of any Lot or in the Common Area.

**B.10 Occupancy.** Each Lot shall be improved with a single-family detached Residence containing a minimum of three (3) bedrooms, two (2) bathrooms, and a two-car attached garage. No Person shall habitate within any garage at any time.

**B.11 Projections from Structures.** Window air conditioning units and other similar projections are prohibited. Any projection extending more than twelve (12") inches through the roof of any structure on the Property shall require the prior written approval of the Declarant or Association.

**B.12 Public Water/Sewer Systems.** Each Residence shall be connected to the public water and sanitary sewer system, and no private water well or water, sanitary or storm sewer system is permitted within the Property unless the Declarant constructs it. If Declarant establishes public or private drainage easements in areas that necessitate or contain a private or public sub-surface storm sewer drainage system, then such easements and facilities therein are to be kept freely running and unobstructed at all times. If the lines become obstructed, all parties that benefit from their function shall be required to equally and promptly share in the cost of repair or replacement of the facilities.

**B.13 Changes in Grade.** Except for such changes as are reasonably necessary to facilitate construction of a Residence on a Lot, no Owner shall change the grade of any Lot except in compliance with all applicable laws. After Declarant has developed the Lots, the general grading, slope and drainage plan of a Lot may not be altered, and no dams, berms, channels or swales may be constructed or excavated without the prior written approval of Declarant or Association, the City (if applicable) and other appropriate agencies having authority to grant such approval.

**B.14 Visible Activities - Outdoors.** Outdoor drying of clothes is prohibited. Lawn mowers, rakes, carts, and other yard tools and equipment shall be stored indoors and not in view from adjoining Lots and Streets when not in use. Above-ground swimming pools

shall be prohibited. Hot tubs, whirlpools, and similar facilities, less than 100 square feet in size, are permitted to be placed only in the rear yard of a lot, and not in view from adjoining Lots and Streets.

**B.15 General Restriction - Nuisances.** In general, no condition shall be allowed to exist on a Lot which, by sight, noise, or smell (as determined exclusively by the Declarant or Association), shall constitute a public or private nuisance or unreasonably disturbs any other Owner in the use and enjoyment of its Lot, Residence, or the Common Area.

## **SECTION C**

### **CONSTRUCTION PROVISIONS**

**C.1 Plan Approval Required.** No Residence or Structure shall be constructed within the Property until the plans therefor have been approved in writing by the Declarant or Association.

**C.2 Submission of Plans.** An Owner wishing to construct, reconstruct, or materially alter the exterior appearance of a Residence or any Structure on the Property shall submit two (2) copies of complete plans and specifications therefor to the Declarant or Association for its approval prior to commencing construction. Such plans and specifications shall include engineering and architectural details, landscaping, and construction plans showing the location and elevations of the proposed improvements and the materials to be used in constructing the same, all in sufficient detail to enable adequate evaluation of the proposed improvements by the Declarant or Association. The Declarant or Association may request additional information, including samples of proposed materials to aid it in its decision process. After receipt of a complete set of plans and specifications, the Declarant or Association shall promptly review the information and notify the Owner of its decision to approve or deny the plans, and the reason for denial. No construction shall be commenced on any portion of the Property unless and until the plans for the proposed improvements in question have been approved in writing by the Declarant or Association.

**C.3 Time for Review/Approval.** The Declarant or Association shall approve or deny all plans submitted for construction within five (5) days after the date it receives a complete set of plans and specifications therefor; if the Declarant or Association fails to approve or deny the plans within such five (5) day period, the plans will be deemed to be automatically approved.

**C.4 Review Standards.** The Declarant or Association, in reviewing and approving plans for construction, shall use reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with the standards established by this Declaration and the Design Guidelines

**C.5 Design Guidelines/Building Standards.** The Declarant or the Association may, from time to time, establish specific guidelines and building standards to assist Persons in determining the type and style of Structures and Residences, which may be constructed on the Property. The Declarant or Association may amend or modify such guidelines or standards from time to time in its sole discretion. Such guidelines or standards shall supplement this Declaration and be general guides to permitted construction within the Property, but shall not diminish the authority of the Declarant or Association to approve plans as otherwise herein provided.

**C.6 Failure to Obtain Approval.** The construction, repair, replacement, installation, or placement of any Structure, Residence, or other improvement of any type on a Lot without the prior written approval from the Declarant or Association shall constitute grounds for the imposition by the Declarant or Association of an automatic fine against the

Owner of said Lot in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00). A fine levied under this Section shall be charged to the Owner's assessment account, payable upon demand and secured by the lien created in Article 6.

**C.7 Limitation of Liability.** Neither the Declarant, its officers, directors, partners, agents, employees, representatives, parent or subsidiaries, nor the Association, the Board, including any of its respective members, shall be liable to any Person for any official act of the Declarant or Association in connection with submitted plans and specifications. Notwithstanding any approval by the Declarant or the Association, neither the Declarant nor the Association shall be responsible or liable to any Person with respect to any loss, liability, claim or expense which may arise by reason of such approval or the construction of a Residence or Structure related thereto. Neither the Declarant nor Association shall be responsible in any way for any defects in any plans or specifications submitted, reviewed or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans or specifications. No approval of any plans by either the Declarant or the Association shall be construed to mean that the plans comply with any applicable law, building code, or governmental regulation, it being the responsibility of the Person submitting any plans to assure compliance with all applicable laws. Conversely, the issuance of a building permit or any approval from any governmental authority shall not, under any circumstance, constitute any evidence that construction of a Residence or a Structure complies with the terms and conditions contained in this Declaration or the Design Guidelines. Declarant and members of the Association shall have no liability for decisions made by them regarding the approval or disapproval of plans, so long as the decisions are made in good faith and are not discriminatory, arbitrary, or capricious in nature.

