

JOHN R. VON ARX
MARION COUNTY AUDITOR

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DECLARATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
AUTUMN CREEK

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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
AUTUMN CREEK

THIS DECLARATION, made this 8th day of AUGUST 1997,
by KEVIN K. KIRKPATRICK (hereinafter referred to as the
"Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner of all the lands contained in the area shown on Exhibits "A" and "B", attached hereto and made a part hereof, all of which lands will be subdivided and will be known as Autumn Creek, a subdivision in Marion County, Indiana (hereinafter referred to as the "Development"), and will be more particularly described on the plat thereof which will be recorded in the office of the Recorder of Marion County; and

WHEREAS, the Declarant is about to sell and convey the residential lots situated within the platted areas of the Development and, before doing so, desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial covenants, restrictions, conditions and easements (hereinafter referred to as the "Covenants") under a general plan or scheme of improvement for the benefit of the lots and lands in the Development and the future owners thereof; and

NOW, THEREFORE, the undersigned Declarant hereby declares that all of the platted lots and lands located within the Development as they become platted are held, and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Covenants, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein.

All of the Covenants shall run with the land and shall be binding upon the Declarant and upon the parties having an interest in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any real estate in the Development.

1. DEFINITIONS. The following are the definitions of the

terms as they are used in this Declaration:

- A. "Association" shall mean the Autumn Creek Homeowners' Association, Inc., a nonprofit corporation, the membership and powers of which are more fully described in Section 9 of this Declaration.
- B. "Committee" shall mean the Autumn Creek Architectural Review Committee, the creation, membership and powers of which are more fully described in Section 8 of this Declaration.
- C. "Common Area" shall mean all portions of the Development designated as Common Area on any subdivision plat or plats of the Development now or hereafter recorded in the Office of the Recorder of Marion County, Indiana, and which are not Lots, and which are not dedicated to the public; and the term shall include any entrance structures or walls, subdivision perimeter fencing within the landscape easements, landscaping, trees and other foliage, any of which have been or may be installed by the Declarant or the Association.
- D. "Lot" shall mean any parcel of residential real estate described by the plat of the Development which is recorded in the office of the Recorder of Marion County, Indiana.
- E. "Owner" shall mean any person, partnership, trust, corporation or other entity which has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.
- F. "Plat" shall mean the subdivision plat of the property, as the same may be hereinafter amended or supplemented pursuant to the Declaration.

2. CHARACTER OF THE DEVELOPMENT

- A. In General. Every numbered lot platted as a part of the Development is for residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house. No double occupancy dwelling shall be permitted on any part of the Development. All tracts of land located within the Development which have not been designated by numbering as residential building lots in the recorded plat shall be used in a manner consistent with the zoning and use designated in the plan filed by

the Declarant with the Department of Metropolitan Development in the City of Indianapolis. However, the Declarant reserves unto itself the right to change the character of such designated use, at any time in the future, by applying to the Metropolitan Development Department and its staff for modifications of the plan, and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Declarant's planned use.

- B. No Storage Sheds. Notwithstanding anything contained herein or in the Association's Articles or By-Laws to the contrary, and in addition to all restrictions set forth in the plat of the Development, any and all forms of shed, storage shed, mini-barn, large animal quarters, etc., which are not directly connected to the main dwelling on any Lot are hereby strictly prohibited unless, on a case-by-case basis, the Owners shall approve of such additional Building by a seventy-five percent (75%) majority of all Owners at a meeting of the Owners called for the purpose of approving such Building or at an annual meeting of the Owners. No detached garages shall be permitted.
- C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it has been substantially completed.
- D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, and to all recorded easements and rights-of-way, and also to all governmental zoning authorities and regulations affecting the Development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND EXTERIORS OF DWELLINGS, OTHER STRUCTURES, AND LOTS.

