

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
CASTLE COVE**

THIS AMENDMENT to and RESTATEMENT of the Declaration of Covenants, Conditions and Restrictions of Castle Cove is made this _____ day of _____, 200_, by the undersigned Owners of Lots within Castle Cove.

W I T N E S S E T H:

WHEREAS, Castle Cove Development Corp., the original developer of the Castle Cove subdivision located in Marion County (hereafter, "Developer") previously recorded a "Declaration of Covenants, Conditions and Restrictions of Castle Cove Owners' Assn., Inc." on August 8, 1980 in the Office of the Recorder of Marion County, Indiana, as **Instrument No. 80-47665** (hereafter, "Original Declaration") for the real estate more particularly described in the Plat of Castle Cove, Section 1, recorded October 11, 1977, as **Instrument No. 77-67723**, for Lots I through 47, as amended by the Certificate of Correction of Section I, recorded on October 12, 1978, in the Office of the Recorder of Marion County, Indiana, as **Instrument No. 78-71465**; and

WHEREAS, the Original Declaration stated that at the time of the Developer's execution of the Original Declaration, the Developer owned all of the real estate shown in the Plat, as corrected, for Castle Cove Section I, except for certain Lots, said Lots being referred to hereafter as "Previously Sold Lots"; and

WHEREAS, subsequent to the time of recording the Original Declaration, the Owners of the Previously Sold Lots executed "Joinder Agreements" whereby the Owners of said Lots agreed to subject their property to the terms and conditions of the Original Declaration so that the Original Declaration would run with the land pertaining to said Lots and bind all present and future Owners of the Previously Sold Lots; and

WHEREAS, the Plat for Castle Cove Section I-A, Lots 48 through 53, was filed in the Office of the Recorder of Marion County, Indiana, on March 19, 1985, as **Instrument No. 85-20231**; and

WHEREAS, the Plat for Castle Cove Section II, Lots 106 through 129, was filed in the Office of the Recorder of Marion County, Indiana, on March 30, 1983, as **Instrument No. 83-20351**; and

WHEREAS, the Plat for Castle Cove Section III, Lots 130 through 148, was filed in the Office of the Recorder of Marion County, Indiana, on September 8, 1983, as **Instrument No. 83-65062**; and

WHEREAS, the Plat for Castle Cove Section IV, Lots 149 through 172, was filed in the Office of the Recorder of Marion County, Indiana, on March 7, 1984, as **Instrument No. 84-17292**; and

WHEREAS, the Plat for Castle Cove Section V, Lots 173 through 196, was filed in the Office of the Recorder of Marion County, Indiana, on October 8, 1984, as **Instrument No. 84-78704**; and

WHEREAS, the Plat for Castle Cove Section VI, Lots 197 through 217, was filed in the Office of the Recorder of Marion County, Indiana, on April 10, 1985, as **Instrument No. 85-28868**; and

WHEREAS, the Plat for Castle Cove Section VII, Lots 79 through 105, was filed in the Office of the Recorder of Marion County, Indiana, on August 12, 1985, as **Instrument No. 85-67631**; and

WHEREAS, the Plat for Castle Cove Section VIII, Lots 54 through 78, was filed in the Office of the Recorder of Marion County, Indiana, on August 12, 1985, as **Instrument No. 85-67632**; and

WHEREAS, the Plats for Castle Cove, Sections I-A, II, III, IV, V, VI, VII, and VIII all refer to and incorporate the Original Declaration; and

WHEREAS, the legal description for Castle Cove Sections I-A, II, III, IV, V, VI, VII, and VIII, inclusive, is attached hereto as **Exhibit "A"**; and Section I is attached hereto as Exhibit "B"; and

WHEREAS, the Owners are empowered under Paragraph 14 of the Original Declaration to amend the same by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners; and

WHEREAS, the Owners desire to amend certain provisions of the Original Declaration and to restate the same such that this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Castle Cove in no way nullifies or changes the Original Declaration, as amended, prior to the recording of this Amended & Restated Declaration, or the effective dates of the Original Declaration or any previous amendments thereto.