**C.8 Exterior Appearance of a Residence to be Maintained.** The exterior appearance of a Residence shall be maintained with a high level of taste, design quality, aesthetic harmony, and conformity with the neighborhood. This provision shall be strictly applied to all Residences.

**C.9 Setbacks.** Each Residence constructed upon a Lot shall be so located upon that Lot so as to be setback a minimum distance from the property line of each lot as follows:

- (a) **Front Yard:** 25 Feet
- (b) **Side Yard:** 10% of lot width (at building line)
- (c) **Rear Yard:** 20 Feet

**C.10 Structure Size and Type.** Each Residence constructed upon a Lot shall contain a minimum of 1,500 square feet (single-story) or 1,700 square feet (multi-story) of living area, excluding garages, basements, stoops, patios, and porches. Each Residence shall be of new construction on a Lot and no mobile homes or manufactured housing shall be permitted on the Property except on a temporary basis in connection with construction or sales activities.

**C.11 Garage/Parking Requirements.** Each Residence constructed upon a Lot shall have a two-car attached garage constructed as a part thereof, and that shall be utilized for the parking of vehicles therein. Parking of vehicles in or on any area of a Lot other than the driveway or garage is prohibited at all times.

**C.12 Drive/Walkway Requirements.** All driveways and sidewalks shall be constructed of approximately four-inch (4") thick concrete. Driveways shall extend from the street to the front of the garage of each Residence. Sidewalks shall be four feet (4') wide

extending from property line to property line across the front of each Lot parallel with the curb, and extending from the driveway to the front door of each Residence.

**C.13 Antennae/Satellite Dishes.** The erection, construction, placement or installation of any television, radio, or other electronic tower, serial, antenna, satellite dish or device of any type for the reception or transmission of radio or television broadcasts or for any means of communication upon a Lot or upon any improvement thereon is prohibited except as provided for herein. This prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated pursuant to the Telecommunications Act of 1996, as amended from time to time. The Declarant or Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. All television antennas, satellite dishes, and other antennas and aerials shall be located inside the attic of the residence or mounted to the roof and located on the side or rear of the residence and not visible from the street. Amateur radio towers and antennas (whether for reception or transmission) are specifically prohibited. No exterior television, radio or other antenna of any type shall be placed, allowed or maintained upon any Lot, Residence, or Structure without prior written approval and authorization of the Declarant or Association.

**C.14 Fences.** No fence shall exceed six feet (6') in height. All fences shall be located in the rear yard of a Lot, and shall be so located so as not to extend beyond the back corner of the residence toward the front yard. All fences shall be constructed of (i) black, vinyl-coated chain link fence, or; (ii) treated wood ("shadow box") privacy fence. No fence or wall may be constructed, repaired, rebuilt, or relocated if it impedes or obstructs drainage. Prior written approval from the Declarant or Association is required for any construction, placement or repair of fences on any Lot.

**C.15 Outbuildings.** No outbuildings, storage sheds, mini-barns, detached garages, or similar improvements shall be permitted to be placed or constructed in the Common Area or upon any Lot within the Property at anytime.

**C.16 Trash Containers.** All trash containers shall be kept indoors on a regular basis, except on regularly scheduled days upon which trash and garbage is collected by the City or other service provider.

**C.17 Mailboxes.** All mailboxes shall be of a consistent and similar design and constructed of materials approved by the Declarant or Association and shall conform to United States Postal Service regulations and the Design Guidelines.

**C.18 Signs.** Except for Declarant's signs, no signs may be displayed upon any Lot or in the Common Area other than signs, which do not exceed 9 sq. ft., of tasteful design, which advertise a Lot or Residence for sale or rent. Political signs which do not exceed 6 sq. ft. in size and are of tasteful design are permitted, when such signs are allowed by public authorities prior to and after an election.

**C.19 Exterior Materials.** All exterior construction materials shall be subject to approval by the Declarant or Association in accordance with the Design Guidelines and applicable City codes, and shall contain a minimum of fifty (50%) percent brick and/or stone on the front, side, and rear elevations of the residence.

**C.20 Height Restrictions.** The maximum height of any Residence or Structure on the Property shall not exceed twenty-five feet (25').

**C.21 Roof Restrictions.** The roof lines on the front elevation of each Residence shall have a minimum 7:12 pitch and are subject to approval by the Declarant or Association in accordance with the Design Guidelines.

**C.22 Construction Period and Process.** Construction of any Residence shall be pursued with all due diligence and, in any event, shall be completed within six (6) months after commencement. Construction of any other Structure shall be completed within the time periods specified in the plan approval process. All areas under construction shall be maintained in a clean, safe condition, and debris, trash, and rubble shall be stored in appropriate containers and promptly removed from the Property.

