

**DECLARATIONS OF COVENANTS AND RESTRICTIONS  
BENJAMIN SQUARE SUBDIVISION**

**TABLE OF CONTENTS**

1.	Definitions.....	1
2.	Declaration.....	4
3.	Descriptions of Benjamin Square, Section 1 .....	4
4.	Lots .....	4
5.	Common Area .....	4
6.	Ownership of Common Area .....	4
7.	Delegation of Use of the Common Area.....	4
8.	Encroachments and Easements for Common Area.....	5
9.	Sidewalks .....	5
10.	Easement for Utilities and Public and Quasi-Public Vehicles.....	5
11.	Corporation, Membership Voting, Functions .....	5
	(a) Membership in Corporation .....	5
	(b) Classes and Voting Rights.....	6
	(c) Functions .....	6
12.	Board of Directors .....	6
	(a) Management.....	6
	(b) Initial Board of Directors .....	7
	(c) Duties of the Board of Directors .....	7
	(d) Powers of the Board of Directors .....	9
	(e) Limitation on Board .....	9
	(f) Compensation.....	10
	(g) Non-Liability of Directors.....	10
	(h) Bond.....	11
13.	Initial Management.....	11
14.	Real Estate Taxes .....	12
15.	Utilities .....	12
16.	Maintenance, Repairs and Replacements.....	12
17.	Architectural Control .....	13
	(a) The Architectural Review Board .....	13
	(b) Purpose .....	13
	(c) Conditions .....	14
	(d) Procedures.....	15
	(e) Guidelines and Standards.....	15
	(f) Application of Guidelines and Standards .....	15
	(g) Exercise of Discretion.....	15
18.	Property Rights .....	15
	(a) General .....	15
	(b) Right of Enjoyment.....	16
	(c) Association's Rights and Obligations .....	16
	(d) Declarant's Rights .....	17
	(e) Private Streets .....	18

19.	Assessment.....	18
	(a) Annual Accounting .....	18
	(b) Proposed Annual Budget.....	18
	(c) Regular Assessments .....	19
	(d) Special Assessments .....	19
	(e) Regular Assessments Prior to the Applicable Date.....	20
	(f) Lawn Care Assessment .....	21
	(g) Failure of Owner to Pay Assessments .....	22
	(h) Subordination of Assessment Lien to Mortgage .....	23
20.	Mortgages.....	23
	(a) Notice of Corporation .....	23
	(b) Notice of Unpaid Assessments .....	24
	(c) Right of Mortgagee to Pay Real Estate Taxes of Insurance Premiums .....	24
	(d) Notice of Condemnation or Casualty Loss .....	24
	(e) Notice to Insurers and Guarantors .....	24
21.	Insurance.....	24
	(a) Casualty Insurance .....	24
	(b) Public Liability Insurance .....	25
	(c) Other Insurance .....	25
	(d) General Provisions .....	26
	(e) Insurance by Owners .....	26
	(f) Condemnation Awards.....	26
22.	Casualty and Restoration of Common Areas .....	26
23.	Covenants and Restrictions .....	27
24.	Amendment of Declaration.....	31
	(a) Generally.....	31
	(b) Amendments by Declarant Only .....	32
	(c) Amendment Prior to the Applicable Date .....	33
25.	Annexation of Additional Tract .....	33
26.	Acceptance and Ratification .....	34
27.	Negligence .....	35
28.	Costs and Attorneys' Fees.....	35
29.	No Waiver.....	35
30.	Severability Clause .....	35
31.	Pronouns .....	35
32.	Interpretation.....	35
33.	The Plat.....	35

- Exhibit "A"      Real Estate Comprising Benjamin Square, Section 1 or Tract
- Exhibit "B"      Real Estate Comprising Additional Tract Located Contiguous to  
Benjamin Square, Section 1

38

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
BENJAMIN SQUARE SUBDIVISION**

THIS DECLARATION made this 8<sup>th</sup> day of April, 1999, by  
LAWRENCE/FORT HARRISON DEVELOPMENT CORPORATION an Indiana nonprofit corporation  
(Declarant).

**WITNESSETH:**

**WHEREAS**, the following facts are represented by Declarant:

- A. Declarant is the sole owner of the fee simple title to certain real estate located in Marion County, Indiana, more particularly described in Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Tract" or "Benjamin Square").
- B. Declarant is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit B, which is incorporated herein by reference (hereinafter referred to as "Additional Tract").
- C. Declarant by execution of this Declaration assures that all properties which are a part of Benjamin Square shall be conveyed subject to the terms and conditions of this Declaration, which Declaration shall run with the land and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.
- D. It is the intention of the Declarant that at a future date the Additional Tract shall be made subject to the terms and conditions of this Declaration.

