

Instrument
9809802347

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

179.00
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FOR
ASHWOOD

9809802347
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 01-16-1998 At 10:37 am.
DEC COV RES 79.00

THIS DECLARATION (hereinafter called "the Declaration" or "this Declaration") made this 22nd day of December, 1997, by WOODFIELD, LLC, an Indiana limited liability company (hereinafter called "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of the real estate in Hamilton County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant is in the process of creating on the Real Estate a residential community to be known generally as Ashwood; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities (if any) therein contained, and to this end, Declarant desires to subject the Real Estate and each owner of all or part thereof to the terms of this Declaration, as hereinafter provided; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering the common facilities (if any) located on the Property (hereinafter defined), administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance and repairs as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name "Ashwood Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

ARTICLE I
DEFINITIONS

Section 1. The following words, when used in this Declaration or any supplemental declaration (unless the context shall prohibit), shall have the following meanings:

- A. "Applicable Date" shall mean the "Applicable Date" as defined and determined in accordance with Section 3.B. of Article III hereof.
- B. "Association" shall mean Ashwood Homeowners Association, Inc., an Indiana non-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.
- C. "Board" or "Board of Directors" shall mean the board of directors of the Association.
- D. "Common Area" shall mean such portions of the Real Estate (if any) as are hereafter declared to be "Common Area" by an instrument executed and recorded by the Declarant, whether or not such areas comprise part or all of a Lot or Lots or are shown upon any recorded subdivision plat of the Property and shall include a playground.
- E. "Declarant" shall mean Woodfield, LLC, and any successors and assigns of Declarant who it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under,

or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

F. "Drainage Easement" (D.E.) shall mean those parts so designated on any recorded Plat of the Property, or any part thereof.

G. "Home" shall mean a residential housing unit designed or intended for use as living quarters for one family or housekeeping unit.

H. "Landscape Easement" (L.E.) shall mean those parts of the Property so designated on any recorded Plat of the Property, or any part thereof.

I. "Lot" shall mean and refer to any and each plot of land included in the Property (with the exception of Common Area) designed and intended for use as a building site for a Home, and identified as a lot on any recorded subdivision plat of the property or any part thereof (including the Plat).

J. "Member" shall mean any person or entity holding membership in the Association as provided in Article III hereof.

K. "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.

L. "Mortgagee" shall mean any person or entity named as the mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage.

M. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

N. "Person", whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, limited liability company, limited liability partnership, association, trust, or other legal entity, or any combination thereof.

O. "Plat" shall mean the subdivision plat(s) of the Real Estate.

P. "Property" shall mean and refer to the Real Estate.

Q. "Real Estate" shall mean the parcel or parcels of real estate in Hamilton County, Indiana, described in Exhibit "A" attached to and incorporated in this Declaration.

R. "Sewer Easement" (S.E.) shall mean those parts of the Property so designated on any recorded Plat of the Property, or any part thereof.

S. "Tree Preservation and Pipeline Easement" shall mean those parts of the Property shown on Exhibit "B" attached hereto.

T. "Utility Easement" (U.E.) shall mean those parts of the Property so designated on any recorded Plat of the Property or any part thereof.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. As of the date of execution of this Declaration, the Property consists solely of the Real Estate. The owner of any Lot at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

to vote. When more than one Person holds title to any Lot, all such Persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other Person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other Person entitled to a vote at such meeting, unless such co-Owner or other Persons have filed a general voting authority with the Secretary applicable to all votes until rescinded. If such designation is not made and an agreement is not made between Co-Owners as to the Person entitled to cast the vote, there shall be no vote counted for such Lot.

B. Class B. Class B members shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each single numbered parcel of land owned by it and shown upon and identified as a Lot on any recorded plat of the Real Estate. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after all of the Lots in the Property have been conveyed to Owners other than Declarant; (c) ten (10) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; (the applicable date being herein referred to as the "Applicable Date").

Declarant shall be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of the Class B membership.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of not less than thirty (30) days, or shall be in default in the

A. The right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same;

B. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;

C. The right of the Association to levy assessments as provided in this Declaration; and

D. The rights of the Association and Declarant reserved under this Declaration.

Section 3. Association's Rights and Obligations.

A. The Association shall have the obligation to manage, repair, maintain, improve and operate the Common Area, and the fence and mounding in the Landscape Easement and the landscaping, signs and other Improvements located therein by Declarant.

