

BY-LAWS OF  
BLUE CREEK ASSOCIATION, INC.

ARTICLE I.

PURPOSES AND POWERS

Section 1. Purposes and Powers and Limitations Thereon. The purposes and powers of the Corporation and the limitations thereon shall be those expressed in Article II of its Articles of Incorporation.

ARTICLE II.

OFFICES

Section 1. Principal Office. The principal office of the Corporation shall be in Allen County, Indiana.

Section 2. Other Offices. The Corporation may also have other offices at such places within the State of Indiana as the Board of Directors may designate from time to time.

ARTICLE III.

MEMBERS

Section 1. Members. The members of the Association shall be the owners of lots within the Community of Blue Creek in Aboite Township, Allen County, Indiana (as defined in the Articles of Incorporation) and shall hold memberships as provided in Article V of the Articles of Incorporation of the Corporation. Every member shall receive a certificate from the Corporation, signed by the President or Vice President and the Secretary or

Assistant Secretary, stating that he is a member of the Corporation. Such certificate shall be surrendered upon termination of membership and shall not be transferable.

Section 2. Annual Meeting. The annual meeting of the members of the Corporation shall be held at the principal office of the Corporation on the 1st day of March of each year at 7:00 o'clock P.M., local time, if such day is not a legal holiday, but if such day is a legal holiday, then on the next succeeding business day, or at such other place (within Allen County, Indiana which is reasonably convenient for members to attend) and time (but not later than the end of the sixth month following the close of the fiscal year) as may be fixed by the Board of Directors and designated in the notice or waiver of notice of such meeting. At the annual meeting, the directors for the ensuing year shall be elected, the officers of the Corporation shall present their annual reports, the annual budget for the Corporation shall be adopted, and all such other business as may properly be brought before the meeting shall be transacted. The Secretary of the Corporation shall cause notice of the annual meeting to be given to each member of record of the Corporation entitled to vote by depositing in the United States mail, postage prepaid, in an envelope addressed to the latest address of such member as the same appears upon the records of the Corporation, a written or printed notice stating the place, day and hour of the holding of such meeting, such notices to be mailed at least ten (10) days before the date of such meeting.



Section 3. Special Meetings. Special meetings of the members may be held at the principal office of the Corporation or at such other place within Allen County, Indiana which is reasonably convenient for members to attend as may be designated, pursuant to the Articles of Incorporation, in the notice or waiver of notice of such meeting. Special meetings may be called in writing by the President, by a majority of the Board of Directors or by written petition signed by the holders of not less than 10 percent of the memberships entitled to vote. The Secretary of the Corporation shall cause notice of the holding of any such special meeting to be given to each member of record of the Corporation entitled to vote upon the business to be transacted at the meeting by depositing in the United States mail, postage prepaid, in an envelope addressed to the latest address of each such member as the same appears upon the books of the Corporation, a written or printed notice stating the place, day, hour, and purpose or purposes for which such meeting is called, such notice to be so mailed at least ten (10) days before the date of such meeting.

Section 4. Address of Member. The address of any member appearing upon the records of the Corporation shall be deemed to be the latest address of such member that has been furnished in writing to the Corporation by such member.

Section 5. Waiver of Notice. Notice of any members' meeting may be waived in writing by any member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting

is called and the time and place thereof. Attendance at any meeting in person, or by proxy when the instrument of proxy sets forth in reasonable detail the purpose or purposes for which the meeting is called, shall constitute a waiver of notice of such meeting. Each member who has, in the manner above provided, waived notice of a members' meeting or who personally attends a members' meeting or is represented thereat by a proxy authorized to appear by an instrument of proxy complying with the requirements above set forth, shall be conclusively presumed to have been given due notice of such meeting. When all members shall meet in person, such meeting shall be valid for all purposes and at such meeting any corporate action may be taken.

