

79 82078  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

RECEIVED FOR RECORD  
LUCILLE CAMP  
RECORDER MARION CO.  
OCT 24 3 56 PM '79

FOR  
BEAU JARDIN SUBDIVISION + *Plats*  
PHASE I SECTIONS ONE AND TWO

THIS DECLARATION, made on the date hereinafter set forth, by BEAU JARDIN CORPORATION, (hereinafter referred to as "Declarant"), a corporation incorporated pursuant to the Indiana General Corporation Act, as amended, having its principal office at 2300 Glick Street, Lafayette, IN 47905.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate (hereinafter referred to as "Properties"), in Indianapolis, County of Marion, State of Indiana, which is more particularly described as follows:

Part of the Northeast Quarter of Section Three (3) Township Fourteen (14) North, Range Four (4) East, Marion County, Indiana, described as follows:

Beginning at a point on the eastern line of the Northeast Quarter of said Section Three, said point being located South 0° 00' 00" East, 998.11 feet from the Northeastern corner of the Northeast Quarter of said Section Three; thence South 0° 00' 00" East, along the eastern line of the Northeast Quarter of said Section Three, 410.00 feet; thence South 88° 47' 59" West, 232.00 feet; thence North 1° 12' 01" West, 111.34 feet; thence North 23° 41' 00" West, 90.71 feet; thence North 66° 19' 00" East, 90.00 feet; thence Northeasterly on a curve to the right having a central angle of 11° 06' 00", a radius of 173.00 feet, an arc distance of 33.90 feet; thence North 12° 35' 00" West, 178.49 feet; thence North 90° 00' 00" East, 213.01 feet to the point of beginning, containing 2.19 acres, more or less.

Also, commencing at the northeastern corner of the Northeast Quarter of said Section Three; thence South 0° 00' 00" East, along the eastern line of the Northeast Quarter of said Section Three, 1,408.11 feet; thence South 88° 47' 59" West, 232.00 feet to the point of beginning of this description; thence South 88° 47' 59" West, 163.00 feet; thence North 1° 12' 01" West, 165.52 feet; thence North 82° 10' 00" East, 42.87 feet; thence northeasterly on a curve to the left having a central angle of 9° 16' 30", a radius of 262.34 feet, an arc distance of 42.47 feet; thence North 23° 41' 00" West, 122.57 feet; thence North 66° 19' 00" East, 193.76 feet; thence South 12° 35' 00" East, 130.00 feet; thence southwesterly on a curve to the left having a central angle of 11° 06' 00", a radius of 173.00 feet, an arc distance of 33.90 feet; thence South 66° 19' 00" West, 90.00 feet; thence South 23° 41' 00" East, 90.71 feet; thence South 1° 12' 01" East, 111.34 feet to the point of beginning, containing 1.17 acres, more or less.

WHEREAS, Declarant desires to create on said real estate a residential community, known as Beau Jardin Subdivision Phase I Sections One and Two, with permanent Common Area for the benefit of said community.

WHEREAS, the Declarant intends to develop a portion of the Properties by constructing thereon four (4) quadplex buildings, with each building being located on four (4) platted Lots. Eight (8) Lots will contain a single family one-story residence, with not less than a one car garage; and eight (8) Lots will contain a single family two-story residence, with not less than a one car garage.

WHEREAS, the Declarant intends to develop the remaining portion of the Properties, so as to provide for Common Area real estate that is to be owned, and maintained, by a homeowner's association, to which the Owner of each Lot must belong and pay lien-supported maintenance assessments;

WHEREAS, the Common Area is to be used for the common use, and enjoyment, of the Owners;

NOW, THEREFORE, Declarant hereby declares that all of the real estate hereinbefore described (subject to the easements granted herein) shall be held, sold, and conveyed, subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value, and desirability of, and which shall run with, the real estate, and be binding on all parties having any right, title, or interest, in the described Properties, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

##### DEFINITIONS

Section 1. "Association" shall mean and refer to Beau Jardin Homeowners' Association, Inc., a corporation incorporated pursuant to the Indiana Not-for-Profit Corporation Act of 1971, as amended, and its successors, and assigns.