NOW, THEREFORE, the undersigned Owners amend and restate the Declaration such that all of the platted Lots and lands located with the Development as they have been platted and as they may become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which were and are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development and were and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest, legal or equitable, in and to the real property of the Development or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

ARTICLE I **DEFINITIONS**

Section 1.1. "Association" shall mean Castle Cove Owners' Assn., Inc., an Indiana nonprofit corporation, whose membership and powers are more fully described in this Declaration.

Section 1.2. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Development, including contract sellers, but

otherwise excluding those having such interest merely as security for the performance of any obligation or by virtue of a contract.

Section 1.3. "Development" means the real estate described in the Plats for Castle Cove, Sections I, I-A, II, III, IV, V, VI, VII, and VIII as recorded with the Marion County Recorder's Office, including the Lots and Common Areas.

Section 1.4. "Plats" means the subdivision plats of Castle Cove, Sections I, I-A, II, III, IV, V, VI, VII, and VIII of the Development as recorded in the Office of the Recorder of Marion County, Indiana, as the same may have been or may be hereafter amended, supplemented, or replatted.

Section 1.5. "Lot" means any parcel of residential real estate described by one of the Plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana, which is subject to this Declaration.

Section 1.6. "Board of Directors" means the Board of Directors of the Association.

Section 1.7. "Committee" shall mean the Castle Cove Architectural Improvement Committee.

Section 1.8. "Common Area" or "Common Property" means the real estate delineated as such upon the Plats of the Development. which shall be and is owned by the Association.

Section 1.9. Approvals, determinations, permissions or consents required herein of the Committee, the Board of Directors, or the Association shall be deemed given only if they are given in writing and signed, with respect to the Association or the Board of Directors, by the President or Vice President thereof, and with respect to the Committee, by at least two (2) members thereof.

Section 1.10. "Rules and Regulations" shall mean the Rules and Regulations promulgated by the Board of Directors as more specifically described in Sections 4.5 and 5.1 hereof. A current copy of the Rules and Regulations shall be maintained by the Board of Directors and shall be available to any Owner upon request.

Section 1.11 "Standards" shall mean Standards of Castle Cove as more specifically described in Article XI hereof.

ARTICLE II **CHARACTER OF DEVELOPMENT**

Section 2.1. In General. All Lots shall be used exclusively for residential purposes and the occupancy of a single family. No structure or improvement shall be erected, placed or permitted to remain upon any of said residential Lots except a single family dwelling house and such outbuildings (except for metal outbuildings) as are usually accessory to a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All real estate within the Development which has not been designated by numbering as residential Lots or public right-of-way in the recorded Plats shall be designated and used as Common Property. Common Property

means and includes the lake, swimming pool, shelter, tennis courts, communal parking areas and screening wall along the boundary of 82nd Street which have been created for the mutual use and enjoyment of the Owners in Castle Cove under the terms and conditions hereinafter set forth. Areas designated as "Common Property" or "Common Areas" in each phase or plat of the Development are owned by the Association.

Section 2.2. Limitations on Rentals.

(a) General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year. No portion of any Lot other than the entire Lot and the home thereon shall be leased. No Owner shall place a "For Rent", "For Lease" or other similar sign anywhere on the Lot. No subleasing shall be permitted. During the entire term of the lease, the Owner shall oversee the Lot to ensure that the Lot and home are adequately maintained, including, but not limited to, the exterior maintenance of the home and the mowing of the yard. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-Laws, Articles of Incorporation, the Standards, and any rules and regulations promulgated by the Board of Directors, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease. The Owner shall supply copies of such legal documents to the tenants prior to the effective date of the lease. In addition, the Board of Directors shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing. All Owners who do not reside in the home shall provide the Board of Directors with the name of the tenant(s), all residents living in the home, and the owner's current address, phone number and emergency number.

(b) One Year Waiting Period. In addition to all other provisions of this Section 2.2, for a period of at least one (1) year after an Owner's acquisition of a Lot, said Owner cannot lease such property. After such time, said Lot will be eligible to be leased if all other conditions of this Section 2.2 are satisfied and provided further that the Owner is not delinquent in the payment of any assessments or other charges to the Association. In its sole discretion, the Board of Directors may grant exceptions to this Section 2.2(b) upon an Owner's showing of undue hardship.