Section 6. Quorum. At any meeting of the members the holders of a majority of the memberships entitled to vote who are present in person or represented by proxy shall constitute a quorum for the transaction of business. If the holders of the number of memberships necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place fixed for such meeting, the holders of a majority of the memberships present in person or by proxy may adjourn from time to time, without notice other than announcement at the meeting, until holders of the number of memberships requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.



Section 7. Voting. No membership shall be voted at any time when any assessment with respect to the lot for which such membership is held is past due and unpaid. At each meeting of the members, every member shall have the right to one (1) vote for each membership held by him which is entitled to be voted at such meeting. Such member may vote either in person or by proxy appointed in writing and subscribed by such member or by his duly authorized attorney-in-fact, or appointed by telegram sent by such member or attorney-in-fact, and delivered to the Secretary of the Corporation at or before the time of the holding of such meeting. No such proxy shall be valid after eleven (11) months from the date of its execution unless a longer time is expressly provided therein. Memberships held by fiduciaries may be voted by the fiduciaries in such manner as the instrument or order appointing such fiduciaries may direct. If all persons who are together entitled to one membership do not agree upon the exercise of voting rights, the following provisions shall apply: (1) where a membership is held jointly by three or more persons, such membership shall be voted in accordance with the will of the majority; (2) where such persons or a majority of them cannot agree, or where they are equally divided upon the question of voting such membership, such membership shall be voted as may be directed by any court of general equity jurisdiction, as such court may deem for the best interests of the membership, upon petition filed by any such person or any party in interest.

Section 8. Voting List. The Secretary of the Corporation shall keep at all times a complete and accurate list of the members entitled by the Articles of Incorporation to vote at such election, arranged in alphabetical order, with the address and number of memberships so entitled to vote held by each, which list shall be on file at the principal office of the Corporation and subject to inspection by any member. Such list may be inspected by any member, for any proper purpose, at any reasonable time.

Section 9. Member Action by Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of members may be taken without a meeting if prior to such action a consent in writing setting forth the action to be taken is signed by all members entitled to vote, and such written consent is filed with the minutes of the proceedings of the members.

#### ARTICLE IV.

##### DIRECTORS

Section 1. Number. The present number of directors of the Corporation is three. The number of directors of the Corporation may be increased or decreased to any number not less than three nor more than five by amendment of this section 1, which amendment shall state the new number of the directors, but no decrease shall shorten the term of an incumbent director. Directors shall be members of the Corporation with the exception that the original Board of Directors as designated in the Articles of Incorporation need not be members. At such time as there are sufficient members of the Association to fill the Board as then constituted, the



non-member Directors shall resign and their vacancies shall be filled as hereinafter provided. Directors shall be elected at the annual meeting of the members or at a special meeting called for that purpose. Subject to termination and removal as permitted by law, each director elected at an annual meeting shall be elected to serve for one year and until his successor shall be elected and qualified and each director elected at a special meeting shall be elected for the period ending with the next annual meeting and until his successor shall be elected and qualified.

Section 2. Vacancies. Any director may resign his office at any time by delivering his resignation in writing to the Corporation, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective. Any vacancy occurring in the Board of Directors caused by resignation, death, or other incapacity, or increase in the number of directors, shall be filled by a majority vote of the remaining members of the Board until the next annual meeting of the members or, in the discretion of the Board, such vacancy may be filled by the vote of members at a special meeting called for that purpose.

Section 3. Removal of Directors. A director may be removed with or without cause by the vote of the holders of a majority of the memberships entitled to vote at a special meeting of members called for the purpose.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held at the place of and immediately

following the annual meeting of the members. Other regular meetings may be held at the principal office of the Corporation or at any other place within Allen County, Indiana reasonably convenient for directors to attend, at such times and places as the Board of Directors may fix from time to time.