B. The Association shall not have the right to mortgage any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 3.A. hereinabove.

C. The Association shall have the right to grant permits, licenses, and easements over the Common Area for utilities and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval required hereinbelow.

D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may at any time be granted by Declarant or the Association (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or any other utility services serving any Lots or the Common Area.

Section 4. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last single numbered parcel of land shown upon, and identified as a lot on any recorded plat(s) of the Real Estate (whether heretofore or hereafter recorded, including the Plat) is conveyed to an Owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Area for the completion of improvements and the making of repairs to improvements (whether upon the Common Area, upon unsold Lots, or upon other portions of the Real Estate) and the right to maintain signs upon the Common Area and any other portions of the Property (other than Lots owned by an Owner other than Declarant) for the purpose of marketing homes, and to invite and escort the public thereon for such purpose.

Section 5. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any subdivision plat of any part of the Property shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Area being reserved to the Owners and the Association as provided in this Declaration.

Section 6. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any Home or any improvement to any Home encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Home shall exist for the continuance of any such encroachment on the Common Area.

Section 7. Title to Common Area. Declarant hereby covenants that it shall convey and transfer the Common Area included in and constituting a part of the Real Estate to the Association prior to the Applicable Date. The Common Area so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and restrictions then of record, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and

assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association. The Common Area shall perpetually run with the subdivision.

ARTICLE V ASSESSMENTS

Section 1. Personal Obligations. Each Owner of a Lot by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to: the expenses and costs of liability insurance for Common Areas and any other common property; snow removal; trash removal (if provided by the Association); street lighting (if provided by the Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) or from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in advance on the first day of January of each calendar year or, if so determined by the Association, in such other periodic installments as may be specified by the Association. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written

notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hamilton County, Indiana. No Owner shall avoid liability for the assessments which became due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Home.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property, to construct, manage, improve, maintain, repair and administer the Common Area and the Landscape Easement and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and the Landscape Easement and any other property or elements that must be replaced on a periodic basis. Such reserve fund shall be provided from of the regular annual assessments.

Section 3. Annual Assessments. Until December 31, 1998, the maximum annual assessment shall be Two Hundred and no/100 Dollars (\$200.00) per Lot.

A. From and after December 31, 1998, the maximum annual assessments may be increased each year not more than 10% above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of membership.

B. From and after December 31, 1998, the maximum annual assessments may be increased by more than 10% above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose.

C. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in

part, the cost of any construction, reconstruction, repair, replacement, or maintenance of the Common Area and Landscape Easement or for any other purpose not prohibited under this Declaration or in the Articles of Incorporation or By-Laws of the Association, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days, nor more than sixty (60) days, in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast twenty-five percent (25%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected on an annual basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines. The provisions of this Section 6 are subject to the provisions of Section 13 of this Article V as to all Lots owned by Declarant.

Section 7. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to each Lot subjected to this Declaration on the first day of the month following the month of recording of the instrument by which such Lot is conveyed to an Owner, subject to the provisions of Section 13 of this Article V as to all Lots owned by Declarant and any builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

Section 8. Commencement of Annual Assessments. By November 1 of each year the Board shall fix the amount of annual assessments against each Lot for the

following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 9. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer of the Association setting forth whether there are any then unpaid annual or special assessments levied against the Lot of such Owner or Mortgagee. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 10. Nonpayment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. If an Assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eighteen percent (18%) per annum and shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon and the Association may bring an action at law or in equity against the Person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 11. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the Person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the Office of the Recorder of Hamilton County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the Person personally

liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the Person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

Section 12. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a common expense.

Section 13. Limitations on Assessments Owed by Declarant and Builders. Notwithstanding anything to the contrary contained herein, the Declarant shall not be obligated to pay, as to any and all Lots owned by it from time to time, and any builder

purchasing a Lot with the intent of building a Home for a prospective buyer Owner shall not be obligated to pay as to such Lots owned by such builder, for a period of one hundred twenty (20) days following the closing and sale of such Lot to such Builder, any assessments (whether regular annual assessments or special assessments) payable hereunder by Owners.