- A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, accessory buildings or basements, or similar facilities not modeled and decorated for regular and continuous habitation, shall in no case contain less than 1,200 square feet, and in the case of two-story or multi-level dwellings, the minimum living space of the ground

level floor shall not be less than 600 square feet, exclusive of garages, porches and other accessory structures.

B. Residential Set-Back Requirements.

- (i) Front Set-Backs. Unless otherwise provided in these Covenants or on the recorded plat, all dwelling houses and above-grade structures shall be constructed or placed on residential lots in the Development in compliance with a minimum twenty-five (25) feet front yard set-back line.
- (ii) Side Yards. The side yard set-back lines shall not be less ten (10) feet in the aggregate nor less than five (5) feet from the side line of the lot unless approved by the Marion County Board of Zoning Appeals.
- (iii) Rear Yards. The rear set-back line shall be at least twenty (20) feet from the rear lot line, unless approved by the Marion County Board of Zoning Appeals.
- (iv) Side Yard and Rear Yard set-back lines for corner lots shall be in compliance with the standards of the Department of Metropolitan Development, and in compliance with the set-back lines established on the approved plat of the Development.

- C. Exterior Construction Requirements. The finished exterior of every dwelling constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. The minimum roof pitch shall be 6/12 in the Development. There shall be a separation of one (1) lot before a house type and elevation or color shall be repeated on the same street. The same house type and elevation or color shall not be located directly across the street from one another.

With respect to any dwelling built upon any lot abutting the right-of-way of either Twenty-First Street or German Church Road, the exterior walls thereof shall be finished with brick, to a height of not less than thirty (30) inches above finished grade, in a style, pattern, and color compatible with the design of the dwelling.

All dwelling exteriors shall be finished in brick or stone masonry, or in vinyl or aluminum lap-style siding, or in a combination of masonry and such siding, all in color schemes which are harmonious throughout the Development.

- D. Fences. No fence, wall or non-plant screening shall be constructed or installed upon any Lot unless the same complies with the restrictions of this Declaration and has been approved in advance by the Committee pursuant to the provisions of Paragraph 8 hereof.
- E. Tree Preservation. No live tree with a trunk diameter of four inches or more when measured four feet above the ground may be removed without prior written consent of the Committee.
- F. Landscaping, Street Numbers, Mailboxes and Lamp Posts. Each lot shall have a planting and mulching plan approved by the Committee prior to development. Such plan shall include a minimum number of six (6) shrubs, with at least one (1) being an ornamental shrub of twenty-four (24) inches or more in size and all other shrubs being a minimum of eighteen (18) inches in size; and a minimum of two (2) trees, with shade trees at least two and one-quarter (2 1/4) inches in caliper and ornamental or evergreen trees at least six(6) feet in height.

Mailboxes and Dawn-to-Dusk post lamps are required to be installed by the builder on each lot. A uniform mailbox and mailbox post design, and a uniform lamp and lamp post design shall be selected by the Committee for all lots in the Development.

Each dwelling shall have a street number, clearly visible from the street, permanently affixed to the mail box post by the builder, in a uniform style approved by the Committee.

- G. Garages Required. All residential dwellings in the Development shall include at least a two-car attached and enclosed garage. Attached but only partially enclosed or open-sided garages shall not be permitted.
- H. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has been partially or

totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

- I. Prohibition of Used Structures. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such lot.
- J. Maintenance of Lots and Improvements; Owner's Duties.
- (a) The Owner of any lot in the Development shall, at all times, maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly and, specifically, such Owner shall:
- (i) mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
 - (ii) Remove all debris and rubbish. No owner removing debris or rubbish from its Lot shall dispose of such debris or rubbish or allow the same to be disposed of, by depositing it on any other Lot in the Development or upon the Common Area.
 - (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
 - (iv) Maintain and care for all builder installed trees and shrubs and cut down and remove any dead or hazardous trees or tree branches.
 - (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (b) Duty to Disclose Tenant Information. If any dwelling within the Development is leased by the Owner thereof, it shall be the duty of such Owner to provide to the Association such non-occupying Owner's current address, and the names and daytime telephone numbers of the adult tenants who are occupying the dwelling, all of such information to be provided to the Association on or prior to the date such tenant's occupancy begins. Each Owner who allows his dwelling to be occupied by a tenant shall provide the tenant with a copy of this Declaration and with a copy of the Association's Articles of Incorporation, its ByLaws, and its Rules and Regulations.