Section 5. Special Meetings. Special meetings of the Board of Directors shall be held at the principal office of the Corporation or at any other place within Allen County, Indiana reasonably convenient for directors to attend whenever called by the President or the Secretary of the Corporation or by any two of the members of the Board. At least 72 hours' notice of such meeting specifying the time, place, and purpose thereof shall be given to each director either personally, by written notice deposited in the United States mail, postage prepaid in an envelope addressed to such director, or by telephone or telegram. Notice of the time, place, and purpose of the holding of any such special meeting may be waived in writing by any director if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person by any director shall constitute a waiver of the notice of such meeting. Whenever all of the directors shall meet, such meeting shall be valid for all purposes and at such meeting any corporate action may be taken.

Section 6. Quorum and Voting. A majority of the actual number of directors elected and qualified from time to time shall be necessary to constitute a quorum for the transaction of any business (excepting the filling of vacancies, in which case a



quorum shall be a majority of the remaining directors) and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by The Indiana Not-For-Profit Corporation Act of 1971, the Articles of Incorporation or another provision of these by-laws.

Section 7. Directors' or Committee Action by Consent in Lieu of Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if prior to such action a written consent to such action is signed by all of the members of the Board of Directors or of such committee and such written consent is filed with the minutes of the proceedings of the Board of Directors or committee.

#### ARTICLE V.

##### OFFICERS

Section 1. Officers. The officers of the Corporation shall consist of a President, a Treasurer, and a Secretary, and if desired by the Board of Directors, one or more Vice Presidents, and one or more Assistant Secretaries and Assistant Treasurers, all of whom shall be elected by the Board of Directors of the Corporation at the first meeting thereof immediately following the annual meeting of the members; and they shall hold office, subject to removal as provided by law, until their successors are elected and qualified. One person may hold more than one office, except that the offices of the President and Secretary shall not be held by the same person. The officers shall be chosen from among the directors of the Corporation.

Section 2. Removal. Any officer of the Corporation may be removed by the Board of Directors whenever the Board of Directors in its judgment believes that the best interests of the Corporation will be served by such removal. Such removal will be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer does not of itself create contract rights.

Section 3. Compensation. Officers shall not be entitled to compensation for their services.

Section 4. Duties.

(a) President. The President shall be the chief executive officer of the Corporation and shall have the powers and perform the duties usually incident to that office. He shall preside at all meetings of the members and of the Board of Directors. He shall submit to the Board of Directors, at least ten (10) days prior to the annual meeting of the members, an annual report of the operations of the Corporation during the preceding fiscal year, complete detailed statements of all income and expenditures and a balance sheet showing the financial condition of the Corporation at the close of the fiscal year. The President is authorized to sign, on behalf of the Corporation, contracts and other instruments in writing. The secretary shall thereupon attest any such document requiring such attestation under the corporate seal of the Corporation.

(b) Vice President. In the absence or inability of the President to act, his duties shall be performed and his powers may be exercised by the Vice President. The Vice President shall



perform such other duties as shall be delegated to him by the Board of Directors.

(c) Secretary. The Secretary shall keep or cause to be kept a full, true and complete record of all of the meetings of the members and of the Board of Directors and shall have charge of the minute book of the Corporation and of all its other books and documents (except the books of account). He shall have custody of the corporate seal, and he shall affix the same to and countersign papers requiring such acts, but only upon the order of the Board of Directors or the President, and shall perform such other duties as may be required by the Board of Directors or the President.

(d) Treasurer. The Treasurer shall have custody of the funds and other personal property of the Corporation and shall keep, or cause to be kept, correct and accurate books of account and shall also deposit, or see to the deposit of, the funds of the Corporation in a depository to be approved by the Board of Directors. He shall keep full and accurate accounts of all assets, liabilities, commitments, receipts, disbursements and other financial transactions of the Corporation in books belonging to the Corporation; shall (if directed by the Board of Directors) cause regular audits of such books and records to be made; shall see that all expenditures are made in accordance with procedures duly established, from time to time, by the Corporation; shall render financial statements at all regular meetings of the Board of Directors, and a full financial report at the annual meeting of members, if called upon so to do; and, shall perform such

other duties as may, from time to time, be delegated to him by the Board of Directors or the President.