(c) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of this Declaration, the Articles of Incorporation, the By-Laws, the Standards, and any rules and regulations promulgated by the Board of Directors, or from the Owner's liability to the Association for payments of assessments or any other charges.

(d) Effective Date of Lease Conditions. These leasing restrictions shall not apply to any lease executed prior to the effective date of these restrictions or to any renewals thereof provided in such leases so long as the occupants remain the same.

(e) Institutional Mortgagees. The provisions set forth in this Section 2.2 shall not apply to any institutional mortgagee of any Lot which comes into possession of the mortgagee by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, or deed in lieu of foreclosure.

ARTICLE III
CASTLE COVE OWNERS' ASSN., INC.

Section 3.1. In General. There has been created, under the laws of Indiana, a nonprofit corporation known as Castle Cove Owners' Assn., Inc. ("Association"). Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall be applicable to and may not be separated from ownership of any Lot. There shall be one (1) vote for each Lot on each matter coming before the membership for a vote.

ARTICLE IV
ARCHITECTURAL IMPROVEMENT COMMITTEE

Section 4.1. The Committee. The Committee was and is established to perform the functions provided for herein. The Committee shall be a standing committee of the Association, consisting of at least three (3) Owners appointed by the Board of Directors. At least one (1) member of the Committee shall also be on the Board of Directors.

Section 4.2. Purposes and Powers of Committee. The purposes of the committee is to preserve and enhance the value of all Owners and to maintain a harmonious relationship among structures and the natural vegetation and topography. The Committee shall regulate the external design, appearance, landscaping, and location of residences, buildings, structures or any other improvements placed on any Lot.

Section 4.3. Application by Owner. A residential dwelling, building, structure, fence, wall, mail box, patio, deck, hot tub, or improvement of any type or kind may be erected, constructed, placed or altered on any Lot only with the prior written approval of the Committee. Such approval shall be obtained only after written application has been personally delivered to one of the Committee's members by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed by the Committee and shall be, accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include:

- (a) Plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot;
- (b) The distances from the proposed improvement to all nearby Lot lines;
- (c) The color and composition of all exterior materials proposed to be used;

- (d) Any proposed landscaping;
- (e) Any other material or information which the Committee may require.

All plans and drawings submitted to the Committee shall be drawn to scale. Once approved, the Committee shall stamp and/or sign one copy of said plans designating the Committee's approval and return the same to the Owner. The Committee shall retain identical copies of said approved plans for its permanent files.

Section 4.4. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) The plans, specifications, drawing, or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in the Declaration or any subdivision Plat of the Development; or
- (b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (c) The proposed improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner; or
- (d) The Owner is in violation of any of the terms or conditions of this Declaration, the Association's By-Laws, or any Rules or Regulations promulgated by the Board of Directors, including but not limited to the obligation to pay Annual or Special Assessments.

Section 4.5. Rules and Regulations. The Board of Directors may make, amend, modify or repeal such rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items. Such rules and regulations may also set forth additional requirements to those set forth in this Declaration or any Plat so long as the same are not inconsistent with the Declaration or such Plat. However, the Board may make, amend, modify, or repeal such rules and regulations only after the Board has given all Owners at least fifteen (15) days advance written notice of the date of the Board meeting at which such proposed rules and regulations and any revision, amendment, alteration, or repeal thereof will be considered and voted upon by the Board. At such Board meeting, the Owners shall have a full and complete opportunity to express their concerns to the Board of Directors. Such rules as are adopted may be repealed or amended by a vote of a majority of the entire Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof.

Section 4.6. Duties of Committee. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and shall reflect the majority of the committee. In the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval. In the event the Committee fails to approve or disapprove such construction, improvement and location within twenty one (21) days after said written plans and specifications have been received in person by one of the Committee members, such approval will be deemed to have been given.

Section 4.7. Liability. Neither the Committee, the Board of Directors, the Association, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Association and the Committee do not make, and shall not be deemed by virtue of any action of approval or disapproval taken by them, to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

Section 4.8. Inspection. The Committee may inspect work being performed to assure compliance with these restrictions and applicable regulations.