**NOW, THEREFORE**, Declarant hereby makes this Declaration as follows:

**Definitions.** The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "Additional Tract" means that real estate or any part of it described in Paragraph 25 of this Declaration and in the attached Exhibit B.
- (b) "Applicable Date" means the date determined pursuant to Paragraph 11 of this Declaration.
- (c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (d) "Benjamin Square, Section 1" means the name by which the Tract, as described in Paragraph A above and which is the subject of this Declaration, and which the Corporation manages, shall be known.
- (e) "Benjamin Square" means Benjamin Square, Section I and any additional area or section subjected to this Declaration by a Supplemental Declaration

MARTHA A. WOMACKS  
171287 APR 13 89  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

CHICAGO TITLE

**FILED**  
**APR 12 1999**  
LAWRENCE TOWNSHIP  
ASSESSOR

Inst # 1999-0070076

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as provided herein.

- (f) "Board of Directors" means the governing body of the Corporation, either the Initial Board of Directors or the Board of Directors elected by the Members in accordance with the Articles and By-Laws of the Corporation.
- (g) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. The By-Laws are incorporated herein by reference.
- (h) "Common Area" shall mean (i) those portions, if any, of the Tract shown upon any recorded subdivision plat of the Tract or any part thereof (including the Initial Plat), which are not Lots (reserving, however, unto Declarant the right to re-plat any of such areas as part of one (1) or more Lots), whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, and (ii) such portions of the Tract (if any) as are hereafter declared to be "Common Area" by an instrument executed and recorded by Declarant whether or not such areas comprise part or all of a lot or lots shown upon any recorded subdivision plat of the Tract.
- (i) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area, and any other costs or expense incurred by the Corporation for the benefit of the same or the Owners, including but not limited to any costs and expenses shared with any other homeowners or property owners association for the upkeep, maintenance, repair and replacement of any real estate or improvements commonly enjoyed by the Owners and the owners of such other real estate or commonly enhancing the Lots and Homes and such other real estate and all sums lawfully assessed against the members of the Corporation.
- (j) "Corporation" means Benjamin Square Neighborhood Association, Inc., its successors and assigns, an Indiana nonprofit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 11 of this Declaration.
- (k) "Declarant" shall mean and refer to Lawrence/Fort Harrison Development Corporation, an Indiana nonprofit corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder including, but not limited to any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

- (l) "Home" means the single family dwelling unit located upon a Lot.
- (m) "Lawn Care Expense" means the expense of Lawn Care Service provided by the Corporation to an Owner at the option of such Owner, which shall be paid by each such Owner as a special Lawn Care Assessment as provided for in Paragraph 19(f) of this Declaration. Lawn Care Expense shall not be a Common Expense.
- (n) "Lawn Care Service" means the regular and routine lawn cutting and lawn maintenance, including fertilization and trimming, provided by the Corporation to an Owner at the option of such Owner, which shall be paid by each such Owner as a special Lawn Care Assessment as provided for in Paragraph 19(f) of this Declaration.
- (o) "Lot" means any plot of ground included in the Tract (with the exception of Common Area) and designated as such upon the recorded Plat of Benjamin Square, Section 1 or upon the recorded Plat, if any, of the Additional Tract or any part thereof and upon which one (1) Home is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Home, if any, located thereon.
- (p) "Member" means a member of the Corporation.
- (q) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (r) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- (s) "Private Street" or "Street" means the portion(s) of the Tract or Additional Tract designated and shown as "Streets" on any plat of the Tract or Additional Tract.
- (t) "Snow Removal Expense" means the expense of Snow Removal Service provided by the Corporation to an Owner at the option of such Owner, which shall be paid by each Owner as a special Snow Removal Assessment as provided for in Paragraph 19(f) of this Declaration. Snow Removal Expense shall not be a Common Expense.
- (u) "Snow Removal Service" means the removal of snow from the driveway and the walk from the driveway to the front door of the Owner, provided by the Corporation to an Owner at the option of such Owner, which shall be paid by each such Owner as a special Snow Removal Assessment as provided for in Paragraph 19(f) of his Declaration.
- (v) "Tract" means the real estate described in subparagraph (d) above and such portions of the real estate for which a Plat has been recorded in the Office

of the Recorder of Marion County, Indiana, and which has been subjected to this Declaration by a Supplemental Declaration as provided herein.