(e) Assistant Secretaries. An Assistant Secretary shall assist the Secretary of the Corporation and shall perform such other duties as are delegated to him by the Board of Directors.

(f) Assistant Treasurers. An Assistant Treasurer shall assist the Treasurer of the Corporation and shall perform such other duties as are delegated to him by the Board of Directors.

#### ARTICLE VI.

##### ASSESSMENTS

Section 1. After the close of each calendar year and prior to the date of the annual meeting of the Association, the Board shall cause to be prepared and furnished to each member a financial statement prepared by a certified public accounting firm then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding calendar year.

Section 2. Annually, on or before the date of the regular annual meeting of the Association, the Board shall prepare a proposed annual budget for the ensuing calendar year estimating the total amount of expenses to be incurred by the Association for the ensuing year and shall furnish a copy of such proposed budget to each member prior to the annual meeting. Until such time as the Developer shall have sold all lots owned by him, the Annual Budget shall be divided into two categories, one category to be designated "Common Areas - Maintenance and Expense" and one category to be designated "Improved Lots - Maintenance and Expense."



All anticipated costs and expenses not directly associated with the Association's responsibilities regarding improved lots within the Community shall be allocated to the category designated "Common Areas - Maintenance and Expense." The annual budget shall be submitted to the members at the annual meeting for adoption and, if so adopted, shall be the basis for the assessments for the ensuing year. At the annual meeting, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the members present or represented.

Section 3. The annual budget as adopted shall, based on the estimated cash requirements for the expenses of the Association, contain a proposed assessment against each Lot upon which improvements have been completed subject to the provisions of Section 3 of Article VIII of these By-Laws by a member. No assessment shall be made upon any Lot conveyed to a member, but upon which improvements have not been completed by the member. Immediately following the adoption of the annual budget, each member shall be given written notice of the assessment against his Lot. This assessment against each Lot shall be paid in equal monthly installments, commencing on the first day of April of such calendar year and on the first day of each calendar month thereafter through and including the following March 1. The initial minimum monthly assessment shall be Ninety Dollars (\$90.00), and each member upon completion of improvements on his Lot shall begin payment of such assessment on the first day of the month following completion of the Lot improvements. In order to provide an operating fund for the use of the Association, an additional one month's assessment

shall be paid by each member with the first monthly assessment, said amount to be refunded to the member when he terminates his membership, if at that time all other obligations and assessments owed to the Association are current.

Section 4. From time to time common expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time the Board shall have the full right, power and authority to make by Board resolution special assessments which shall become a lien on each Lot, prorated in accordance with the respective obligation of each Lot to bear such expense as determined by the Board.

Special assessments may be assessed in a single lump sum or ratably over a period of time as the Board in its discretion shall determine. In making such determination, however, the Board shall give due consideration to the expenses and obligations, if any, incurred by the Association and/or the Board in connection with the matters giving rise to the special assessment, and the Board shall exercise every effort to cause special assessments to be charged to members in a manner which is fair and equitable and in a manner which will create as little undue burden or hardship as possible among the respective members, consistent with good accounting practices.

Section 5. The assessments levied by these provisions shall be used by the Association to perform its functions as defined in Article II, Section 2.02 of the Articles of Incorporation, provided however, with respect to its responsibilities under paragraph (g) of said Section 2.02 the responsibilities of the Association



shall be specifically limited to painting of exterior trim, staining of exterior surfaces, and pointing of exterior brick. The performance of these items of exterior maintenance shall not obligate the Association to furnish any other exterior maintenance or structural repair on improvements owned by its Members, and all such structural repairs and additional exterior maintenance shall remain the responsibility of the individual members. The Association shall have the power upon an affirmative vote of at least 66-2/3% or more of its members to perform such additional structural repairs or exterior maintenance upon the improvements of any Member who has failed after notice from the Board of the Association to undertake such repairs or maintenance to the satisfaction of the Board, to levy a special assessment against said member for the cost of such repairs and maintenance, and to encumber said Member's lot with a lien in the same manner as described in Section 6 hereafter.