Section 4.9. Antennas. The installation, maintenance and use of antennas, including satellite dishes, shall be regulated rules adapted by the Committee.

ARTICLE V **OWNERSHIP, USE & ENJOYMENT OF** **COMMON PROPERTY AND RECREATIONAL FACILITIES**

Section 5.1. In General. The Common Property and recreational facilities shall remain private and shall not be dedicated to the public. All Owners, their family members and their guests shall have an easement in and upon the Common Property for the use and enjoyment of the same, subject to Rules and Regulations promulgated by a majority of the entire Board of Directors effecting the conduct thereon of the Owners, their family members and their guests. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. The Common Property is owned in fee simple title by the Association.

ARTICLE VI **ASSESSMENTS**

Section 6.1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Annual Assessments (for maintenance, repairs, and ordinary operating expenses);
- (2) Special Assessments for capital improvements and operating deficits, as provided for herein.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late charges, and reasonable attorneys' fees, shall also be the personal obligation of the Owner.

Section 6.2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the health, safety and welfare of the residents in the Development, for the insurance, maintenance, repair and replacements of the Common Property and the improvements thereon, and for other purposes only as specifically provided herein. A portion of the Annual Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the capital improvements which the Association is required to maintain.

Section 6.3. Maximum Annual Assessments.

- (a) Without a vote of the membership, the Annual Assessment may be increased by the Board of Directors each calendar year by no more than the greater of;
 - (1) five percent (5%) above the assessment for the previous year; or
 - (2) the same percentage increase, if any, in the Consumer Price Index between the index figure for the month of August of the prior year and the index figure for the month of August which immediately precedes the Association's annual meeting. As used herein, "Consumer Price Index" means the Consumer Price Index for All Urban Consumers, U.S. City Average of All Items (CPI-U, reference base of 1982-1984=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index is discontinued, the Association's Board of Directors may substitute comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical.
- (b) The Annual Assessment may be increased above the maximum described in Section 6.3(a) above only by a vote of a majority of the Owners who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is represented.

Section 6.4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may incur. Any such Special Assessment shall have the assent of two-thirds (2/3) of those members who cast votes in person or by proxy at a meeting duly called for this purpose at which a quorum is represented. For purposes of this Section 6.4 only, the Owners or their representatives owning at least fifty percent (50%) of the total number of Lots shall constitute a quorum at this meeting.

Section 6.5. Uniform Rate of Assessment. Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots.

Section 6.6. Due Dates of Assessments. The Annual Assessment against each Lot shall be paid in one lump sum in advance on or before March 1st of each calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto no later than February 1st.

The due dates and collection period for any Special Assessments shall be established by the Board of Directors and approved by the Owners as provided in Section 6.4 above. If the Special Assessment is to be paid by the Owners in a lump sum payment, written notice of such Special Assessment shall be sent to every Owner subject thereto at least thirty (30) days before the due date. If the Special Assessment is to be paid by the Owners in two (2) or more installments, written notice of such Special Assessment shall be sent to every Owner subject thereto at least thirty (30) days before the first installment is due.

Payment of Annual and Special Assessments shall be made to the Board of Directors or the Managing Agent, if any, as directed by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 6.7. Effect of Nonpayment of Assessments, Remedies of the Association. No Owner may exempt himself or herself from paying Annual or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Property and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Property or the recreational facilities thereon or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Annual or Special Assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make payments of any Annual or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the assessment;
- (2) accelerate the entire balance of any unpaid Special Assessment for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) suspend such Owner's right to use the recreational facilities within Castle Cove and any other part of the Common Property as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and
- (4) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Annual or Special Assessments. The Board may bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover an Annual or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot.

Section 6.8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the property subject to assessment. Notwithstanding anything contained in this section or elsewhere in the Declaration or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Annual or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Annual or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Annual or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

ARTICLE VII **GENERAL CONSTRUCTION STANDARDS** **AND OTHER RESTRICTIONS**

Section 7.1. Minimum Living Space Area. The minimum square footage of the living space of residential dwellings constructed on numbered Lots in the Development shall be designated on the Plats. They shall, in no case, contain less square feet of living area than the original house on that Lot. For the purposes of this section, the square footage shall be exclusive of porches, terraces, garages, accessory buildings or basements, or portions thereof, or similar facilities not modeled and decorated for regular continuous habitation.