2. **Declaration.** Declarant hereby expressly declares that the Tract and Additional Tract, if any, shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. **Description of Benjamin Square, Section 1.** Benjamin Square, Section 1 consists of ninety ~~seven~~ (90) ~~feet~~ Lots numbered 1 through 90, inclusive, together with the Common Area as designated on the Plat. The Common Area and the size of the Lots are as designated on the Plat. The legal description for each Lot in Benjamin Square, Section 1 shall be as follows:

Lot \_\_\_\_\_ in Benjamin Square, Section 1, a subdivision in Marion County, Indiana, as per plat thereof recorded \_\_\_\_\_, 1999, as Instrument Number \_\_\_\_\_ in the Office of the Recorder of Marion County, Indiana.

4. **Lots.** The boundaries of each Lot in Benjamin Square, Section 1 shall be as shown on the Plat.

5. **Common Area.** Common Area includes all the area designated as such on the recorded Plat of Benjamin Square, Section 1 or on a recorded Plat of the Additional Tract or any part thereof; including but not limited to any lake, sidewalks, private streets, and perimeter landscaping and fencing benefiting only the Tract or Additional Tract, but excluding all Lots. If the Additional Tract is not planned, the Paragraphs in this Declaration relating to Common Area in the Additional Tract and ownership thereof by the Corporation shall not be applicable. The fencing along the northern boundary of the Tract shall be deemed a part of the Common Area.

6. **Ownership of Common Area.** The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

- (a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, all Class B Members, and by two-thirds of all first mortgagees, 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 by the Corporation.
- (b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 12.
- (c) The Common Area in Benjamin Square, Section 1 shall be conveyed to or owned by the Corporation at the time of conveyance of the first Lot in Benjamin Square, Section 1.

7. **Delegation of Use of the Common Area.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on any Lot.
8. **Encroachments and Easements for Common Area.** If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.
9. **Sidewalks.** The Owner of a Lot shall have an easement to and a non-exclusive right to use the sidewalks serving more than one Lot, whether or not such sidewalks are part of the Lot or located in the Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.
10. **Easement for Utilities and Public and Quasi Public Vehicles.** All public and quasi public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the ingress-egress easements and Common Area in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such Utilities, including but not limited to water, sewers, gas, cable television, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Homes. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Tract without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract. An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.
11. **Corporation; Membership; Voting; Functions.**
- (a) **Membership in Corporation.** Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the

new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

- (b) Classes and Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:
- (i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
  - (ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the registered agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:
    - (1) the date upon which the written resignation of the Class B Members as such is delivered to the registered agent of the Corporation,
    - (2) thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or
    - (3) January 1, 2006
- (c) Quorum. Except where otherwise expressly provided in these Declarations, the By-Laws, the Articles or the Act, the presence of Owners or their duly authorized representatives owning at least twenty-five percent (25%) of the total number of Lots shall constitute a quorum at all meetings. Unless otherwise required herein or by the Act, the Owners at a meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum. As used elsewhere in these Declarations or the By-Laws, the term "Majority of Owners" shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total number of Lots, and the term "Majority of the Vote" shall mean a majority of the votes of the Owners present or represented at a meeting at which a quorum is present.



After the Applicable Date, all Class B Members shall become Class A Members and subject to all terms, conditions, restrictions, rules and regulations applicable to Class A Members.

- (a) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated to it to perform under this Declaration.

12. Board of Directors.

- (a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 12.
- (b) Initial Board of Directors. The Initial Board of Directors shall be composed of the following persons, to-wit: J. Lynn Boese, Craig H. Romeril and Warren W. White, jr. (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles or the By-Laws (a) the initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant; who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Home by any type of juridical acts *inter vivos* or *cause mortis*, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger or consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board,

whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Initial Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

- (c) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and be responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party for cause upon thirty (30) days written notice and terminable without cause upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of Lots entitled to vote and fifty-one percent (51%) of the Mortgagees entitled to vote as herein provided. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:
- (ii) protecting, repairing, maintaining and replacing of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
  - (iii) procuring of snow removal from the Common Area;
  - (iv) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area;
  - (v) surfacing, paving and maintaining any streets and sidewalks constituting a part of the Common Area;
  - (vi) preparing the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual meeting is mailed or delivered;
  - (vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