Section 2. "Owner", and "Owners", shall mean, and refer to, the record owner, whether one, or more, persons, or entities, of a fee simple title to any Lot, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean, and refer to, the certain real estate hereinbefore described (subject to the easements granted herein), and such additions thereto, as may hereafter be brought, within the jurisdiction of the Association.

Section 4. "Lot", or "Lots", shall mean, and refer to, any plat of land shown upon any recorded subdivision map of the Properties, with the exception

of the Common Area. The Declarant has planned so as to provide for four (4) quadplex buildings, with each building being located on four (4) platted Lots. Eight (8) Lots will contain a single family residence, with not less than a one car garage; and sight (8) Lots will contain a single family two-story residence, with not less than a one car garage. Each single family residential dwelling, exclusive of garage, shall contain not less than Eight hundred sixty (860) square feet of gross living area for a one-story structure; and not less than Seven hundred twenty (720) square feet for the main floor, if a two-story structure. In addition, each Lot shall include a patio area, which shall be contiguous, and appurtenant, to the aforementioned Lot area.

Section 5. "Common Area" shall mean all the real estate (including any improvements thereto) owned by the Association for the common use, and enjoyment, of the Owners, and shall also include, exclusive driveway easements, exclusive parking easements, and drainage and utility easements, as herein-after referred to, and as designated on any recorded plat of the Properties.

Section 6. "Declarant" shall mean, and refer to, Neau Jardin Corporation, successors, and assigns, if such successors, or assigns, should acquire more than one (1) undeveloped Lot from the Declarant for the purpose of development.

#### ARTICLE II

##### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right, and easement, of enjoyment in, and to, the Common Area, which shall be appurtenant to, and shall pass with, the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission, and other fees, for the use of any recreational facility situated upon the Common Area; provided however, said fees must be agreed to in writing by three-fourths (3/4) of each Class of Members of the Association.
- (b) The right of the Association to suspend the voting rights, and right to use of the recreational facility, of an Owner, for any period during which any assessment, or portion thereof, against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate, or transfer, all, or any part, of the Common Area to any public agency, authority, or utility, for such purposes, and subject to such conditions, as may be agreed to by the Members of the Association. No such dedication, or transfer, shall be effective, unless an instrument, agreeing to such dedication, or transfer, signed by three-fourths (3/4) of each Class of Members of the Association, has been recorded.

(d) The right of individual Owners to the use of the exclusive parking space easements, as provided in this Article.

(e) The right of individual Owners to the use of exclusive driveway easements, as provided in this Article.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area, and facilities, to the members of his family, his tenants, or contract purchasers, who reside on the property.

Section 3. Parking Rights. In addition to the exclusive use of the respective attached garages upon the Lots, ownership of each Lot shall entitle an Owner, or Owners, thereof to the use of exclusive parking space easements, and exclusive driveway easements, as shown on the recorded Plat of the subdivision.

Section 4. Title to Common Area. The Declarant shall convey the Common Area to the Association, in fee simple absolute, prior to, or at the time of, the first conveyance of a Lot, such conveyance to be subject to taxes current, but unpaid at the time of conveyance, and to restrictions, conditions, limitations, and easements, of record.

Section 5. Association's Easement for Maintenance and Repair. The Association, and any Member thereof, whose enjoyment of the use and occupancy of his Lot is affected thereby, shall have an easement to go upon any other Lot for the purpose of maintaining, or causing to be maintained, or repaired, any party walls, utility lines, sewer, or other facilities, which serve more than one Lot. Any Member shall also have an easement to go upon the Common Area for the purpose of maintaining his own Lot.