Section 6. Each member shall be personally liable for the payment of all assessments. Where the member constitutes more than one person, the liability of such persons shall be joint and several.

(a) If any member shall fail or refuse to make any such payment of any assessment when due, the amount thereof shall constitute a lien on the Lot of the member, and upon the recording of notice thereof by the Association, such lien shall be constituted upon such member's Lot prior to all other liens and encumbrances, recorded or unrecorded, except only (i) taxes, special assessments and special taxes theretofore or thereafter levied by any political

subdivision or municipal corporation of this State and other State or Federal taxes which by law are a lien on the interest of such member prior to pre-existing recorded encumbrances thereon, (ii) encumbrances on the interest of such member recorded prior to the date such notice is recorded, which by law would be a lien thereon prior to subsequently recorded encumbrances, and (iii) the lien of any first mortgage owed by a member to a financial institution.

(b) The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other members, and may be foreclosed by an action brought in the name of the Association in a like manner as a mortgage of real property. The Association, acting on behalf of the members, shall have the power to bid in the interest so foreclosed at foreclosure sale and to acquire, hold, lease, mortgage and convey the same; and to subrogate so much of its right to such lien as may be necessary or expedient to an insurance company which will continue to give total coverage in spite of nonpayment of such defaulting member's portion of the premium.

(c) Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same.

(d) The Board shall further have the power to suspend the voting rights and right to use of the common areas of a member during any period in which such members shall be in default in the payment of any assessment levied by the Association.



(e) Any payment for assessments not made when due shall bear interest at the rate of eighteen percent (18%) per annum from the date the same shall become due until the date the same is paid. It shall further be the obligation of any party who shall fail to pay any assessment or assessments when due to reimburse the Association for all expenses incurred as a result of such failure to pay, including all expenses incurred by the Association in the collection of the same, and including further, but not limited to, all costs of overhead, accounting and legal expenses incurred with respect to, arising out of, or occasioned by the said failures to pay.

(f) In the event any person shall acquire or be entitled to the issuance of a tax deed, public trustee's deed, sheriff's deed, commissioner's deed, etc., the interest so acquired shall be subject to all the provisions of these by-laws.

#### ARTICLE VII.

##### IMPROVEMENT OF LOTS

Section 1. Each member of the Association, by purchase of a Lot in the Community of Blue Creek and by acceptance of a certificate of membership, agrees to utilize John H. Shoaff as architect, Benchmark Homes, Inc. as general contractor, and Saxton Nursery and Landscape, Inc. as landscaping contractor, in the design and construction of all original improvements to be built upon his Lot in the Community. The purpose of this provision is to insure compliance with uniform and high quality standards of design and construction in the completion of the improvements in

the Blue Creek Community, the above persons or firms having been previously selected by the Developer, G. Irving Latz II, and having worked closely with said Developer in designing and planning a unified and cohesive overall development plan for the Community.

Section 2. Should any one of the above persons or firms become unable, for any reason, to perform his or its function in the original improvement of any Lot in the Community, the Developer shall propose to the members of the Association, at a meeting of said members called specifically for the purpose of designating a replacement for such person or firm, a panel of not more than three (3) persons or firms that he has selected, any one of which he recommends as replacement for the person or firm that is unable to perform his or its function.

Section 3. The members of the Association shall by majority vote, said vote not to include any vote for Lots owned by the Developer, either accept one of the persons or firms presented by the Developer, or reject all of said persons or firms presented.