- (viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
  - (ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
  - (x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area;
  - (xi) furnishing, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year;
  - (xii) procuring and providing for the Lawn Care Service and Snow Removal Service, as applicable to Owners electing such service; and
  - (xiii) establishing and maintaining for the benefit of the Corporation and Owners, membership in the Historic Fort Harrison Property Owners Association and paying any assessments and costs thereof as Common Expenses of the Corporation.
- (d) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the following:
- (i) To employ a reputable and recognized professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties; provided, however, any management agreement shall be terminable for cause upon thirty (30) days written notice and terminable without cause upon ninety (90) days written notice, and any such agreement may not exceed three (3) years;
  - (ii) To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
  - (iii) To procure for the benefit of the Owners fire and extended coverage insurance covering the Common Area to the full insurable value thereof, to procure public liability and property damage insurance and Worker's Compensation Insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners, the Corporation, and the Mortgagees;
  - (iv) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

- (v) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Area;
  - (vi) To include the costs of all of the above and foregoing as Common Expenses of the Corporation and to pay all of such costs therefrom;
  - (vii) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto;
  - (viii) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Tract and Additional Tract provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment or alteration thereof.
- (e) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a Majority of Owners is obtained, except in the following cases:
- (i) Supervision and management of the replacement or restoration of any portion of the Common Area damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received;
  - (ii) Proposed contracts and proposed expenditures expressly set forth in and which do not exceed by more than 10% in aggregate the proposed annual budget as approved by the Owners at the annual meeting. However, specific items within the budget need not be approved separately by the Owners at the annual meeting. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded by more than 10% and, by doing so, the total budget will not be increased by more than 10%;
  - (iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners; and
  - (iv) The said Five Thousand Dollar (\$5,000.00) maximum shall automatically be adjusted every five (5) years from the date of execution of this Declaration to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.
- (f) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- (g) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their

own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

- (h) **Bond.** After the Applicable Date, the Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and, such other officers or directors of the Corporation that handle or are responsible for funds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation or wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Lots and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board of Directors. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of employees' or similar terms or expressions. Such bonds shall provide that they may not be canceled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

13. **Initial Management.** The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate for cause upon thirty (30) days written notice and without cause upon ninety (90) days written notice, under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area, and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Tract and perform all the functions of the Corporation.

14. **Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract and Additional Tract or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract and Additional Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Tract and Additional Tract or part thereof assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract and Additional Tract or part thereof assessed as a whole based upon the ratio that the square footage of his Lot bears to the total square footage of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.
15. **Utilities.** Each Owner shall pay his own utilities which are used in connection with his Lot and Home. Such utilities shall be metered separately. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.
16. **Maintenance Repairs and Replacements.** Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation as a part of its duties and the cost thereof shall constitute a part of the Common Expenses.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any Lot or the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

If any owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost which cost shall be added to and become a part of the Owner's assessment and such cost shall be immediately due and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration, each Owner, by his acceptance of a deed to any Lot irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the

maintenance, cleaning, repair or other work contemplated herein.

17. **Architectural Controls.**

- a) **The Architectural Review Board.** An Architectural Review Board ("Committee") consisting of three (3) or more persons shall be appointed by the Declarant. After the Applicable Date the Architectural Review Board shall be appointed by the Board of Directors.
- b) **Purpose.** The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Tract and Additional Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship as to structures, improvements, and the natural vegetation and topography.

In requiring, the submission of detailed plans and specifications as herein set forth, Declarant intends to develop the Tract and Additional Tract as an architecturally harmonious, artistic and desirable residential subdivision, and in approving or withholding its approval of any detailed plans and specifications so submitted, the Architectural Review Board, or its successors and assigns, may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent lots, its artistic and architectural merits, its adaptability to the Lot on which it is proposed to be made, and such other matters as may be deemed to be in the interest and benefit of the owners of the lots in the Tract and Additional Tract as a whole. In this regard, and without limiting the foregoing, the following architectural standards shall apply to all improvements constructed and maintained within the Tract and Additional Tract:

1. **Siding Color.** The Declarant shall designate for the Architectural Review Board those colors which will be available for siding in the Tract and Additional Tract on all new construction within the Tract and Additional Tract. Lot Owners shall not change the color of any exterior siding without the approval of the Architectural Review Board. Changes in any siding color shall be limited to those colors designated by the Declarant.
2. **Trim Color.** All residential dwellings shall have and maintain white exterior trim, including without limitation, all columns, corners, screen doors, architectural details, eaves, overhangs, windows, window casings and any other non-siding or non-brick architectural features.
3. **Brick Color.** The Declarant shall designate for the Architectural Review Board colors which will be available for brickwork within the Tract and Additional Tract on all new construction within the Tract and Additional Tract. Lot Owners shall not change the color of any exterior brick without the approval of the Architectural Review Board. Changes in any brick color shall be limited to those colors designated by the Declarant.