Section 6. Utilities, Public Officials, Association Officials. There is hereby created a blanket easement upon, across, over, and under, all of said Properties for ingress, egress, installation, replacing, repairing, and maintaining, all utilities, including, but not limited to, water, sewers, gas (if available), telephones, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical service, and/or telephone company, to erect, and maintain, the necessary poles, and other necessary equipment, on said property, and to affix, and maintain, electrical, and/or telephone wires, circuits, and conduits, on, above, across, and under, the roofs, and exterior walls, of dwelling units. An easement is further granted to all police, fire protection, ambulance, and all similar persons, to enter upon the streets, and Common Area, in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association, to enter in, or to cross over, the Common Area, and any lot, and dwelling unit, to perform the duties of maintenance, and repair, of the dwelling units, lots, or Common Area, provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities, may be installed, or relocated, on said Property, except as initially programmed and approved by the Declarant, or thereafter approved by Declarant, or the Association's Board of Directors. Should any utility, furnishing a service covered by the general easement herein provided, request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property, without conflicting with the terms hereof. The easements provided for in this Article II shall in no way affect any other recorded easement on said premises.

Section 7. Easements for Encroachment. If any part of the Common Area encroaches upon any Lot, or building thereon, a valid easement for such encroachment, and the maintenance thereof, so long as it continues, shall, and does, exist. If any part of any Lot, or the building thereon, encroaches upon the Common Area, or upon another Lot, or Lots, a valid easement for such encroachment shall, and does, exist. In the event that any building upon a Lot in the Properties shall be partially, or totally, destroyed and then rebuilt, minor encroachments of the building upon the Common Area, or other Lots, including, but not limited to, eaves and roof over-hang, valid easements for such encroachments, and the maintenance thereof, shall exist.

Section 8. Developer's Easement to Correct Drainage. For a period of five (5) years from the date of conveyance of the first Lot in the Properties, the Developer reserves a blanket easement, and right, on, over, and under, the ground within the Properties, to maintain, and to correct, drainage of surface water, in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which, the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer, an emergency exists, which precludes such notice.

#### ARTICLE III

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot, which is subject to assessment, shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot, which is subject to assessment.

Section 2. The Association shall have two Classes of voting membership:

(a) Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) 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 determine, but in no event shall more than one vote be cast with respect to any Lot. A person, group of persons, or entity, who holds an interest in a Lot solely as a security for the performance of an obligation, shall not be considered an Owner for purposes of membership in Class A.

(b) Class B. The Class B Member shall be the Declarant and shall be entitled to fifteen (15) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership on the happening of the following event:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual, or monthly, assessments; and (2) special assessments for capital improvements; and (3) special assessments as may otherwise be herein provided; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, reasonable attorney's fees, and any other obligation, which may be charged to an Owner, pursuant to this Declaration, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment, or charge, is made. Each such assessment, or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person, who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title, unless expressly assumed by them. The term "monthly" assessment, as used herein, shall refer to an amount which is one-twelfth of the "annual" assessment. Nothing in this declaration shall prohibit the proper authority from assessing charges at an annual rate and expressing such assessment in terms of monthly payments, rates, or assessments.

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 residents in the Properties, and for the improvement, maintenance, repairs, and replacement, of the Common Area, and for the improvement, and maintenance, of the residences situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$480.00 per Lot, which shall be due and payable in equal monthly installments.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner,

the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above ten percent (10%), by a vote of three-fourths (3/4) of each Class of Members, who are voting in person, or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. 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, or replacement, of a capital improvement, upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of three-fourths (3/4) of the votes of each Class of Members, who are voting in person, or by proxy, at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, or 4, 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 meeting called, the presence of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each Class of 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.