- K. Association's Right to Perform Certain Maintenance.
In the event that the Owner or occupant of any lot in the Development upon which there is located a completed house shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Covenants. The cost therefor to the Association shall be added to and become a part of the annual assessment to which said lot is subject and may be collected in any manner in which such annual assessment may be collected. The provisions of this subparagraph shall be applied so as not to unduly burden the construction phases of any builder actively engaged in the construction of a home upon any lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. GENERAL PROHIBITIONS

- A. In General. No noxious or offensive activities shall be permitted on any lot in the Development, nor shall anything be done on any of said lots or upon the Common Area that shall be or become an unreasonable annoyance or nuisance to any Owner of another lot in the Development.
- B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development, except entry signs and home or lot sales signs, except with the approval of the Declarant or the Association.
- C. Animals. No animals shall be kept or maintained on any lot in the Development except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. Vehicle Restrictions. No commercial trucks, campers, trailers, boats or similar vehicles shall be parked on any street in the Development. No motorhome or recreational vehicle, trailer, camper or boat shall be permitted to remain on any lot except within a closed garage and shall not be regularly parked upon unpaved areas. No motor vehicle which does not have a current registration plate affixed shall be parked on any street, and no such vehicle shall remain on any lot for

a period in excess of thirty (30) days.

The repair or storage of inoperative motor vehicles shall not be permitted on a lot unless entirely within a garage constructed in accordance with these Covenants.

- E. Garbage and Other Refuse. No Owner of a lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his lot except as may be permitted in subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. Fuel Storage Tanks and Trash Receptacles. No tanks for the storage of home heating fuels or vehicle fuels shall be installed, kept or maintained within the Development, but standard-sized containers for gas cooking grills shall be permitted. Every receptacle for ashes, trash, rubbish or garbage shall be stored within the dwelling or garage except at the times when refuse collections are being made, after which the same shall be promptly returned to within the dwelling.
- G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home without permission to do so from the Declarant.
- H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot, except when being used by a builder, or by the Declarant, or with the written permission of the Declarant.
- I. Open Drainage Ditches and Swales.
 - (i) Drainage swales (ditches) along dedicated roadways and within the rights-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled or otherwise changed, without the written permission of the city or county engineer. Lot owners upon whose lot is located any open storm drainage ditch or swale must maintain these swales as unobstructed, sodded grassways or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such

water. Driveways may be constructed over these swales or ditches only when appropriate-sized culverts or other approved structures have been permitted by the city or county engineer.

Culverts must be protected, especially at the ends, by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced.

(ii) Any lot Owner altering, changing or damaging the drainage swales or ditches will be held responsible for such action and will be given ten (10) days' notice, by registered mail, to repair said damage, after which time, if no action is taken, the city or county will cause said repairs to be accomplished and the bill for such repairs will be sent to the affected lot owners for immediate payment.

- J. Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No utility services shall be installed, constructed, repaired, removed or replaced under finished streets, except by jacking, drilling or boring.
- K. Wells and Septic Tanks. No water wells shall be drilled on any of the lots (other than for heating or cooling purposes) nor shall any septic tanks be installed on any of the lots in the Development. No outside toilets shall be permitted on any lot in the Development (except during a period of construction).
- L. Obtrusive Objects. No high intensity lighting, no television, radio or other antennae, nor any other visually obtrusive object may be erected by any lot Owner on the exterior of a dwelling or anywhere on a lot unless approved by the Committee, nor shall any satellite reception dish greater than 24 inches in diameter be installed upon any Lot or upon the exterior of any dwelling.
- M. Above Ground Pools. No above ground swimming pools shall be allowed in the subdivision, except that small kiddie pools, hot tubs or spas closely attached to the house shall be permitted.
- N. Obstructions. No fence, wall, hedge, tree, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain within the triangular

area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of the street line with the edge of a driveway. No trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstructions of sight lines.