4. Roof Materials and Colors. The roofs of all residential dwellings in the Tract and Additional Tract shall be constructed of asphalt shingles of a single color as approved by the Architectural Review Board.
  5. Landscaping. All residential dwellings within the Tract and Additional Tract shall include in their initial construction a landscaping plan providing a minimum of one lot tree and eight (8) shrubs. Each lot Owner shall maintain, and to the extent necessary, replace the landscaping on such Owner's Lot in accordance with these minimum standards.
  6. Coach Light. Each residential dwelling on each lot shall include a photocell-operated coach light to be illuminated from dusk to dawn and mounted on the exterior of the dwelling.
  7. Recreational Facilities. No permanently mounted basketball goals will be allowed to be attached to any residential dwelling or otherwise permanently installed on a freestanding pole or other permanent structure within the Tract and Additional Tract. This restriction will not prohibit the Declarant from installing any such recreational facilities in any Common Area Easement.
  8. Screening. Screening for outdoor patio and deck enclosures, air conditioners and other screening shall be of a wooden lattice-type screening as approved by the Architectural Review Board.
  9. Mail Box. All mail boxes and mail box posts shall be of a uniform style, type, design and color, as designated by the Architectural Review Board, and all such mail boxes and mail box posts shall conform, at all times, to the required uniform style, type, design and color. Individual mailboxes shall not be permitted on Lots. Mailboxes shall be grouped mail boxes and repaired, replaced and maintained as a Common Expense.
  10. Decks and Patios. Decks and patios shall not exceed two hundred (200) square feet in gross area.
  11. Fencing. All fencing, color, style and its placement shall be subject to approval by the Architectural Review Board. Rear yard fence shall not be higher than four (4) feet and shall be wood shadowbox style.
- (c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, landscaping, or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant's approved builder to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan



therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Home, building, fence, wall, swimming pool, tennis court, patio or other structure on a Lot or (ii) any plantings on a Lot other than foundation plantings, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board and no building, fence, wall, Home or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any person other than Declarant's approved builder without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Tract and Additional Tract, and no Owner shall undertake any construction activity within the Tract and Additional Tract unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. No approval shall be required for installation of annual or perennial flowers, or any other planting previously approved by the Board of Directors or the Architectural Review Board.

- (d) Procedures. In the event the Architectural Review Board fails to approve, modifies or disapproves in writing a Lot Development Plan within sixty (60) days after notice of such Plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant, or, if Declarant is no longer a Class B member, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of the Architectural Review Board to act on the Plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such Plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.
- (e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping guidelines and standards as it may deem appropriate to achieve the purpose set forth herein to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.
- (f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which

would render the plan acceptable to the Architectural Review Board if resubmitted.

- (g) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of sub-section (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceedings challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Review Board, could only conclude that such action constituted an abuse of discretion.

18. Property Rights.

(a) General.

- (i) All easements described in this Declaration are permanent easements appurtenant to and running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the owner and mortgagee, if any, from, time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.
- (ii) The covenants and restrictions contained in this Declaration shall run with and bind the Tract and Additional Tract and shall inure to the benefit of and be enforceable by the Declarant, the Corporation or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2016, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

- (b) Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area limited, however, to and for the uses and purposes for which any portion of the Common Area is designed and intended. Such right and easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions.

- (i) The right of the Corporation to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same;
- (ii) The right of the Corporation to suspend the voting rights of an Owner for any period during any assessment against his Lot remains unpaid;
- (iii) The right of the Corporation to levy assessments as provided in this Declaration; and