**C.23 Landscaping.** All Lots shall be landscaped and maintained in accordance with the Design Guidelines, including planting of grass, trees, shrubs, and other vegetation to be maintained by the Owner of the Lot unless otherwise provided herein. Any dead, dying, or diseased trees and shrubs shall be replaced by the Owner of the Lot upon which the dead, dying, or diseased tree or shrub is located. All front and side yards shall initially be planted in sod and all rear yards with seed and straw. A minimum of two, two-inch caliper trees shall initially be planted in the front yard of each lot.

**C.24 Floodplain Areas.** In accordance with all applicable laws, the Builder of any structure or residence upon a lot which adjoins or lies within the 100-year floodplain of Blackiston Creek shall be so constructed with a finished floor elevation at least two feet (2.0') above the Floodplain elevation, as denoted upon the plat.

**C.25 Right to Waive or Modify Specific Instruction Provisions.** The Declarant or Association shall have the right, in its discretion, to grant reasonable waivers of the construction provisions set forth in this Declaration, and any such waiver shall not entitle any other person to a similar waiver.

**C.26 Declarant Rights.** So long as Declarant owns any Lot, Declarant may exercise any of the rights of the Association as provided herein.

## **SECTION D** **MAINTENANCE PROVISIONS**

**D.1 Owner's Obligation to Maintain.** Each Owner shall maintain its Lot and the Residence and other Structures thereon in a clean and orderly condition. Each Owner shall regularly maintain the trees, shrubs, flowers, and other landscaping on its Lot in good condition at all times, including regular mowing of the lawn. Each Owner shall maintain the exterior of all Residences and Structures in good condition and shall make such repairs and replacements as necessary to maintain good order and the aesthetic harmony of the Property.

**D.2 Damaged Improvements.** If any Residence or Structure is damaged in any way, the Owner shall immediately repair such damage or, in the case of substantial damage the Owner shall raze the damaged Structure or Residence and remove the debris from the Lot and commence rebuilding of the Structure or Residence in compliance with the Design Guidelines and the terms of this Declaration.

**D.3 Declarant/Association Right to Perform.** If any Owner fails to maintain the condition of its Lot, the landscaping thereon, including the prompt removal of deceased trees and shrubs, or the Residence or other Structures thereon as contemplated herein and fails to take action to correct such defect within thirty (30) days after the Declarant or the Association has furnished written notice thereof to such Owner, then the Owner of such Lot hereby grants permission to the Declarant or Association (or its duly authorized agents) to enter upon such Lot and perform those duties which the Owner failed to perform without liability whatsoever to such Owner or any Person for trespass, conversion, or any claim for damages. The cost of performing such duties shall be added to the Owner's assessment account and shall bear interest at the rate of eighteen percent (18%) per annum (but not in

excess of the lawful maximum rate), be payable upon demand, and shall be secured by the lien provided for herein.

**D.4 Easement Maintenance.** Each Owner grants to the Declarant and Association, the right but not the obligation to access, repair, and maintain all facilities and improvements within any easement as depicted on the Plat. The Owner of each Lot hereby grants, creates and conveys unto the Declarant, Association, and other adjacent Owners, a perpetual Drainage Easement (herein so called) over, through, under and across the Owner's Lot for the purpose of permitting runoff and/or storm water to drain from other adjacent Lots over, through, under and across the Owner's Lot(s). Without limiting the foregoing, in order to facilitate drainage from the Property subject to the Declaration over, through, under and across the Owner's Lot, each Owner hereby agrees that the Declarant or Association, as the case may be, shall have the right but not the obligation to enter onto the Owner's Lot at any time to (i) prevent possible interference with the Drainage Easement and to remove possible hazards from the Drainage Easement area, (ii) prevent the construction or placement of any building, structure or other obstruction within the Drainage Easement area which may endanger or interfere with the efficient and convenient use of the Drainage Easement, (iii) grade, improve, construct, reconstruct, repair and perpetually maintain swales within the Drainage Easement area, and (iv) or regrade portions of the Drainage Easement area necessary or appropriate to permit drainage as generally described herein or as approved or required by appropriate governmental authorities. Notwithstanding any of the foregoing rights of the Declarant or Association, each Owner hereby agrees to maintain the Drainage Easement area at such Owner's sole cost and expense. If any structures or other obstructions are constructed, created or placed by any Owner within the Drainage Easement area without the prior written consent of the Declarant or Association, the Declarant or Association shall have the right to remove such structure or obstruction at the sole cost of such Owner.

## **SECTION E** **OWNER'S ASSOCIATION**

**E.1 Establishment.** The Association will hereafter be created as an Indiana corporation. Each Owner of a Lot shall be a member in the Association and such membership is appurtenant to and shall not be separated from ownership of a Lot. Upon the transfer of a Lot, the new Owner shall automatically become a member of the Association. The term of existence of the Association and other matters pertaining to its operation are set forth in its Articles of Incorporation and the By-Laws. The Association is established to enforce this Declaration and the Covenants, to promote the interests of the Owners as residents of the Property, and to enhance the value of the Lots as a part of a harmonious, high quality, residential subdivision.