Section 6. Uniform Rate of Assessment. Both annual, and special assessments, as provided for herein, shall be fixed at a uniform rate for all Lots within a voting Class, as set forth in Article III, Section 2, provided, that the assessment for all Lots owned by the Declarant, shall be fixed at a rate which is Twenty-five percent (25%) of the rate for Lots owned by the Owners.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein, shall commence as to all Lots, on the first day of the month following the conveyance of the Common Area, or any part thereof. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot, at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association, as to the status of assessments on a Lot, is binding upon the Association, as of the date of its issuance. The due dates for all assessments shall be established by the Board of Directors.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent, and shall become, together with such interest thereon, and cost of collection thereof, as hereinafter provided, a continuing lien on the relevant property, binding upon the then owner, his heirs, devisees, successors, and assigns. The personal obligation of the then owner to pay such assessments, however, shall remain his personal obligation, and shall not pass to his successors in title, unless expressly assumed by them.

If the assessment is not paid within Thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of Eight (8%) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment, the costs of preparing and filing the complaint in such

action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein, shall be subordinate to the lien of any first mortgage. 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 thereafter becoming due, or from the lien thereof.

Section 10. Collection by Mortgage. Nothing in this Declaration shall be construed as prohibiting any first mortgagee from collecting the assessments due as a part of, or in addition to, any monthly payment due the mortgagee, provided, any mortgagee collecting assessments from any owner, shall pay said assessments when they become due.

#### ARTICLE V

##### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot, which is subject to assessment hereunder, as follows: Paint, repair, replacement, and care, of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. (Such exterior maintenance shall not include glass surfaces, screens, screen and/or storm doors, exterior door and window fixtures, and other hardware and patios.)

In the event that the need for maintenance, or repair, is caused through the willful, or negligent, act of its Owner, or through the willful, or negligent, acts of the family, guests, or invitees, as determined by the Board of Directors of the Association, and not covered, or paid for, by insurance on such Lots, the cost of such maintenance, or repairs, shall be added to, and become a part of, the assessment to which such Lot is subject, and such additional amount shall be payable in a lump sum, or over such period of time, as determined by the Board of Directors of the Association.

#### ARTICLE VI

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall, which is built as a part of the original construction of the homes on the Properties, and placed on the dividing line between the Lots, shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general

rules of law of the State of Indiana regarding Party Walls and liability for property damage due to negligence, or willful, acts, or omissions, shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair, and maintenance, of a Party Wall, shall be shared by the Owners, who make use of the Wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a Party Wall is destroyed, or damaged, by fire, or other casualty, any Owner, who has used the Wall, may restore it, and if the other Owners thereafter make use of the Wall, they shall contribute to the cost of the restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others, under any rule of law regarding liability for negligent, or willful, acts, or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner, who, by his negligent, or willful, act, causes the Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to Contribution from any other Owner under this Article, shall be appurtenant to the land, and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising, concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by the majority of all the arbitrators.

#### ARTICLE VII

##### ARCHITECTURAL CONTROL

No building, fence, wall, or other structure, shall be commenced, erected, or maintained, upon the Properties, nor shall any exterior addition to, or change, or alteration therein, be made, until the plans, and specifications, showing the nature, kind, shape, height, materials, and location of the same, shall have been submitted to, and approved in writing, as to harmony of external design and location, in relation to surrounding structures and topography, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the board. In the event said Board, or its designated committee,

fails to approve, or disapprove, such design and location, within Sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, or the Marion County Department of Metropolitan Development, shall have the right to enforce, by any proceeding at law, or in equity, all restrictions, conditions, covenants, reservations, liens, and charges, now hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant, or restriction herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants, or restrictions, by judgment, or court order, shall in no manner affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with, and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period, by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded. Provided, however, that the Declarant may amend the terms, covenants, and restrictions of this Declaration at any time during the first ten (10) years from the date hereof, with the consent of the Association. Any other provision of this Section to the contrary notwithstanding, the Declarant shall not be entitled to amend this Declaration after such time as the Declarant no longer holds any interest in the Properties covered hereunder, or in any Properties adjacent, or contiguous thereto.