5. EASEMENTS.

- A. Lots are subject to drainage easements, sewer easements, utility easements, and landscape easements, either separately or in combination of the four, as shown on the plat of the Development, which are reserved for the use of the lot owners, the Association, public utility companies and governmental agencies as follows:
- (i) Drainage easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Development. Under no circumstances shall said easements be blocked, in any manner, by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Declarant.
 - (ii) Storm sewer easements (S.E.) and sanitary sewer easements (S.S.E.) are created for the use of the local governmental agency having jurisdiction over the storm and/or sanitary waste disposal system of said city and/or county designated to serve the Development for the purposes of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect with public sanitary sewer.
 - (iii) Utility easements (U.E.) are created for the use of public utility and cable television companies, not including transportation companies, for the installation of pipes, mains, ducts and cables, as well as for the uses specified in the case of sewer easements.
 - (iv) Landscape easements (L.E.) are created for the use

of the Association, subject to the rights of the Owners as set forth in this Declaration, and the Association shall be responsible for the management, control and maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

- (v) The Owners of all lots in the Development shall take title subject to the rights of public utilities, governmental agencies, and of the Association, and the rights of the other lot owners in the Development to said easements herein granted for ingress and egress in, along and through the strips of ground for the purposes herein stated.

6. Common Area, Variable D.E.

- A. There are identified on the plat of the Development areas to be owned by the Association and designated as Common Area or Common Areas, some of which comprise a detention pond designed to accommodate storm water drainage runoff from the Development (hereinafter the "Lake Common Area"). All Common Areas so identified shall be conveyed by the Declarant to the Association.

B. Certain Obligations and Access Rights to the Lake Common Area.

- (i) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Areas, and for the maintenance of the same in a safe, neat and orderly condition at all times.
- (ii) The Association shall have and is hereby granted a general right of access and easement to all of the Lake Common Area across the lots, at reasonable times, and at any time in the case of an emergency, as is reasonably required by its officers, directors, employees, and their agents and independent contractors, to the full extent necessary or appropriate, to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the development and for so long as Declarant may be responsible for any warranty work.

- (iii) An easement is hereby dedicated and granted for the use, in the case of an emergency, of emergency vehicles, including, but not limited to fire trucks, police cars and ambulances and of emergency personnel, public and private, over and upon the Common Areas owned by the Association.

C. Use of Lake Common Area.

- (i) Except as otherwise provided herein, the enjoyment of the Lake Common Area shall be limited to the Owners of the lots within the Development, and to their families, guests and tenants.
- (ii) The Lake Common Area as shown on the plat includes portions thereof which can reasonably be expected to remain above the usual high-water line of the lake. Each Owner, his immediate family, guests and tenants shall have the right to enter upon, use and enjoy such areas, subject to other terms of this Declaration and subject to rules adopted by the Association.
- (iii) Subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns, as set forth in this Declaration, no individual has the right to cross another lot for access to the Lake Common Area.
- (iv) No one shall commit or permit any action or activity which could result in pollution of the lake, diversion of water, elevation of lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management except as provided in the Declaration. The lake may not be used for swimming, fishing, boating or for any other purpose, except for drainage of the Development, unless allowed by law and expressly and specifically approved by the Association and so stated, in writing, by the Board of Directors.
- (v) No swimming, ice skating, boating or rafting shall be permitted upon the lake. Fishing shall be permitted for the Owners, their immediate families, guests and tenants, provided that all applicable fishing and game laws regulating licenses, sizes and creel limits, and seasons shall be obeyed at all times.