Section 4. In the event the members do not accept any of the persons or firms presented by the Developer, the matter of replacement of the person or firm that is unable to perform shall be submitted to binding arbitration before an arbitrator or arbitrators selected as provided below, such arbitrator or arbitrators to be certified architects. In the event the Developer and the Members are unable to agree upon a single Arbitrator to hear the matter of replacement of the person or firm who is unable to perform, both the Developer and the members shall each



select an Arbitrator, and the two Arbitrators so selected shall together select a third Arbitrator. The three Arbitrators selected shall then hear the matter of the replacement of the person or firm who is unable to perform, and render their decision as to said replacement as expeditiously as possible. The decision of the Arbitrator(s) shall be final and not appealable to any Court for review. The costs of such arbitration proceedings shall be borne equilly by the Developer and the Members.

Section 5. The above method of selection of a replacement person or firm for an architect, general contractor, or landscaping contractor shall be in effect until such time as six (6) lots in the Community have been conveyed by the Developer and improvements on those six lots have been completed. Thereafter, the Association, by a majority vote of its members shall have the sole authority to designate a replacement person or firm for any such person or firm originally designated to act as architect, general contractor, or landscaping contractor, who is unable to perform his or its function in the improvement of the remaining lots.

#### ARTICLE VIII

##### COMMON AREAS

Section 1. Certain areas have been designated in the recorded plat of Blue Creek as Common Areas. These areas are to be initially developed and improved by the Developer, and may be used by any member of the Association and by family members, guests, and invitees of Members at such times and in such manner as may be more fully outlined in specific rules and regulations for such use to be adopted by the Association.

Section 2. The Developer shall be required to convey the title to the Common Areas to the Association at the time when the contemplated improvements to the Common Areas are completed. If less than all of the platted Common Areas are developed and improved to completion by the Developer, at that time the Developer shall retain the right to convey title to that portion of the platted Common Areas that have been completed as contemplated by the Developer. Upon such conveyance the Association shall immediately assume the responsibility for maintenance of such Common Areas conveyed.

Section 3. During the period of time during which the Developer is the owner of any lots in the Community, the Developer shall be responsible for payment to the Association of his pro rata share of the expenses of care and maintenance of the Common Areas in the Community, said pro rata share of those expenses to be based upon a portion of the total expenses for such care and maintenance computed by multiplying such total expenses by a ratio, the numerator of which shall be the number of Lots owned by the developer and the denominator being the total number of Lots platted (i.e. nine). These funds so paid into the Association by the Developer shall be paid into and applied to that portion of the Association's annual budget designated as "Common Areas -Maintenance and Expense."

Section 4. During the period of time during which the Developer is the owner of any lots in the Community, the Developer shall not be responsible for any payment into the portion of the



Annual Budget designated as "Improved Lots - Maintenance and Expense", the funds for said portion of the Corporation's annual budget to be derived solely from the monthly assessments made against improved Lots as more fully described in Article VI.

#### ARTICLE IX

##### SEAL

Section 1. The corporate seal of the Corporation (if one is acquired) shall have inscribed thereon the name of the Corporation around the circumference thereof and the word "Seal" in the center thereof. The seal can be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

#### ARTICLE X

##### FUNDS

Section 1. Depository. The funds of the Corporation shall be deposited in a depository or depositories to be selected by the Board of Directors of the Corporation.

Section 2. Withdrawal of Funds. The funds of the Corporation may be withdrawn and disbursed by such officers as may be designated by the Board of Directors.

#### ARTICLE XI.

##### AMENDMENT

These by-laws may be amended by the Board of Directors, by the affirmative votes of a majority of the whole Board, at any regular or special meeting notice of which contains the proposed amendment or a digest thereof, or at any meeting, regular or special, at which all directors are present, with the exception

that the provisions of Article VII may only be amended by an affirmative vote of 66-2/3% of the members of the Association itself, at a special meeting of the Association called for that purpose.