ARTICLE VI

ARCHITECTURAL CONTROLS

Section 1. Architectural Committee Authority. No exterior additions, removals or alterations to any building on the Property, additional fences, or changes in existing fences, hedges, walls, walkways and other structures shall be commenced, erected or maintained except such as are installed or approved by the Declarant in connection with the initial construction of the Home and other buildings and improvements on the Property, until the written plans and specifications showing in reasonable detail the nature, kind, shape, height, materials (including color), location and approximate cost of same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding buildings in the Property by an Architectural Committee composed of the Board of Directors of the Association or three (3) or more representatives appointed by the Board of Directors. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within thirty (30) days after said written plans and specifications have been submitted to it, or if no suit to enjoin the making of such additions, alterations or changes or to force the cessation thereof has been commenced within sixty (60) days of such submission, such approval will be deemed to have been given. If no such submission has been made to the Architectural Committee, suit to enjoin or force the removal of such additions, alterations or changes may be instituted at any time by the Association or any Owner. During the time which the Association has a Class B Member, the decisions of the Architectural Committee must have the written approval of the Declarant. The approvals of the Architectural Committee required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required to be obtained from any other Persons or governmental agencies pursuant to the terms of the Plat, or any other plat or otherwise.

Section 2. Restoration in Accordance with Original Plans. Any restoration or repair of the exterior of a Home, after a partial condemnation or damage due to fire or other casualty, shall be performed substantially in accordance with this Declaration and the original plans and specifications for the same, unless other action is approved by the Architectural Committee.

ARTICLE VII

OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Area. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area and all improvements (if any) thereon or in the Landscape Easement and the entrance lights and shall keep the same in good order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots) shall include, but not be limited to, the maintenance and repair of the Common Area, and all other improvements or material located within or used in connection with the Common Area, including the mounds in the Landscape Easement and the entrance lights.

Section 2. Services. The Association may obtain and pay for the services of any Persons, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property whether such personnel are furnished or employed directly by the Association or by any Person with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or an entity owned or controlled by the same Persons as Declarant, must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice

and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property (if any) to a resident of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

Section 4. Hazard and Liability Insurance for Common Property. The Association shall procure extended coverage insurance on the Common Areas, providing for reconstruction of such insurable Common Areas and other common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages ("First Mortgagees") on Homes, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Homes establishing entitlement to such reimbursement.

ARTICLE VIII
OWNERS' MAINTENANCE

Section 1. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Home and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association.

ARTICLE IX
GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS
APPLICABLE TO PROPERTY

Section 1. Home and Lot Restrictions. No more than one Home shall be erected or maintained on each Lot. No Home shall be used for purposes other than as a single family residence, nor shall any trade or business of any kind be carried on within a Home or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model Homes and business and sales offices during the construction and sale periods by Declarant or any builders with whom Declarant has contracted for the sale of Lots.
- B. The maintenance of offices by the Association or its designated manager for purposes of management of the Property.
- C. Lease, rental or use of a Home for purposes consistent with this Section.
- D. The use of a Home by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 2. Building Set-back Lines. Building set-back lines are established on the Plat. No building or structure shall be erected or maintained between said set-back lines and the front or rear lot line (as the case may be) of said lot.

Section 3. Home Size. No Home shall have less than 1300 square feet of floor area, exclusive of garages. No homes consisting of two stories shall have less than 800 square feet of floor area on the first level, exclusive of garages.

Section 4. Garages. No garage shall be erected on any Lot which is not permanently attached to the Home, and no unenclosed storage area shall be erected.

Each Home shall contain no less than a two car garage. No enclosed storage area shall be erected on any Lot which is not permanently attached to the Home.

Section 5. Exterior. All Homes shall have a minimum of 25% of the vertical front exterior finished with masonry, excluding from this computation doors, windows, gables, porches, patios and upper levels of Homes having two or more levels.

Section 6. Outbuildings. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot, except that used by a builder during the construction of a Home, which temporary construction structures shall be promptly removed upon completion of construction of the Home, without approval by the Architectural Committee.

Section 7. Driveways, Mailboxes. Each driveway on a Lot shall be of concrete material. All mailboxes and street numbers shall be uniform and in accordance with the specifications established by the Architectural Committee.

Section 8. Swimming Pools. No above-ground swimming pools shall be permitted in the Property.

Section 9. Lighting, Solar Heat Panels. Each Home shall have two uniform dusk to dawn lights on the front exterior at the location established by the Architectural Committee. No solar heat panels shall be permitted in the Property.