Section 7.2. Building on Continuous Lots. Whenever two or more contiguous Lots in the Development shall be owned by the same Owner, and the Owner shall desire to use two or more of said Lots as a site for a single dwelling house, the Owner shall apply, in writing, to the Committee for permission to use said Lots as desired. If permission for such a use shall be granted, the contiguous Lots constituting the site for such a single dwelling house shall be treated as a single Lot for the purpose of applying Restrictions to said Lots, so long as the Lots remain improved with one single dwelling house.

Section 7.3. Residential Set-Back Requirements. All dwelling houses and above grade structures shall be constructed, or placed, on any numbered Lot in the Development no closer than the minimum front setback lines as established in plats of the various sections of the Development.

Section 7.4. Exterior Construction. The finished exterior of every building constructed, or placed, on any numbered Lot in the Development shall generally be of wood, brick, stone and/or any other material approved by the Committee as to color and quality. Except as otherwise required by any applicable building code, no building shall have exposed metal flues that extend above the highest roof line. No aluminum or vinyl siding shall be allowed on any structure in Castle Cove.

Section 7.5. Garages. All residential dwellings in the Development shall include enclosed, off-street parking facilities for at least two full size vehicles attached to the primary residence, and two open guest parking facilities that may be a part of the driveway or turn around area.

Section 7.6. Prohibition of Used Structures. All structures constructed, or placed, on any numbered Lot in the Development shall be constructed with substantially all new materials. No used structures shall be relocated, or placed, on any such Lot without approval of the Committee.

Section 7.7. Model Homes. No Owner of any Lot in the Development shall build, or permit the building upon said Lot, any dwelling house that is to be used as a model home or exhibit house without the permission of the Board.

Section 7.8. Temporary Structures. No facility shall be erected or placed on any lot for the purpose of temporary storage and or residence.

Section 7.9. Driveways, Approaches and Turn Around Areas. For all numbered Lots in the Development, all surface areas intended for vehicular and/or personnel traffic shall be of a durable material and hard surface area such as concrete, asphalt or brick. Loose gravel and similar materials are prohibited.

Section 7.10. Residential Use of Structures

- a. Residential Use of Accessory Outbuildings. No accessory outbuilding shall be used as a residence.
- b. Occupancy or Residential Use of Partially Completed Dwelling House. No dwelling house constructed on any Lot shall be occupied, or used, for residential purposes of human habitation until it shall have been "substantially completed" according to industry standards.

Section 7.11. Swimming Pools. Only permanent, in-ground swimming pools constructed by pool professionals will be permitted, so long as approved in advance by the Committee. All swimming pools shall be backyard pools and should be oriented to minimize the potential effect on neighboring properties. All fencing around said swimming pools shall conform to county and municipal regulations, shall be designed to be in harmony with the surrounding areas, and must be approved in advance by the Committee. Swimming pools on lake front Lots are prohibited.

Section 7.12. Outside Toilets. No outside toilets shall be permitted on any Lot in the Development.

Section 7.13. Solar Panels. No solar panels shall be permitted.

Section 7.14. Sight Distances at Intersections. No fence, wall, hedge, shrub or other planting or structure which obstructs sight lines at elevations between two and six feet above the street shall be placed, or permitted to remain, within the triangular area formed by the street property lines and a line connecting points twenty-five feet from the intersection of said street lines, or in the case of rounded property corner, from the intersection of the street lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

Section 7.15. Timeliness of Construction.

- a. All construction projects in the Development shall be completed within six (6) months of the start of said construction.
- b. No structure which has been partially, or totally destroyed by natural or manmade disaster shall be allowed to remain in such a state for more than three (3) months from the time of such destruction or damage.
- c. If the Owner fails to comply with the requirements of this section within the time limits set forth above, the Association may authorize and implement completion of the needed construction as it sees fit.
- d. All costs incurred by the Association in enforcing any provisions of this Article VII, including any and all associated attorneys fees and court costs, shall be assessed against the Owner of said Lot and become a continuing lien upon the Lot in the same manner enforceable by the same means and charges as the levying and collection of other assessments as herein set forth.