7. LANDSCAPE EASEMENTS (L.E.) AND COMMON AREAS.

- A. The Association, as part of its duties and as part of the Association's expenses, shall provide for:
- (i) Maintenance of the L.E.'s and all Common Areas including but not limited to, fertilizing, mowing and replanting, when necessary, of the grass and trees, and periodic maintenance of any other improvements within these areas.
 - (ii) Maintenance of the entry signs and walls located within the L.E.'s and the perimeter landscaping installed by the Declarant.
- B. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the L.E.'s, the Lake Common Area, and the other Common Areas as it deems necessary.
8. ARCHITECTURAL REVIEW COMMITTEE. There is hereby created the Autumn Creek Architectural Review Committee, to be comprised of three (3) persons who, initially, shall be the Declarant, the Secretary of the Association, and any builder actively engaged in the construction of homes within the Development. Any vacancies in the Committee shall be filled by appointment of the Declarant or, after termination of the Declarant's Class B membership, by appointment of the Association's Board of Directors, from among the Directors of the Association. The Declarant may, at any time, in writing, relinquish to the Association the power to fill vacancies occurring in the membership of the Committee.
- A. Statement Of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon which are subject to these Covenants in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.
- (i) In General. No dwelling, building, structure, fence, wall, or other improvement of any type or kind shall be constructed or placed on any lot in the Development, nor shall any modification of an existing improvement which is visible from the exterior thereof be commenced or completed, without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed, from time to time, by the Committee, and shall be accompanied by

two(2) complete sets of plans and specifications any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1', and all plot plans shall be drawn to a scale of 1" = 30' or to such other scale as the Committee shall require.

(ii) Power Of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
- (b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;
- (c) The proposed improvement is that of converting all or part of an existing enclosed garage into living area without the simultaneous replacement of the existing garage with another attached, enclosed two car garage constructed in harmony with the dwelling and in compliance with all other provisions of this Declaration, and in compliance with all restrictions imposed within the Plat, and within all applicable zoning regulations and building codes.
- (d) The proposed improvement, or any part hereof, would, in the sole opinion and absolute discretion of the Committee, be contrary to the interests, welfare or rights of all or any part of other owners.

(iii) Fences and Walls. All fences and walls, whether

decorative fences, rear yard perimeter fences, or privacy fences or screens shall require the approval of the Committee prior to construction. The Committee shall not approve the proposed construction of any fence, wall or screen unless the same meets the following standards:

- (a) No front yard perimeter fencing shall be permitted, but the Committee may approve decorative front yard fences which are attractive and otherwise compatible with other improvements on the Lot.
- (b) All rear yard perimeter fencing approved by the Committee shall be uniform throughout the Development and shall consist only of black vinyl coated or similarly black coated chain link, 42 inches in height with black metal posts and top rails. No rear yard perimeter fencing shall be installed nearer to the front of the dwelling than the rear foundation line thereof.
- (c) Privacy fences and/or patio screens having a maximum height of six (6) feet may be approved for installation adjacent to patios in order to secure privacy for the immediate patio area.
- (d) All fences, walls and screens, whether owner-installed or professionally installed shall be constructed to professional levels of quality, and final approval of the Committee may be withheld until final inspection by the Committee has approved the quality of final construction.
- (iv) Power To Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.
- (v) Non-Applicability to Declarant and Approved Builders. The provisions of this Section 8 shall not apply to the Declarant or to any of its development and construction activities, or to the original construction of a dwelling upon a Lot

within the Development so long as the same is being constructed by the Declarant or by a builder approved by the Declarant, and the dwelling being so constructed is one of the several models or plans of such builder which have been approved in advance by the Declarant.

- B. Duties of Committee. The Committee shall, by a majority of those present and voting, approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.
- C. Liability Of Committee. Neither the Committee nor any agent thereof, nor the Declarant, shall be liable in any way for the approval or disapproval of any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
- E. Continuation of Committee. When the Declarant notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. AUTUMN CREEK HOMEOWNERS' ASSOCIATION, INC.