**E.2 Voting Power.** The Association shall have two classes of voting membership as follows:

(a) **Class A.** The Class A Member shall be all Owners other than Declarant and shall be entitled to one vote for each Lot owned. If more than one person owns an interest in a Lot, they shall combine their vote in such a way as they see fit, but there shall be no fractional votes, and no more than one vote with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant who shall be entitled to fifteen (15) votes for each Lot owned by Declarant. Subject to the conditions set forth in the remainder of this paragraph, the Class B membership shall be converted to Class A membership at such time when the total votes of Class A membership equal the total votes of Class B membership. In determining the number of Lots owned by Declarant

for the purpose of Class B membership status hereunder, the total number of Lots covered by this Declaration, including all Lots annexed thereto, shall be considered. In the event the Class B membership has previously lapsed, but annexation of additional property restores the ratio of Lots owned by Declarant to the number required for Class B membership status, such Class B membership shall be reinstated until it expires pursuant to the terms hereof.

(c) **Board of Directors Election.** The Board shall be elected as provided in the articles and bylaws of the Association. The Board shall act by majority vote as provided in the bylaws.

(d) **Specific Powers of Board.** Without limiting the authority granted to a board of directors under Indiana law, the Board shall have the following specific powers on behalf of the Association:

- (1) to enforce the provisions of this Declaration;
- (2) to enter into contracts;
- (3) to retain third parties, as necessary, to assist the Board in carrying on the Association's activities, including engineers, accountants, lawyers, architects, land planners, professional management, and other consultants;
- (4) to take such action as necessary to maintain the Common Area in good order and condition;
- (5) to acquire property, services and materials to carry out its duties;
- (6) to purchase insurance covering potential liability for use of the Common Area and for other risks;
- (9) to promulgate reasonable rules and regulations for access to and use of Common Areas as well as a policy establishing a schedule and procedures by which the Association may assess fines against Owners for violations of the Covenants or the Design Guidelines.

**E.3 Officers.** The Association will have such officers as are set forth in the bylaws.

**E.4 Dissolution.** So long as Declarant owns record title to any Lot, the Association shall not be dissolved. Once Declarant is divested of all ownership interest in the Property, the Association may be dissolved upon the written consent of Owners owning at least seventy-five percent (75%) of the Lots. Upon such dissolution, the assets of the Association shall be sold, distributed, donated or otherwise divested in such a manner which best serves the interests of the Association and complies with applicable laws.

## **SECTION F** **ASSESSMENTS**

**F.1 Power to Establish Assessments.** The Association is empowered to establish and collect Assessments as provided herein for the purpose of performing its duties and responsibilities, and to otherwise preserve and further the operation of the Association and the Property as a high quality residential subdivision. The purposes for which Assessments may be used include, without limitation, maintaining, operating, managing, repairing, replacing or improving the Common Area or any improvements thereon; mowing grass and maintaining grades and signs; paying legal fees and expenses incurred in enforcing this Declaration; paying expenses incurred in collecting and administering assessments; paying insurance premiums for liability and fidelity coverage for

the Association; and satisfying any indemnity obligation under the articles or bylaws. The Association may reject partial payments and demand payment in full of all amounts due and owing the Association from any Owners. The Association is specifically authorized to establish a policy governing how assessment payments are to be received and applied.

**F.2 Commencement of Assessments.**

(a) **Owner other than Declarant.** Unless otherwise provided by separate agreement by and between Declarant and any Person, the Assessments shall commence as to each Lot upon its conveyance by Declarant to any Person.

(b) **Declarant.** Declarant shall not be liable for Assessments for any Lots that it owns. Declarant may, but shall have no obligation to, subsidize the cost of operating the Association from time to time. In the event Declarant decides to subsidize the Association and any shortfall in the operating budget of the Association is due in part to the failure of the Association to collect delinquent Assessments, then the Association shall immediately and vigorously pursue collection of such delinquent Assessments through foreclosure, if necessary, and shall reimburse the Declarant the amounts, if any, so collected.

**F.3 Regular Annual Maintenance Assessments.**

(a) **Annual Budget.** For each calendar year or a part thereof during the term of this Declaration, the Declarant or Association shall establish an estimated budget of the expenses to be incurred by the Association for the forthcoming year. Based upon such budget, the Association shall then assess each Lot an annual fee ("Maintenance Assessment") which shall be paid by each Owner, in advance, on the first day of each January unless the Association determines a different schedule. The Association shall notify each Owner of the Maintenance Assessment for the ensuing year by December 15 of the preceding year, but failure to give such notice shall not relieve any Owner from its obligation to pay Maintenance Assessments. Any Maintenance Assessment not paid within fifteen (15) days of the date due shall be delinquent and shall thereafter be subject to late charges as provided herein. As to any partial year, Maintenance Assessments on any Lot shall be appropriately prorated.

(b) **Maintenance Assessments.** The initial Maintenance Assessment for each Lot shall be in the amount of One Hundred and No/100 Dollars (\$100.00), paid in one installment as indicated herein. Thereafter the Declarant or Association may increase or decrease the Maintenance Assessment annually to meet the anticipated needs of the appropriate budget, but the Maintenance Assessment may not be increased in any year by an amount in excess of twenty percent (20%) above the previous year's Maintenance Assessment, unless such increase is approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, where a quorum exists.