ARTICLE VIII **MAINTENANCE OF PROPERTY**

Section 8.1. Maintenance of Lots and Improvements. The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly. Specifically, such Owner shall:

- a. Mow the Lot at such times as may be reasonably required to be consistent with common frequency within the development.
- b. Remove all debris and rubbish.
- c. Cut down and remove dead trees.

- d. Prevent the existence of any other condition that reasonably tends to detract from, or diminish, the aesthetic appearance of the Development.
- e. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

Section 8.2. Ditches and Swales. It shall be the duty of every Owner of every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated on his Lot continuously unobstructed, mowed and in good repair.

Section 8.3. Garbage and Other Refuse. No Owner of a Lot in the Development shall burn, or permit the burning, out of doors of garbage or other refuse. No Owner shall accumulate, or permit the accumulation, out of doors of such refuse on his Lot, including any compost pile that becomes an annoyance or nuisance to any other residents in the Development.

Section 8.4. Trash Receptacles. Every outdoor receptacle for ashes, trash, rubbish and/or garbage shall be installed underground, or shall be so placed and kept as not to be visible from any street within the Development at any time except from the evening before, to the evening of, the day when refuse collections are scheduled.

Section 8.5. Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Development shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions or the Standards (hereafter defined), the Association shall have the right (after fifteen (15) days written notice to said Owner), by and through its agents, employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the Standards. The cost therefor to the Association, including but not limited to all attorneys fees and court costs, shall be invoiced to the Owner of said Lot due and payable within 30 days. Said invoice shall be subject to the same remedies as payment of the annual assessment. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

ARTICLE IX **GENERAL RESTRICTIONS**

Section 9.1 General. No noxious or offensive activities shall be permitted on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development including loud noises and objectionable odors.

Section 9.2. Animals. No animals shall be kept, or maintained, on any Lot in the Development except for the usual household pets. Where such household pets are kept, they shall be reasonably confined, controlled, cared for and cleaned up after so as not to be a nuisance to other

residents. Owners of said animals shall be required to clean up any defecation, droppings or similar debris left by their animal on any property in the Development, and shall be responsible for any other damage said animals may cause to the Common Property or any other Lot. No "dog runs" or similar methods or mechanisms of confinement shall be permitted.

Section 9.3. Vehicles. No recreational vehicles, watercraft, campers, trailers of any kind, buses, mobile homes, or oversized commercial vehicles are to be kept or stored in view. Residents may not park vehicles in view which have tools, equipment or materials attached or stored to the outside of the vehicle. Repair and/or restoration of vehicles is to be confined within an owner's garage. No junk, derelict, non-repairable or other vehicles on which current registration plates are not displayed shall be kept in view. Parking of vehicles on Common Areas, except for the pool/tennis area parking lot, is not permitted. Parking along streets during or following a measurable snowfall is prohibited until snow removal efforts are complete.

Section 9.4. Pumping of Lake Water. Pumping of lake water is permissible only when the top of the overflow drain located on the North end of the lake is not visible. It is the homeowner's responsibility to verify the level of the lake prior to pumping.

Section 9.5. Residential Use and Home Occupations. It is the intent of this section to reinforce that Castle Cove is a residential complex and not a commercial park. As such, the rules are to govern those as to not jeopardize the safety of the residents, value, or character of the neighborhood. A home based business may be permitted if (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's home; (3) there are no employees or independent contractors within the home other than the Owner or other resident; (4) such Owner has obtained approvals for such use as may be required by the appropriate local and state governmental agencies; (5) the Owner has informed the Board of Directors; and (6) all other provisions of this Declaration, the By-Laws, the Standards (hereafter defined), and the rules and regulations are complied with. No Lot or dwelling shall be used or rented for transient, motel or hotel purposes.