- A. In General. There has been or will be created, under the laws of the State of Indiana, a nonprofit corporation to be known as the "Autumn Creek Homeowners' Association, Inc.", which is herein referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Covenants on other owners of residential lots within the Development and on members of the Association, including those provisions with respect to the payment of an annual assessment.

- B. Classes Of Membership. The Association shall have two classes of voting membership:
- Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in 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 lot.
- Class B. The Class B member(s) shall be the Declarant or any assignee of the Declarant, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
- (a) On the date of the sale of the last Lot within the Development to a non-builder homeowner.
 - (b) On January 1, 2002.
- C. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.
- D. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party, with or without cause, and without any termination fee, by prior written notice of not less than thirty (30) days.
- E. Responsibilities of the Association.
- (i) The Association shall maintain the landscaping in and along East Twenty-First Street and along German Church Road and the landscape easements (L.E.'s) and Common Areas shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.
 - (ii) The Association shall govern the use of and maintain the Common Areas as defined herein.
 - (iii) The Association may procure and maintain casualty insurance, liability insurance (including Directors' and officers' insurance) and such other

insurance as it deems necessary or advisable.

- (iv) The Association may contract for such services as management, snow removal, security control, individual Lot fertilization and lawn mowing, trash removal and such other services as the Association deems necessary or advisable.

10. COVENANT FOR MAINTENANCE ASSESSMENT.

- A. Creation of Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person or other entity which was the owner of such property at the time when the assessment fell due. No charge or assessment shall ever be levied by the Association against the Declarant.
- B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the safety and welfare of the residents in the Development and for the improvement and maintenance of improvements, operated or maintained by the Association that may, from time to time, be construed by the Declarant, and the landscape easements on the Development and for such other purposes as specifically provided herein.
- C. Special Assessments for Capital Improvement and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may, from time to time, incur, provided, however that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called

for this purpose.

- D. Notice and Quorum for Any Action Authorized Under Section C. Written notice of any meeting called for the purpose of taking any action authorized under Section C shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the 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 the 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.
- E. Contributions to the Association by the Declarant. Declarant shall have the duty to contribute to the Association sufficient funds to enable the Association to fulfill its duties after the Association shall have exhausted all other funding received as regular assessments and special assessments theretofore collected by the Association. The Declarant's duty under this subparagraph shall cease upon that date specified in Paragraph 9, subparagraph B of these Covenants.
- F. Date of Commencement of Annual Assessments: Due Dates. The semi-annual installments of the annual assessment provided for herein shall commence for each Lot on the first day of the January or the first day of July, whichever date first follows the date of conveyance by deed to a non-builder owner other than the Declarant or on the date a non-builder purchaser signs a Land Contract to purchase a Lot. For any Lot purchased by a builder, the semi-annual installments of the annual assessment shall begin on the first day of the seventh month following the date that the Lot was purchased by the Builder.

No Lot owned by the Declarant shall be subject to any annual or special assessment.

The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be

established by the Board of Directors.

G. Annual Assessments; Maximum Increase. Until December 31, 1998, the initial annual assessment shall not exceed the annual rate of \$120.00, payable semi-annually at the rate of \$60.00 for each Lot.

(i) The Board of Directors may fix the actual annual assessments at any amount not in excess of the maximums permitted hereunder.

(ii) From and after December 31, 1998, the annual assessment may be continued at the same level as the annual assessments for the previous year, or increased by an amount not exceeding five percent (5%) of the previous year's assessment without a vote of the membership.

(iii) From and after December 31, 1998, the maximum annual assessments may be increased in an amount greater than five percent (5%) only after a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting called for this purpose, but no such increase shall exceed ten percent (10%) of the maximum annual assessments permitted for the previous year.

I. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expenses or costs, including attorneys' fees, incurred by the Association in collecting the same. Every holder of any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of

such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this paragraph 10 of these Covenants.

The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

- J. Subordination Of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage, but shall have priority over all other liens or mortgages irrespective of the date of attachment of such other liens or mortgages except for the lien of real estate taxes and municipal assessments specifically attaching to a designated lot. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments theretofore having become due or from the lien thereof; provided, however, that a sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu of foreclosure shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.
- K. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member (i) for any period during which any of the Association's charges or any fines assessed under these Covenants owed by the member remain unpaid. (ii) during the period of any continuing violation by a member of the restrictive covenants for the Development, after the existence of the violation shall have been declared

by the Board of Directors of the Association; and (iii) during the period of any violation by a member of the Articles of Incorporation, By-Laws or regulations of the Association.

11. REMEDIES.

- A. In General. The Association or any party to whose benefit these Covenants inure, including the Declarant, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Covenants, or to force compliance with these Covenants, together with right to collect costs and reasonable attorneys' fees; but neither the Declarant nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Covenants.
- B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Covenants shall be held to be a waiver by that party of (or an estoppel of that Party to assert) any right available to him upon the occurrence, reoccurrence or continuation of such violations of these Covenants.
- C. Enforcement by City of Indianapolis or Marion County. These Covenants may be enforced by the City of Indianapolis or Marion County, Indiana, or its successors or assigns pursuant to whatever powers or procedures are statutorily available to it for such purposes.

12. EFFECT OF BECOMING AN OWNER. The owners of any lot subject to these Covenants by acceptance of a deed conveying title hereto, or the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every covenant, restriction, condition, easement, and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Declarant, the Committee and of the Association with respect to these Covenants, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Declarant, the Committee and the Association and to and with the owners and subsequent owners of each of the lots affected by these Covenants to keep, observe, comply with and perform such Covenants and agreements.

13. TITLES. The titles preceding the various paragraphs and subparagraphs of these Covenants are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Covenants. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.
14. DURATION. The foregoing Covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2008, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed, in whole or in part, by vote of those persons who are then the owners of seventy-five percent (75%) of the numbered lots in the Development.
15. SEVERABILITY. Each one of the covenants, restrictions, conditions, and easements herein is hereby declared to be independent of and severable from every other one of the covenants, restrictions, conditions and easements, and each is independent of and severable from every combination of the other covenants, restrictions, conditions, and easements.

Therefore, if any of the Covenants shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, or the enforceability, or the quality of running with the land of any of the other Covenants.

16. AMENDMENT. These Covenants may be amended by a vote of seventy-five percent (75%) of the then lot owners of all lots in the Development.

IN TESTIMONY WHEREOF, witness the signature of the Declarant this 18 day of August, 1997.

DECLARANT:

By: 
Kevin K. Kirkpatrick,


STATE OF INDIANA)
) SS.
COUNTY OF MARION)

Subscribed and sworn to before me, a Notary Public in and for said County and State, by Kevin K. Kirkpatrick who personally appeared and, having read and examined the foregoing, affirmed, under the penalties for perjury, that the representations made hereinabove are true and accurate to the best of his knowledge, information and belief.

WITNESS my Hand and Notarial seal this 18TH day of AUGUST, 1997.

My Commission Expires:

County of Residence:

Heather L. Rogers
Notary Public [Signature]

HEATHER L. ROGERS
COMMISSION EXP: 2-1-2001
RESIDENT OF HANCOCK COUNTY
Notary Public [Printed]

This Instrument Prepared By: Sam Stoehr, HOWARD & STOEHR, 6100 North Keystone Avenue, Suite #448, Indianapolis, Indiana 46220; (317)251-2277, Attorney I.D. #528-49.