(c) **Initial Payment of Assessments.** Upon the sale or transfer of record title to a Lot by Declarant or a Builder to the first Owner, the total annual maintenance assessment, or pro-rated portion thereof, shall be paid to the Association by or on behalf of such first Owner. This amount is not refundable and shall account for all maintenance assessments for the calendar year in which the transfer of record title to a lot is accomplished. This amount shall be used by the Declarant or Association for operating and other expenses incurred by the Association pursuant to the terms of this Declaration and the bylaws of the Association.

(d) **Uniform Assessments.** Maintenance Assessments for all Lots shall be uniform and equal.

(e) **Use of Maintenance Assessments.** Maintenance Assessments shall be used by the Declarant or Association to maintain the Property in a clean and orderly manner so as to promote the Property as a high quality residential subdivision.

**F.4 Special Assessments.** The Association may impose special assessments ("Special Assessments") to make capital improvements to the Common Area, to satisfy its indemnity obligations under the articles or bylaws, or for other similar purposes. Any Special Assessment proposed by the Association must be approved by a majority vote of those members of the Association present at a meeting, in person or by proxy, at which a quorum exists. At least fifteen (15) days prior to any meeting of the Association called to consider any Special Assessment, the Board shall notify each Owner thereof by written notice specifying the total amount of the Special Assessment required, the amount thereof imposed on each Lot (which shall be uniform), the purpose for such Special Assessment, and the time and method of payment thereof. The time for paying any Special Assessment (which may be in installments) shall be as specified in the approved proposal therefore.

**F.5 Liability for and Enforcement of Assessments.**

(a) **Personal Liability.** Each Owner shall be personally liable for all Assessments imposed during the time it owns a Lot.

(b) **Reservation, Subordination, and Enforcement of Assessment Lien.** Declarant hereby reserves for the benefit of itself and the Association, a lien (the "Assessment Lien") against each Lot to secure payment of (1) the Assessments imposed hereunder and (2) payment of any amounts expended by the Declarant or Association in performing a defaulting Owner's obligations as provided for herein. Each Owner, by accepting conveyance of a Lot, shall be deemed to have agreed to pay the Assessments herein provided for and to the reservation of the Assessment Lien. The Assessment Lien shall be subordinate to the liens of any valid first mortgage lien encumbering a particular Lot. No sale or transfer of ownership of a Lot shall relieve such Lot from Liability and the Assessment Lien for any Assessments thereafter becoming due. Each Owner, by accepting conveyance of a Lot, expressly grants the Association a power of sale in connection with the foreclosure of the Assessment Lien. The Association is empowered to appoint a trustee, who may be a member of the Association, to exercise the powers of the Association to non-judicially foreclose the Assessments Lien in the manner provided for under Indiana law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(c) **Notices of Delinquency of Payment.** The Association, the Association's attorney or Declarant may file notice of any delinquency in payment of any Assessment in the Records of Floyd County, Indiana. Upon the timely curing of any default for which a notice was recorded by the Association, the Association through its attorney is hereby authorized to file of record a release of such notice upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing a release. Upon request of any Owner, any title company on behalf of such Owner or any Owner's mortgagee, the Association through its agents may also issue certificates evidencing the status of payments of Assessments as to any particular Lot (i.e., whether they are current or delinquent and if delinquent, the amount thereof). The Association or its Managing Agent may impose a reasonable fee for furnishing such certificates or statements.

(d) **Suit to Recover.** The Association may file suit to recover any unpaid Assessment and, in addition to collecting such Assessment and interest thereon, may also recover all expenses reasonably expended in enforcing such obligation, including reasonable attorneys' fees and court costs.

(e) **Late Charges and Collection Fees.** If any Assessment or any part thereof remains unpaid after fifteen (15) calendar days from and after the due date established by the Association, a late charge shall be assessed against the non-paying Owner for each day or any part thereof, that any portion of any Assessment remains unpaid. Should any Assessment be payable in installments, the Association is authorized to accelerate the entire Assessment and demand immediate payment thereof. The late charge shall be in the amount of Five and No/100 Dollars (\$5.00) per day. The Association's Managing Agent shall be entitled to charge an Owner a monthly collection fee to compensate Managing Agent for its administrative costs and efforts to collect and process the late payment of Assessments. A service charge in the amount of Twenty-Five and No/100 Dollars (\$25.00) shall be charged for each check that is returned because of insufficient funds or any other reason. The amount of late charges and service charges may be adjusted, from time to time, by the Association consistent with any changes in the administrative costs to collect unpaid Assessments or the Association's bank charges. All late charges, collection fees, service charges and attorneys' fees assessed or incurred due to late payment of Assessments shall be charged to an Owner's Assessment account which shall be part of the delinquent Assessment and shall be payable and secured in the same manner as herein provided with regard to Assessments.

(f) **Interest on Past Due Amounts.** All Assessments past due more than thirty (30) days, unpaid fines and other amounts owed to the Association by any Owner which are not paid when due shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum, but not in excess of the maximum rate allowed by applicable law.