Section 10. Landscaping, Sidewalks. Each Home shall have a landscape plan approved by the Architectural Committee. Lots will be sodded in the front yard and the balance hydroseeded upon completion of construction of a structure. All Lots shall have a minimum of two (2) low bushes and two (2) ash trees or other type approved by the Architectural Committee of not less than two and one-half inch (2 1/2") caliper installed on each Lot between the sidewalk and the public street and two pine trees. The Owners of Lots shall install prior to occupancy of any Home concrete sidewalks across the entire portion of the Lot that abuts the street pursuant to plans approved by the Architectural Committee and which comply with all applicable municipal ordinances, rules and regulations.

Section 11. Access. All Lots shall be accessed only from the interior streets of the Property.

Section 12. Trash. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon and during construction all rubbish, garbage or other waste shall be removed regularly and in no event less than at the end of each day.

Section 13. Setback Requirements. No part of any structure (except an open porch or eave or cornice overhang not exceeding two (2) feet) shall be built closer to the street than the front building set back lines as shown on the Plat. A minimum rear yard of thirty (30) feet shall be provided for each perimeter Lot. The minimum side yard separation shall be no less than fifteen (15) feet between improvements for each Lot.

Section 14. Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located such that they are completely concealed from public view.

Section 15. Obstruction. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Association except construction materials and equipment during the construction period or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

Section 16. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof or of the exterior of the Property and buildings thereon shall be committed by

any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants. No noxious, destructive or offensive activity shall be allowed in any Home, on any Lot or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 17. Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of 25% of the total votes of the Association, the Board of Directors shall have the authority to and shall order the removal of any pet.

Section 18. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot upon which the same are located. The design of such screened enclosure must be approved by the Association in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any

description other than normal passenger automobiles (including station wagons, utility vehicles and small trucks such as pickups and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Area, either permanently or temporarily.

Section 19. Signs. No signs of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require, and except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale periods.

Section 20. Antennae and Satellite Dish. No exterior television, radio antennae, or satellite dish (except those not exceeding two feet (2') in diameter and approved in writing by the Board) of any sort shall be placed, allowed or maintained upon any portion of the improvements or structures to be located upon the Property, or on the Property itself.

Section 21. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Home or Lot may be leased for a period of less than 90 days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Home.

Section 22. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including the Common Area, as the Board in its sole discretion deems appropriate or necessary.

Section 23. Accessory Outbuilding Prohibited. No accessory outbuildings shall be erected on any Lot or Lots without the prior written approval of the Committee.

Section 24. Occupancy or Residential Use of Partially Completed Home Prohibited. No Home shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the Home shall have been substantially completed in accordance with the approved building plan shall be made by the Architectural Committee and such decision shall be binding on all parties.

Section 25. Other Restrictions. The Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Property, all of which are incorporated herein by reference.

Section 26. Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration, Declarant shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of this Declaration. The cost incurred by Declarant shall be collected from Owner. Declarant or its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the Applicable Date, the Association shall succeed to and be vested with the rights of the Declarant provided for in this Section 26.

Section 27. Development and Sale Period. Nothing contained in this Article IX shall be construed or interpreted to restrict the activities of Declarant, in connection with the development of the Property and sale of Lots. Declarant and builders with whom Declarant has contracted shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or such builders, as in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices, business offices and a construction entrance.

Section 28. Porches. The front entry porches on all Homes shall not be enclosed or used for storage purposes and shall at all times be maintained by Owner in a good state of appearance and cleanliness. The Porches shall not be structurally modified or altered without the prior written approval of the Declarant until the Applicable Date and thereafter by the Association.

Section 29. Water Discharge. No clear water sources, including, but not limited to, foundation drains, sump pumps and road drains shall be permitted to be discharged into the sanitary sewers.

ARTICLE X

RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Association identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Home and the address of such party (a holder of a First Mortgage on a Lot or Home who has so requested such notice shall be referred to herein as an "Eligible Mortgage Holder" and an insurer or governmental guarantor of a First Mortgage on a Lot or Home who has so requested such notice shall be referred to herein as an "Eligible Insurer or Guarantor"), any such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(A) Any condemnation loss or any casualty loss which affects a material portion of the project or any lot or Home on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Home subject to a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of 60 days;

(C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article; and

(E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 3. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Home will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 4. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage shall not be liable for the unpaid assessments of the Lot which were payable prior to the acquisition of title to or possession of such Lot by the First Mortgagee.