ARTICLE X **GENERAL PROVISIONS**

Section 10.1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the terms of this Declaration, the rules and regulations promulgated hereunder, the Plats, the Standards (as hereafter defined), or the By-Laws of the Association, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions, and restrictions contained herein, the By-Laws, the Plats, the Standards, and any Rules and Regulations promulgated by the Board of Directors, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief, or secure removal by due process of any structure not in compliance with the Covenants, Conditions and Restrictions contained herein. In such an action, the Association

shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2. Severability. Each provision of this Declaration, the By-Laws, the Articles of Incorporation, the Standards, and the Rules and Regulations adopted by the Board of Directors is severable from every other provision, and the invalidity or unenforceability of any one or more provisions shall not change the meaning of or otherwise affect any other provision. To the extent that any provision of such documents is found to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision, then the narrower or partially enforceable construction shall be applied and, to the extent lawful, the provision shall be enforced.

Section 10.3. Amendment & Duration. The provisions of this Declaration may be amended, modified, or repealed, in whole or in part, at any time upon the approval of the Owners of at least two-thirds (2/3) of the total number of Lots in the Development at a special meeting called for such purpose.

The Covenants, Conditions and Restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4. Interpretation. The captions herein are provided only for reference, and shall not be deemed to define, limit or otherwise affect the scope, meaning or effect of any provision. If there is any conflict among this Declaration, the By-Laws, the Articles of Incorporation, the Standards, or the Rules and Regulations adopted by the Board of Directors, this Declaration shall control, except as to matters of compliance with the Act, in which case the Articles of Incorporation shall control. Particular provisions shall control general provisions, except that a construction consistent with the Act shall in all cases control over any construction inconsistent therewith. The provisions of the By-Laws shall control over any conflicting provision of any Standard or Rule or other resolution adopted pursuant to any of the Declaration. The Declaration, the By-Laws, the Articles of Incorporation, the Standards, and the Rules and Regulations adopted by the Board of Directors shall be construed together and shall be deemed to incorporate one another in full. Any requirements as to the content of one shall be deemed satisfied if the deficiency can be cured by reference to any of the others.

ARTICLE XI STANDARDS

Section 11.1. Standards. Attached hereto as Exhibit "C" is an instrument entitle "**Standards of Castle Cove—Compliance Guidelines**" (hereafter, "Standards"). The terms and conditions set forth in the Standards are covenants running with the land as to all Lots and Common Property within Castle Cove. The Standards shall not be contrary to, and shall be consistent with, this Declaration. If there is any irreconcilable conflict between any of the terms, covenants and restrictions contained in this Declaration and the Standards, the conflicting term, covenant or

restriction contained in this Declaration shall govern and control to the extent only of the irreconcilable conflict, it being the intent hereof that all such covenants and restrictions shall be applicable to the Development to the greatest extent possible.

Section 11.2. Amendment of Standards. After the recording of this Amended & Restated Declaration, the Standards shall be more readily amended in the future than the terms and conditions in this Amended & Restated Declaration. Consequently, said Standards may be amended by a procedure which is different from that set forth in Section 10.3 above. The Standards may be amended, modified, or repealed, in whole or in part, at any time upon the approval of the Owners of at least two-thirds (2/3) of the Lots represented, in person or by proxy, at a special meeting called for such purpose at which a quorum is represented. Notwithstanding any other provision in this Declaration or the Association's By-Laws to the contrary, the quorum for such a special meeting shall be fifty percent (50%) of the total number of Lots, in person or by proxy.

The undersigned Owner(s) of Lot _____ in Castle Cove, Section _____, an addition in Marion County, Indiana, having reviewed the above Amended & Restated Declaration of Covenants, Conditions and Restrictions of Castle Cove, do hereby adopt, ratify and approve, for themselves, their successors and assigns, the Amended & Restated Declaration and the inclusion of such Lot under said Declaration, as the same maybe amended from time to time, in consideration for the benefits afforded thereby including, but not limited to, the Association's management, operation, maintenance and repair of the swimming pool, lake, tennis courts, common areas and other amenities.

(owner's signature)

(owner's signature)

(printed)

(printed)

(street address)

(Lot no.)

(Section no.)

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared _____ and _____, who acknowledged the execution of

the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions of Castle Cove, and who, having been duly sworn, stated that the statements contained herein are true to the best of their knowledge and belief. Subscribed and sworn to before me this ____ day of _____, 200 ____.

Notary Public

Printed

My Commission Expires: _____

Residence County: _____