(g) **Suspension of Right to Use Common Area.** In addition to the other powers herein granted, the Association may suspend the rights of any Owner to participate or otherwise use and enjoy any facility, activity, or Common Area during the time that such Owner is delinquent in paying any Assessment.

(h) **Suspension of Voting Rights.** No Owner who is delinquent in paying its Assessments shall have the right to vote as a member of the Association while such delinquency continues. An Owner may cure a delinquency at a meeting to regain the right to vote by paying all outstanding amounts (including interest, fines, and penalties) by cash, cashier's or certified check or other good funds acceptable to the Board.

## **SECTION G** **COMMON AREA**

**G.1 Right to Use Common Areas.** Each Owner, the members of that Owner's immediate family, and the Owner's guests (provided guests are accompanied by an Owner) shall have the right to use the Common Area for its intended purposes as herein provided. The Declarant and Association shall have the right to enter on and use the Common Areas at all times to exercise their rights or (in the case of the Association) perform its duties hereunder.

**G.2 Specific Facilities.** Improvements, if any, to be located in the Common Area shall be determined initially by Declarant, and thereafter by the Association. The Declarant or Association may promulgate reasonable rules and regulations for use of these improvements.

**G.3 Maintenance of Common Areas.** The Association shall be solely responsible for all maintenance, repair, replacement, and improvement of the Common

Areas, utilizing the Maintenance Assessments for such purposes as herein provided. Declarant shall be responsible for maintenance, repair, replacement, or improvement of the Common Area after initial construction and until ownership of the Common Area is transferred from the Declarant to the Association.

**G.4 Risk of Loss - Use of Common Areas.** Each Owner shall be individually responsible and assume all risk of loss associated with its use of the Common Area and use by its family members and guests. Neither the Association nor Declarant shall have any liability to any Owner or their family members or guests, or to any other Person, arising out of or in connection with the use, in any manner whatsoever, of the Common Area or any improvements comprising a part thereof from time to time.

**G.5 Conveyance of Common Area to Association.** The Association shall accept ownership of the Common Area at such time that Declarant conveys the Common Area to the Association, free and clear of any liens, claims or encumbrances, but not later than sixty (60) days after Declarant no longer owns a Lot in the Property.

## **SECTION H** **SPECIFIC DECLARANT RIGHTS**

**H.1 Rights to Annex.** Declarant may annex additional property to become a portion of the Property and thereafter be subject to the terms, provisions and conditions of these Covenants, provided the Declarant still owns at least one (1) Lot. Any such annexation by Declarant may require the prior approval of the City. Declarant may exercise such right by recording a supplement to this Declaration in the Records of Floyd County, Indiana subjecting such additional property to the terms and conditions hereof. No further action or approval shall be required or necessary for the Declarant to annex additional properties into the Property for the purpose of subjecting it to the Covenants. Any document subjecting additional property to the Declaration may also impose additional restrictions not found in this Declaration upon such additional property. Upon the annexation and platting of any additional property as herein provided, each lot described therein shall become a "Lot" for all purposes hereunder.

**H.2 No Duty to Annex.** Nothing herein contained shall establish any duty or obligation on the part of Declarant or any member to annex any property to this Declaration and no owner of the property excluded from this Declaration shall have any right to have such property annexed thereto.

**H.3 Effect of Annexation on Class B Membership.** In determining the number of Lots owned by Declarant for the purpose of Class B membership status, the total number of Lots covered by this Declaration, including all Lots annexed thereto, shall be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by Declarant to the number required by Class B membership, such Class B membership shall be reinstated until it expires pursuant the provisions set forth herein.

**H.4 Specific Declarant Rights to Amend Declaration.** Declarant, without agreement of the Association or the other Owners may amend this Declaration to correct any errors or to cause the Declaration to be in compliance with any City, State, or Federal governmental requirement.

**H.5 Easement/Access Right.** Declarant reserves a general easement over all Streets, rights of way, and easements in the Property and over the balance of the Common Area for access for the purpose of finishing development of the Property as a subdivision

and as otherwise reasonably necessary to effect Declarant's rights hereunder. Such easements and rights shall expire at such time that Declarant no longer owns a Lot.

**H.6 Assignment of Declarant Rights.** Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in Records of Floyd County, Indiana specifically stating that Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.

**H.7 Declarant's Right to Install Improvements in Setback and Other Areas.** Declarant, in connection with development of the Property and construction of homes thereon, reserves the right but shall have no obligation to install or construct monuments, fences, landscaping, and other improvements in the setback areas (being the area on, along and/or between the boundary line of a Lot and the building or setback lines applicable to such Lot). If Declarant exercises such right in a setback area, then such improvements shall be the property of the Owner(s) of the Lot(s) upon which or adjacent to these are located, and such Owner(s) shall maintain and repair any such improvement unless the Declarant or Association, informs the Owner(s) in writing of its intent to assume such maintenance and repair obligations.

**H.8 Replatting or Modification of Plat.** Declarant reserves the right to replat, amend or modify the Plat so as to affect only those Lots owned by Declarant in order to assure a harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights so long as it owns any Lot and no agreement of any other Owner shall be required to give effect to such rights, each Owner consenting to Declarant's execution of any replat on such Owner's behalf. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights hereunder shall expire at such time Declarant no longer owns a Lot.