Section 4. Annexation of Additional Property.

(a) Additional property may be brought within the jurisdiction of the Association, or made subject to the provisions of this Declaration, in the manner provided herein. Such annexation of additional property shall

require the assent of three-fourths (3/4) of the Class A Members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Class A Members, not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting setting forth the purpose of the meeting. The presence of Members, or of proxies, entitled to cast Sixty (60%) percent of the votes of Class A Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that three-fourths (3/4) of the Class A membership are not present in person, or by proxy, Class A Members not present may give their written consent to the action taken thereat.

Provided, that any such annexation shall consist of improvements, which will be of comparable quality in construction, as the existing residential units, and that the density of the amended units will be no greater than the density of the existing units, and provided further, that any such annexation will not adversely affect the value of the existing residential units, nor adversely affect the use of recreational facilities, which serve the existing residential units.

(b) Additional land adjacent to the Properties, and owned by the Declarant, may be annexed by the Declarant, without the consent of Owners, or Members, within five (5) years of the date of this instrument, and said annexation shall be effective upon the Declarant recording an instrument referring to this Declaration, describing the property to be annexed, and submitting said property to the provisions of this Declaration.

Section 3. FHA/VA Approval. Once this Declaration has been approved by the Federal Housing Administration and/or the Veteran's Administration, and as long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration and/or the Veteran's Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE IX

DECLARANT'S RIGHTS

Section 1. Use of Property. Declarant reserves the right to grant easements for utilities, and other reasonable purposes, across the Common Area, to use any of the Lots as models, and to sell, assign, or conduct other businesses, in connection with the construction and development of the project, from any of such Lots prior to their being sold. This reservation of right, or privilege, in the Declarant includes, but is not limited to, the right to maintain models, erect signs, maintain an office, staff the office with employees, and to the use of any, and all, of the Common Area, and to show Lots then unsold. Any improvements placed on the Properties for the purpose of such sales, such as signs, telephones, or any other promotional items, shall not be considered a part of the Common Area, nor attachments thereto, but shall remain the property of the Declarant, and may be removed at any time convenient to the Declarant. The Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location, or manner of construction, of buildings and other improvements.

Section 2. Management. So long as Declarant owns ninety percent (90%) of the Lots in the Properties (or owns, or has a contract to purchase, any property that may be annexed thereto), the Declarant shall, at its option, have the right to perform the functions of the Association and to manage the Properties. Declarant's right to manage shall include the right to manage the Common Area, to set annual assessments subject to the limitations herein contained, and to adopt rules and regulations governing the use of the Properties. Such rights shall be subject to the following:

(c) Declarant may manage, or cause to be managed, the Properties, and it shall have the right to assess, and collect, the maximum annual assessment as set forth in Article IV above. Also, Declarant may increase the amount of the annual assessment, so long as such increase shall not exceed the maximum

percentage increase permitted by such Article IV, Section 3, without vote of the Members, unless a greater increase is approved by the membership as therein provided.

(b) Declarant shall have the right to transfer the management of the Properties, or any part thereof, to the Association, at any time it believes that the Association is able to manage the Properties without undue difficulty. The Declarant's right to manage the Properties shall expire, when ninety percent (90%) of the Properties have been sold, or when Declarant owns no portion (or holds no right to acquire the fee in any portion) of certain adjacent property, described in Article VIII, Section 4, whichever shall occur later. So long as the management of the Association is being borne by the Declarant, the rights of the Association to manage the Properties, and set assessments, shall be suspended.

Section 3. Declarant's Easement for Adjoining Property. Certain other Properties may be annexed to the Properties as provided in Article VIII, Section 4 hereof. Declarant reserves unto itself, its successors and assigns, a non-exclusive easement over the streets, driveways, and walks, of the Properties, in order to provide access through the Properties to, and from, such adjoining property. Declarant further reserves the right to connect to, extend, and utilize, the utilities that will be located on the Properties. Declarant further reserves the right to permit future owners of all, or any portion, of such adjoining property, their tenants, invitees, and guests, to use the recreational facilities of the Common Area, provided that such persons pay a pro rata share of the operating and maintenance cost of such recreational facilities, and that all persons having the right to use the same, shall abide by the reasonable rules and regulations adopted by the Association governing such use.