Section 5.A. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Lots or their assigns (based upon one vote for each First Mortgage owned), and at least seventy-five (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder including the Declarant) of the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association nor the Owner shall be entitled to:

(A) terminate the legal status of the project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);

(B) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed such a transfer;

(C) use hazard insurance proceeds for losses to any Common Area or other common property for other than the repair, replacement or reconstruction of such common property;

(D) add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (1) Voting;
- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of the Common Area (or exterior maintenance of Homes if applicable);
- (4) Insurance or Fidelity Bonds;
- (5) Rights to use Common Area;
- (6) Responsibility for maintenance and repair of the several portions or the project;
- (7) Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project;
- (8) Boundaries of any Lot;
- (9) The interests in the general Common Area;
- (10) Convertibility of Lots into Common Area or of Common Area into Lots;
- (11) Leasing of Lots or Homes;
- (12) Imposition of any right of first refusal or similar restriction on the right of Owner to sell, transfer, or otherwise convey his or her Lot or Home;
- (13) Any provisions which are for the express benefit of First Mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of First Lien on Lots;

except in accordance with procedures set forth in this Declaration and the By-Laws or in the event of amendment or termination made as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Areas which might occur pursuant to any plan of expansion or phased development contained in this Declaration;

(E) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Homes.

For purposes of this section, an addition or amendment to such documents shall not be considered material if it is made (i) for the purpose of correcting clerical, typographical or technical errors, (ii) for clarification only, (iii) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform)

functions similar to those currently performed by the above-referenced entities, (iv) to induce any of the agencies or entities mentioned or referred to in subsection (iii) herein to make, purchase, sell, insure or guarantee First Mortgages covering Lots and Homes, or (v) to bring such documents into compliance with any statutory requirements; and any such addition or amendment to such documents which is so considered not to be material may be made by Declarant acting alone and without the consent, approval or joinder of the Owners, the Association, any First Mortgagees, any other mortgagees or any other person

An eligible mortgage holder who receives a written, request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

Section 5.B. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration if, at the time such actions are taken, the Federal Housing Administration or the Veterans Administration is then the Owner of a Lot, an Eligible Mortgage Holder or an Eligible Insurer or Guarantor:

(A) dedication to the public or to or for any public use or purpose of any part of the Common Area; provided, however, that such approval is not and shall not be required for the granting of easements to utility companies, public or private, for the installation, maintenance repair, replacement and servicing of equipment and facilities necessary to provide all utility services to the Property; and

(B) amendment of this Declaration; provided however, that such approval is not and shall not be required for any amendment or supplement to this Declaration made by Declarant or the owners of the Lots for any purposes set forth in Subparagraphs (i) through (v), inclusive, of Section 5.A.

Section 6. Examination of Books and Records. First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 7. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay

overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 8. Designation of Representative. Any holder of a First Mortgage on a Lot or Home may designate a representative to attend meetings of members, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved.

Section 9. Distribution of Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

ARTICLE XI INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available and necessary, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of, the agencies and entities mentioned or referred to herein, to-wit:

(A) Master or blanket type of policy of fire insurance with extended coverage endorsement [including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage] insuring the Common Area (including all of the fixtures installed therein). Said policy shall afford, at a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement.

where such is available. The name of the insured under such policies must be set forth therein substantially as follows;

"Ashwood Homeowners Association, Inc., for the use and benefit of the individual Owners".

The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners, payable in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with respect to the Common Area equally with each other Lot. Policies must provide for the recognition of any Insurance Trust Agreement.

(B) Workmen's compensation, occupational disease and like insurance (if the Association has eligible employees);

(C) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:

- (1) covering events occurring anywhere on the Common Area (and public and private ways) or arising out of or in connection with the use, ownership or maintenance of the Common Area;
- (2) covering without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
- (3) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and
- (4) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence.)

(D) Such other insurance as the Board of Directors may determine.

(E) All such policies must provide that they may not be cancelled or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owners' Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, all personal property, including, without limitation, fixtures, furniture and furnishings.

Section 3. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any Insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Section 4. Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessments levied by the Association, and such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

ARTICLE XII

EMINENT DOMAIN

Section 1. Representation. The Association shall represent the Owners in any condemnation proceedings and in any negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof; and by acceptance of a deed for his, her or its Lot, each Owner appoints the Association

as such Owner's agent and attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

Section 2. Reconstruction. In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof).

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association may be by any proceeding, at law or in equity, instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the court shall be assessable against and payable by any persons violating the terms contained herein.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the

covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinabove provided.

Section 3. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing.

Section 5. Captions. The Article and Section headings herein are intended for convenience of reference only and shall not be given any substantive effect.