**H.9 Limitation of Declarant Liability.** The Declarant shall not be responsible or liable for any deficit in the Association's funds. Declarant may, but is under no obligation to, subsidize any liabilities incurred by the Association and the Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

**H.10 Termination of Declarant's Responsibilities.** In consideration of Declarant's deficit funding of the Association, if any, upon the occurrence of any of the following events: (i) conversion of Declarant's Class B membership status to Class A membership status; (ii) completion of any facilities in the Common Area by Declarant; or (iii) assignment of Declarant's rights hereunder, then and in such event Declarant shall be fully released, relieved and forever discharged from any further duty or obligation to the Association or any of its members as Declarant by reason of the terms and conditions of this Declaration including any amendments thereof or supplements thereto, save and except the duties and obligations, if any, of Declarant as a Class A member by reason of Declarant's continued ownership of one or more Lots, but not otherwise. Further, and without regard to whether or not Declarant has been released from obligations and duties to the Association, so long as Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor any member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies,

the Declarant shall be entitled to injunctive relief restraining the Association or any member of the Association from further breach of this Section.

## **SECTION I** **MISCELLANEOUS PROVISIONS**

**I.1 Term and Renewal.** These Covenants shall commence on the date hereof and shall continue in effect for a period of thirty (30) years. Thereafter these Covenants shall automatically renew for subsequent periods of ten (10) years each unless Owners of at least seventy-five percent (75%) of the Lots vote to terminate these Covenants by written instrument recorded in the Records of Floyd County, Indiana.

**I.2 Enforcement.** The terms, provisions and conditions of this Declaration and the Design Guidelines shall be enforceable by the Declarant or Association, and each Owner. The Board shall have the power and authority to impose reasonable fines (which shall not exceed Two Hundred Fifty and No/100 Dollars (\$250.00) for each separate violation) for violation of this Declaration, the Design Guidelines or any rule or regulation of the Association, which shall constitute a lien upon the Lot of the violating Owner as provided in the Declaration, and to suspend the Owner's right to vote or any Person's right to use of the Common Area. If any occupant, guest, or invitee of a Lot violates the Declaration, the Design Guidelines or a rule or regulation of the Association and a fine is imposed, the fine shall be assessed against the Owner to which such occupant, guest, or invitee is associated; The Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, the Design Guidelines or any rule or regulation of the Association shall not operate as a waiver of the right of the Association to do so thereafter.

**I.3 General Easement for Access, Maintenance and Utilities.** Each Owner grants to the Declarant, the Association, the other Owners, the City, and applicable Utility Companies a general easement for the maintenance of any Common Area improvements and for access to and from each Owner's Lot through driveways, rights of way and easements as reflected on the Plat for the purpose of giving effect to the provisions of these Covenants.

**I.4 Amendment of Declaration.** These Covenants may be amended by Declarant as provided herein. In addition, the Declaration may be amended at any time and in any respect with the approval of Owners owning at least seventy-five percent (75%) of the Lots; provided, however, that no such amendment shall be effective unless agreed to by Declarant until such time as Declarant no longer owns a Lot.

**I.5 City Provisions.** All construction within the Property shall comply with all applicable City ordinances and regulations. If any ordinance or regulation imposed by the City imposes more demanding, extensive or restrictive requirements than those set forth in this Declaration, such City requirements shall govern. No ordinance or regulations adopted by the City shall lessen the requirements set forth in these Covenants.

**I.6 Notices.** Any notice required to be given to any Owner under the terms of this Declaration shall be deemed to have been properly delivered in writing and received by an Owner by electronic mail, facsimile transmission, hand-delivery, or first class mail delivery by the United States Postal Service, postage prepaid, properly addressed to the addressee. Each Lot Owner's address for purpose of notice hereunder shall be deemed to be the Residence located on its Lot.

**I.7 Indemnification.** Neither the Declarant, including any of its officers, directors, employees or agents, nor any officer, director or agent of the Association shall be

liable to any Person, Owner or any person claiming by or through any Owner or otherwise for any act or omission in the performance of the duties of such Declarant or officer, director or agent of the Association except only if such act or omission should be judicially declared to constitute fraud or intentional willful misconduct. The Association shall and does hereby agree to indemnify the Declarant, including any of its officers, directors, agents or employees, the officers, directors and agents of the Association against all claims, demands, actions and proceedings and all expenses in connection therewith arising from the good faith exercise of their duties pursuant to this Declaration.

**I.8 Severability.** If any of the terms hereof shall be invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of these Covenants, which shall be in full force and effect.

**I.9 Acceptance by Owners of Rights and Obligations.** By the recording of a deed or other conveyance transferring all or part of an interest in a Lot subject to this Declaration, the person or entity to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all the provisions of the Declaration, the Design Guidelines, the articles and bylaws of the Association, including any rules or regulations adopted or promulgated by the Association, whether or not mention thereof is made in said deed.