Section 4. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of construction and sale of Lots, upon such portion of the Properties as the Declarant may deem necessary, such facilities, as in the sole opinion of the Declarant may be reasonably required, or be convenient, or incidental to, the construction and sale of the Lots, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices, and business offices.

ARTICLE X  
USE RESTRICTIONS

Section 1. Residential Use. Said property is hereby restricted to dwellings for residential use. All buildings, or structures, erected upon said Property shall be of new construction, and no buildings, or structures, shall be moved from other locations onto said Property, and no subsequent buildings, or structures, other than dwelling units, being single family dwelling units joined together by a common exterior roof and foundation, where appropriate, shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding, shall be used on any portion of said Property at any time as a residence, either temporarily, or permanently.

Section 2. Separate Estate. Each Lot shall be conveyed as a separately designated freehold estate, subject to the terms, conditions, and provisions hereof, and of the plat.

Section 3. Declarant's Facilities. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, or the Builder of said dwelling unit, to maintain during the period of construction and sale of said dwelling unit, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably required, convenient, or incidental, to the construction and sale of said dwelling units, including, but without limitation, a business office, storage area, construction yards, signs, model units, and sales office.

Section 4. Animals. No animals, livestock, or poultry, of any kind, shall be raised, bred, or kept, on any of said Lots, except that dogs, cats, or other household pets, may be kept, provided, that they are not kept, bred, or maintained, for any commercial purposes, and they are reasonable in size and number. The decision of the Board of Directors of the Association, with regard to the reasonableness of the size, type, and number of pets, shall be final.

Section 5. Signs. No advertising signs, billboards, unsightly objects, or nuisances, shall be erected, placed, or permitted, to remain on the Properties, nor shall said Properties be used in any way, or for any purpose, which may endanger the health, or unreasonably disturb the Owner of any Lot, or any resident thereof. No business activities of any kind whatsoever shall be conducted in any building, or in any portion of said Property; provided,



however, the foregoing covenants shall not apply to the business activities, signs, and billboards, or the construction and maintenance of buildings, if any, of Declarant, its agents, and assigns, during the construction and sale period of the Declarant, its successors, and assigns, in furtherance of its powers and purposes as herein set forth.

Section 6. Outside Equipment. No clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles, shall be regularly exposed to view upon the Properties. All rubbish, trash, or garbage, shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

Section 7. Landscape. Except in the individual patio areas appurtenant to a Lot, no planting, or gardening, shall be done, and no fences, hedges, or walls, shall be erected, or maintained, upon said Properties, except such as are installed in accordance with the initial construction of the buildings located thereon, or as approved by the Association's Board of Directors, or their designated representatives. Except for the rights as granted by this Declaration, the Owners of Lots are hereby prohibited, and restricted, from using any of said Properties outside the exterior building lines, patio, and garage areas, or any other part of the Common Areas, except as may be expressly allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned, that this paragraph is for the mutual benefit of all Owners of Lots, and is necessary for the protection of said Owners.

Section 8. Exterior Maintenance. Maintenance, upkeep, and repairs, of any patio, screens and screen doors, exterior doors and window fixtures, and other hardware, shall be the sole responsibility of the individual Owner of the Lot appurtenant thereto, and not in any manner the responsibility of the Board of Directors of the Association. Any cooperative action necessary, or appropriate, to the proper maintenance and upkeep of the Common Area, and all exteriors and roofs of the dwelling units, including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors, or by its duly delegated representative.