Section 6. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

ARTICLE XIV

AMENDMENT

Except as hereinafter provided, this Declaration may be amended prior to the Applicable Date by an instrument signed by not less than ninety percent (90%) of the Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. Certain amendments also require additional approval as specified in this Declaration.

The foregoing notwithstanding, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval so long as Declarant owns one or more Lots. The foregoing notwithstanding, this Declaration may also be amended by Declarant at any time prior to the Applicable Date, if it has an ownership interest in the Property.

ARTICLE XV

ACTIONS

Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Declarant and Association, any Person having any right,

title or interest in the Real Estate (or any part thereof), or any Person having any right, title or interest in a Lot which is now or hereafter made subject to the Declaration, and all Persons claiming under them, against the Person violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Declarant nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

ARTICLE XVI EASEMENTS

Section 1. Easements. The Lots shall be conveyed subject to easements for the benefit of the Lots as shown on the Plat. The terms of the Plat, in addition to the provisions in Section 2 of this Article XVI prescribe the terms, conditions and use of such easements.

Section 2. Utility and Drainage Easement. There are parts of the Property on the Plat marked "Drainage Easement", "Sewer Easement" and "Utility Easement". Such easements are hereby created and reserved for the use by the Declarant prior to the Applicable Date, and by all public utility companies (including Hamilton Southeastern Utilities, Inc. ("HSE")) but not including transportation companies, governmental agencies and the Association, for access to and construction, extension, installation, operation maintenance, reconstruction, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services and for access to and installation, repair or removal of a sanitary sewer system. The delineation of the areas on the Plat shall not be deemed a limitation on the rights of any Person for whose use and benefit such easement is created.

Section 3. Landscape Easement. The Landscape Easement shall be used for the aesthetic and visual enjoyment of the Owners of Lots. The landscaping and signs located within this area shall be maintained by the Association and the Association

shall have an easement of ingress and egress on and over such area for the purpose of maintenance.

Section 4. HSE Requirements.

A. No pavement or concrete, including driveways and sidewalks, shall be constructed on or within one foot horizontal distance of any sanitary sewer manhole or cleanout casting.

B. All repairs and replacements to retaining walls, landscaping walls, entrance walls and landscaping located within a Sewer Easement caused by the construction or maintenance of the sanitary sewer facilities shall be performed by the Association (as to Common Areas) and the Owner of the Lot (as to areas on a Lot).

C. All Lot Owners shall be responsible for all maintenance, repair and replacement of all grinder pumps, force mains and gravity laterals from sewer main if not serviceable by a gravity main.

D. Any grade changes across sanitary sewer facilities must be approved in writing by HSE.

E. The drip line of all trees must be located a minimum of ten feet from the center of sanitary sewers and manholes and no trees shall be planted directly over Home sewers (laterals).

F. HSE shall not be responsible for the operation, maintenance and replacement of the portion of the lateral servicing each Lot from the Home to the gravity main installed under paved areas.

Section 5. Tree Preservation and Pipeline Easement. The Tree Preservation and Pipeline Easement shall not be used for any purpose other than aesthetic and visual enjoyment of the Owners of Lots. No structures or buildings may be constructed in this area. No trees or shrubs, unless they have died, shall be removed from the northern 20' of the Tree Preservation and Pipeline Easement, but they may be replaced by comparable trees or shrubs.

IN WITNESS WHEREOF, Declarant, by its President, has caused this document to be executed as of the day and year first above written

DECLARANT

WOODFIELD, LLC,
an Indiana limited liability company

By: EquiCor Development, Inc., Member

By: [Signature]
Greg M. Small, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared Greg M. Small, the President of EquiCor Development, Inc., an Indiana corporation, a Member of Woodfield, LLC, an Indiana limited liability company, who, having been duly sworn, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said corporation, for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 22nd day of December, 1997.

[Signature]
Notary Public

Theresa J. Hill
Printed Name



My Commission Expires:

December 31, 1998

County of Residence:

Hamilton

This Instrument prepared by: Jeffrey A. Abrams, Dann Pecar Newman & Kleiman, Attorneys at Law, 2300 One American Square, Indianapolis, IN 46282

EXHIBIT "A"

S $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29 Township 18N
Range 5 E

N $\frac{1}{4}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 29 Township 18 N
Range 5 E

N $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 29 Township 18N
Range 5 E

South half of the Southwest Qtr. of the North west Qtr. of
Section 28. Township 18 North Range 5 East