**I.10 Arbitration of Disputes Involving Declarant.**

**(a)** ANY AND ALL DISPUTES ARISING HEREUNDER BETWEEN AN OWNER AND DECLARANT, SHALL BE SUBMITTED TO BINDING ARBITRATION AND NOT TO A COURT FOR DETERMINATION. ARBITRATION SHALL COMMENCE AFTER WRITTEN NOTICE IS GIVEN FROM EITHER PARTY TO THE OTHER, SUCH ARBITRATION SHALL BE ACCOMPLISHED EXPEDITIOUSLY IN FLOYD COUNTY AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”). THE ARBITRATION SHALL BE CONDUCTED BY THREE (3) ARBITRATORS, ONE OF WHOM SHALL BE APPOINTED BY THE OWNER AND ONE OF WHOM SHALL BE APPOINTED BY DECLARANT. THE THIRD ARBITRATOR SHALL BE APPOINTED BY THE FIRST TWO ARBITRATORS. THE ARBITRATORS SHALL BE SELECTED FROM A LIST OF ARBITRATORS SUBMITTED BY THE AAA. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION SHALL NOT COMMENCE UNTIL THE PARTY REQUESTING IT HAS DEPOSITED ONE THOUSAND FIVE HUNDRED AND NO/100 U. S. DOLLARS (\$1,500.00) WITH THE ARBITRATORS AS A RETAINER FOR THE ARBITRATORS’ FEES AND COSTS. THE PARTY REQUESTING ARBITRATION SHALL ADVANCE SUCH SUMS AS ARE REQUIRED FROM TIME TO TIME BY THE ARBITRATORS TO PAY THE ARBITRATORS’ FEES AND COSTS, UNTIL THE PREVAILING PARTY IS DETERMINED OR THE PARTIES HAVE AGREED IN WRITING TO AN ALTERNATIVE ALLOCATION OF FEES AND COSTS. EACH PARTY SHALL PAY HIS/HER OWN LEGAL FEES AND COSTS AND ANY OTHER FEES INCURRED IN CONNECTION WITH AN ARBITRATION PROCEEDING WHICH ARISES OUT OF OR RELATES IN ANY WAY TO THIS AGREEMENT PROVIDED, HOWEVER, THAT THE ARBITRATION PANEL SHALL AWARD THE ARBITRATORS’ FEES AND COSTS TO THE PREVAILING PARTY IN ITS ARBITRATION JUDGMENT.

**(b) Other Dispute Resolutions.** Notwithstanding Declarant’s and Owner’s intent to submit any controversy or claim arising out of or relating to this Declaration to arbitration, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this Section, then the parties agree to the following provisions:

**(c) Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BE BEST SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OR ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

Executed by Declarant as of the date set forth above.

MAINSTREAM DEVELOPMENT, INC.,  
an Indiana Corporation

By: \_\_\_\_\_  
David B. Bauer  
President

STATE OF INDIANA       §  
COUNTY OF FLOYD     §

BEFORE ME, the undersigned authority, on this day personally appeared David B. Bauer, President of MAINSTREAM DEVELOPMENT, INC., an Indiana Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of MAINSTREAM DEVELOPMENT, INC., an Indiana Corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of August, 2004.

\_\_\_\_\_  
Notary Public, State of Indiana

My Commission Expires: \_\_\_\_\_

Prepared By:  
Scott Adams  
MAINSTREAM DEVELOPMENT, INC.  
2625 Charlestown Road  
New Albany, Indiana 47150  
(812) 949-3624

## EXHIBIT A

### Legal Description

Part of Lot "A" in Survey #63 of the Illinois Grant, City of New Albany, Floyd County, Indiana, more particularly described as follows:

Commencing at the Westernmost corner of Lot #24 of the Dell View Subdivision, Section 2, Plat #1045, said point being in the Southern right of way of Rainbow Drive, thence crossing said Rainbow Drive North 35 47' 26" West 51.11 feet, thence along the Northern right of way of said Rainbow Drive North 57 25' 30" East 101.96 feet, this being the point of beginning, thence South 37 02' 52" East 52.89 feet, thence North 57 23' 03" East 11.78 feet, thence along a curve concave Southerly whose radius is 175.00 feet (and whose long chord bears North 61 34' 35" East, having a length of 25.59 feet) a distance of 25.61 feet, thence continuing along a curve concave Southerly whose radius is 433.25 feet (and whose long chord bears North 71 53' 39" East, having a length of 80.52 feet) a distance of 80.64 feet, thence North 81 54' 42" East 363.13 feet, thence along a curve concave Southerly whose radius is 175.00 feet (and whose long chord bears South 88 55' 42" East, having a length of 142.73 feet) a distance of 147.02 feet, thence North 53 40' 00" East 188.19 feet, thence North 68-01-26 West 129.07 feet, thence South 17 21 12 West 115.82 feet, thence along a curve concave Southerly whose radius is 175.00 feet and whose long chord bears North 84 51' 58" West having a length of 80.06 feet, a distance of 80.77 feet, thence South 81 54' 42" West 50.74 feet, thence North 16 58' 52" West 113.65 feet, thence North 11 32' 04" East 78.42 feet, thence North 36 38' 43" West 743.69', thence South 62 23' 40" West 16.98 feet, thence North 27 36' 20" West 170.00 feet, to a point in the Southern right of way of Interstate #265, thence with said ROW as follows: South 62 23' 40" West 205.52 feet, South 56 02' 49" West 382.26 feet, thence leaving said right of way South 37 02' 52" East 902.91 feet, to the point of beginning, containing 13.747 Acres, more or less.