Section 9. Interior Maintenance. All fixtures and equipment installed within a dwelling unit, commencing at a point where the utility lines, pipes, wires, conduits, or systems, enter the exterior walls of a dwelling unit, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no

act, nor any work, that will impair the structural soundness, or integrity, of another dwelling unit, or impair any easement of hereditament, nor do any act, nor allow any condition to exist, which will adversely affect the other dwelling units, or their Owners.

Section 10. Antenna. Without prior written approval and the authorization of the Board of Directors, no exterior television, or radio antennas of any sort, shall be placed, allowed, or maintained, upon any portion of the improvements to be located upon the Lots, or Common Area, nor upon any structure situated upon the Lots, or Common Area, other than an aerial for a master antenna system, should any such master system, or systems, be utilized and require any such exterior antenna.

Section 11. Equal Standing. No action shall at any time be taken by the Association, or its Board of Directors, which in any manner would discriminate against any Owner, or Owners, in favor of the other Owners, not for the mutual benefit of all Owners.

Section 12. No Owner shall cause, or permit, anything to be placed on the outside walls of any residence, and no awning, canopy, shutter, radio, or television antenna, shall be affixed to, or placed upon the exterior walls, or roof, or any part thereof, without the prior written consent of the Association. No Owner shall change an exterior residential door, without first obtaining the prior written consent of the Association, as to the style, design, and quality, of such replacement door.

Section 13. No trucks of any kind that require a "truck license", shall be parked, or permitted to remain, on any street, driveway, or parking area, or on any part of the Common Area, unless such truck shall be enclosed by a garage, and not exposed to view. Trucks making deliveries, or present in connection with service, repair, or construction, are excepted.

Section 14. No unlicensed vehicles shall be permitted on any part of the Common Area more than twenty-four (24) hours. (an exception would be when the vehicle is stored in an Owner's garage and not exposed to view.)

Section 15. All automobile repairs for gain are prohibited, and if performed by Owner for a member of that household, said repairs shall be performed in the garage, and not be exposed to view.

Section 16. No boat, boat trailer, travel trailer, camper, or recreational equipment, of any description, shall be stored, or exposed to view, on the Common Area.

ARTICLE XI  
INSURANCE AND TAXES

Section 1. Each Owner, and the Association, shall carry fire, and extended coverage, insurance on their respective properties. The Association shall carry such insurance on the respective Common Areas. Each Owner shall carry fire, and extended coverage, insurance on his residence, including the exterior. The Association, or the Declarant pursuant to its rights reserved hereunder, may adopt rules and regulations governing the minimum amounts of insurance required to be carried by all Owners; certain provisions which may be required to be included in all such insurance policies; and such other terms and provisions pertaining to insurance, which may reasonably be deemed necessary, or appropriate, (1) to assure that all Common Areas and all residences are insured, and that there will be proceeds of insurance to repair, or restore, the same, in the event of a casualty loss thereto, or (2) otherwise to assist, or to simplify problems, of coordinating insurance coverage between the Owners and the Association. The Association, or the Declarant, may provide, by the adoption of rules and regulations, that fire and extended coverage on each of the residences, shall be carried by the Association, or that each Owner shall be required to purchase his fire and extended coverage insurance from the same insurance company which carries the Association's fire and extended coverage insurance.

Section 2. The Board of Directors of the Association shall also have the authority to and shall obtain comprehensive public liability insurance, in such limits as it shall deem desirable, and workmen's compensation insurance, and other liability insurance, as it may deem desirable, insuring each Owner and the Association, its Board of Directors, and any of its employees, or agents, from liability in connection with the Common Area. Where agreeable to the insurer, all liability insurance policies shall contain cross-liability endorsements, to cover liability of the Owners collectively to an Owner individually.

Section 3. Each Owner shall have the right to purchase any additional insurance he deems necessary, and he shall be responsible for all insurance on his own residence, and on the contents thereof, his additions, and improvements thereto, and decorating, and furnishing, and personal property therein, and his personal property stored elsewhere on the property, and his personal liability to the extent not covered by the liability insurance for all Owners, obtained as a part of the common expenses as above provided.