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EXHIBIT A

Part of the Southwest Quarter of the Southwest Quarter of Section 27, Township 16 North, Range 5 East, of the Second Principal Meridian in Warren Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of Section 27, Township 16 North, Range 5 East of the Second Principal Meridian in Warren Township, Marion County, Indiana; thence South 89 degrees 38 minutes 55 seconds East (assumed bearing) 1324.36 feet along the South line of said Section to the Southeast corner of the Southwest Quarter of the Southwest quarter of said Section 27; thence North 00 degrees 09 minutes 45 seconds East 428.36 feet along the East line of said Quarter Quarter Section to the Point of Beginning of the herein described tract; thence continuing North 00 degrees 09 minutes 45 seconds East 908.20 feet along said East line of said Quarter Quarter Section to the Northeast corner thereof; thence North 89 degrees 39 minutes 50 seconds West 1323.31 feet along the North line of said Quarter Quarter Section to the Northwest corner thereof; thence South 00 degrees 12 minutes 27 seconds West 676.22 feet along the West line of said Quarter Quarter Section; thence South 89 degrees 38 minutes 55 seconds East 660.00 feet parallel with the South line of said Quarter Quarter Section; thence North 12 degrees 09 minutes 51 seconds West 20.48 feet; thence North 00 degrees 00 minutes 00 seconds East 131.40 feet; thence North 90 degrees 00 minutes 00 seconds East 271.97 feet to a point on a tangent curve concave to the North, having a radius of 225 feet and from which the radius point bears North 00 degrees 00 minutes 00 seconds East; thence Easterly 36.78 feet along said curve to a point which bears South 09 degrees 21 minutes 58 seconds East from said radius point; thence South 00 degrees 09 minutes 45 seconds West 204.51 feet parallel with the East line of said Quarter Quarter Section; thence North 89 degrees 50 minutes 15 seconds West 128.88 feet; thence South 00 degrees 12 minutes 27 seconds West 187.74 feet to a point which bears South 89 degrees 47 minutes 33 seconds West from the Point of Beginning; thence North 89 degrees 47 minutes 33 seconds East 489.03 feet to the Point of Beginning. Said tract contains 21.957 acres more or less. (Also known as Autumn Creek, Section One)

EXHIBIT B

Part of the Southwest Quarter of the Southwest Quarter of Section 27, Township 16 North, Range 5 East, of the Second Principal Meridian in Warren Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of Section 27, Township 16 North, Range 5 East of the Second Principal Meridian in Warren Township, Marion County, Indiana; thence South 89 degrees 38 minutes 55 seconds East (assumed bearing) 660.00 feet along the South line of said Section to the Point of Beginning of the herein described tract; thence continuing South 89 degrees 38 minutes 55 seconds East 664.36 feet along the South line of said Section to the Southeast corner of the Southwest Quarter of the Southwest Quarter of said Section; thence North 00 degrees 09 minutes 45 seconds East 428.36 feet along the East line of said Quarter Quarter Section; thence South 89 degrees 47 minutes 33 seconds West 489.03 feet; thence North 00 degrees 12 minutes 27 seconds East 187.74 feet; thence South 89 degrees 50 minutes 15 seconds East 128.88 feet; thence North 00 degrees 09 minutes 45 seconds East 204.51 feet parallel with the East line of said Quarter Quarter section to a point on a non-tangent curve concave to the North having a radius of 225 feet and from which the radius point bears North 09 degrees 21 minutes 58 seconds West; thence Westerly 36.78 feet along said curve to the point of tangency, said point bears South 00 degree 00 minutes 00 seconds East from the radius point of said curve; thence North 90 degrees 00 minutes 00 seconds West 271.97 feet; thence South 00 degrees 00 minutes 00 seconds East 131.40 feet; thence South 12 degrees 09 minutes 51 seconds East 20.48 feet; thence South 00 degrees 12 minutes 27 seconds West 660.00 feet parallel with the West line of said Quarter Quarter Section to the Point of Beginning. Said tract contains 8.657 acres, more or less. (Also known as Autumn Creek, Section Two)