Section 4. Casualty and Restoration. In the event of damage, or destruction, of any of the Properties, then the Association shall cause such damaged, or destroyed property, to be promptly repaired and restored. The proceeds of the insurance carried by the Association and Owner, covering their respective obligations hereunder, shall be applied to such repair and restoration. In the event of damage, or destruction, by fire, or other casualty, to any property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgages, if any, upon receipt of the insurance proceeds, contract to rebuild, or repair, such damaged, or destroyed, portions of the property, to as good condition as formerly. All such insurance proceeds shall be deposited in a bank, or other financial institution, the accounts of which bank, or institution, are insured by a Federal Governmental Agency, with the proviso agreed to by said bank, or institution, that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding, of such destroyed building, or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Owners of the damaged homes, in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such homes, to make up any deficiency, except, that the special assessment shall be levied against all home Owners, as provided in this Declaration, to make up any deficiency for repair, or rebuilding, of the common area not a physical part of a home. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners, in such proportions as the Board of Directors deem fair and equitable, in light of the damage sustained by such homes. Such payments shall be made to all such owners, and their mortgagees, as their interests may then appear. In the event of damage, or destruction, by fire, or other casualty, to any home, or other property, covered by insurance written in the name of an individual owner, said owner shall, with concurrence of the mortgages, if any, upon

receipt of the insurance proceeds, contract to repair, or rebuild, such damaged, or destroyed, portions of the exterior of the home, in a good workmanlike manner in conformance with the original plans and specifications of said home. In the event such owner refuses, or fails, to so repair, and rebuild, any and all such damage to the exterior of the home within Sixty (60) days, the Association, by, and through, its Board of Directors, is hereby irrevocably authorized by such owner, to repair, and rebuild, any such home in a good and workmanlike manner, in conformance with the original plans and specifications of the home. The owner shall then repay the Association in the amount actually expended for such repairs, and the Association shall have a lien securing the payment of same, identical to that provided above in this Declaration, securing the payment of assessments; and subject to foreclosures as above provided. At any place in this Section where the word "home" or "homes" is used, it shall mean the structure erected upon a Lot within the Properties regardless of its use.

Section 5. Taxes. Each Owner shall pay all installments of real estate taxes on the Lot, or Lots, owned by him. In the event that any installment of such taxes becomes delinquent, then the Association shall have the right to pay such installments, and any amount so paid by the Association, shall become a lien on such Owner's property, in accordance with the provisions in Article IV, Section 1 of this Declaration.

The undersigned persons executing this Declaration on behalf of the Declarant, Beau Jardin Corporation, represent and certify that they are the duly elected officers of the Declarant, and have been fully empowered, by proper resolution of the Board of Directors of the Declarant, to execute this Declaration; that the Declarant has full corporate capacity to make this Declaration pertaining to the real estate described herein; and that all corporate action necessary for the making of this Declaration has been taken and done.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed this 24th day of October, 1978.

BEAU JARDIN CORPORATION

BY:   
John E. Smith, President



ATTEST:

BY:   
James C. Hilligoss, Assistant Secretary

STATE OF INDIANA )  
                          ) SS:  
TIPPECANOE COUNTY)

Before me, a Notary Public, in and for said County and State, personally appeared John E. Smith and James C. Hilligoss, the President and Assistant Secretary respectively, of Beau Jardin Corporation, who acknowledged execution of the foregoing Declaration for and on behalf of the Declarant.

Witness my hand and notarial seal this 24th day of October, 1978.

 Expires: \_\_\_\_\_  
  
Notary Public

Elaine A. Brant  
(Name Printed)  
Notary resides in Clinton County, Indiana.

This instrument prepared by James C. Hilligoss

-22- 79-82078

79 82078