- (iv) The rights of the Corporation and Declarant reserved in this Declaration.
- (c) Corporation's Rights and Obligations.
- (i) The Corporation shall have the obligation to manage, repair, maintain, improve and operate the Common Area and the Private Streets and to perform all additional obligations described in this Declaration;
  - (ii) The Corporation shall have the right to mortgage all or any portion of the Common Area for the purpose of securing a loan of money to be used for any of the purposes specified in subsection (i) above, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners under this Declaration, and provided, further, that the mortgagee shall have received the prior written approval specified hereinbelow;
  - (iii) The Corporation shall have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Area for utilities and other purposes necessary or useful for the proper maintenance or operation of the Tract or Additional Tract, subject to any prior written approval required herein;
  - (iv) The Tract or Additional Tract shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may at any time be granted by Declarant or the Corporation (subject to the approval referred to in the preceding paragraph) to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers or water pipes, coaxial cable, or other utility services serving any Lots or the Common Area; and
  - (v) Anything herein apparently to the contrary notwithstanding, except as otherwise expressly herein provided for, no abandonment, partition, subdivision, encumbrance sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified herein.
- (d) Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last parcel of land shown upon and identified as a lot on any recorded plat of the Tract or Additional Tract (whether heretofore or hereafter recorded, including the Plat) is conveyed to an Owner other than Declarant or until the Applicable Date (whichever event shall first occur) Declarant shall have the right and agreement upon the other portions of the Tract or Additional Tract and the right to maintain signs upon the Common Area and any other portions of the Tract or Additional Tract, other than Lots owned by an Owner other than Declarant for the purpose of marketing homes, and to invite and escort the public

thereon for such purpose.

- (e) Private Streets. Declarant hereby covenants that it shall convey and transfer the Private Streets, if any, included in and constituting a part of the Tract and Additional Tract to the Corporation upon the completion of such Private Streets. Any Private Streets so conveyed by Declarant to the Corporation shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and restrictions then of record, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof which shall thereafter be paid when due by the Corporation, and be further subject to the terms and provisions of this Declaration. Declarant reserves unto itself, its successors and assigns, and hereby establishes for each Owner, their guests and invitees, and all public and quasi-public vehicles, an easement for ingress and egress on and over the Private Streets. The terms "public vehicles" and "quasi-public vehicles" shall include, but shall not be limited to, vehicles operated for police and fire protection, ambulance and other emergency vehicles, for trash and garbage collection, and for mail and other delivery services operated in the performance of their duties.

19. Assessments

- (a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- (b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing fiscal year estimating the total amount of the Common Expenses for the ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the ensuing fiscal year. At the annual meeting of the Owners at which a quorum is present, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally

accepted accounting principles applied on a consistent basis.

The annual budget shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area, including but not limited to the private streets, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Regular Assessments as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the owners shall pay Regular Assessments based upon the Board's proposed annual budget.

- (c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the ensuing fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). The aggregate amount of the Regular Assessments shall be equal to the total amount of expense provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors: provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. The Regular Assessment for the ensuing fiscal year of the Corporation shall become a lien on each separate Lot and Home as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

- (d) Special Assessments. From time to time Common Expenses of an unusual

or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 12(b) of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

- (e) Regular Assessments Prior to the Applicable Date. During the period that Declarant or its authorized Developer and/or Builder is constructing Homes within the Tract or any Additional Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in this Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 19(e).

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant)(hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 13 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) 1 year after the date of recordation of this Declaration, the monthly Regular Assessment shall not exceed Twenty Five Dollars (\$ 25.00 ) (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, Declarant guarantees that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year

so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such monthly charge shall, during such guarantee period, entirely defray the Owner's obligation for his share of Common Expenses and shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient the replacement reserve fund, if any such fund exists.

Excluding the Lawn Care Expense and Snow Removal Expense, five percent (5%) of the Regular Assessment paid prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessments collected by Declarant prior to the Applicable Date applicable to any replacement reserve created shall be held by the Initial Board and, if required, applied to the replacement of Common Areas. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of Regular Assessments prior to the Applicable Date with respect to each Home (that is not owned by Declarant or its authorized Developer and/or Builder) shall commence on the date of conveyance by Declarant or its authorized Developer and/or Builder to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date.

FOR EACH LOT DECLARANT OWNS, DECLARANT SHALL PAY TO THE CORPORATION TWENTY-FIVE PERCENT (25%) OF THE AMOUNT OF THE REGULAR ASSESSMENT; PROVIDED, HOWEVER, SUCH PAYMENT BY DECLARANT FOR LOTS WITHIN THE PLAT SHALL NOT COMMENCE UNTIL THE FIRST LOT IN SUCH AREA SUBJECT TO THE PLAT IS CONVEYED TO AN OWNER OTHER THAN DECLARANT'S AUTHORIZED BUILDER. THE AUTHORIZED BUILDER SHALL PAY NO REGULAR ASSESSMENT FOR A PERIOD OF SIX (6) MONTHS FROM THE DATE OF PURCHASE. THEREAFTER SUCH BUILDER SHALL PAY THE REGULAR ASSESSMENT AS ANY OTHER OWNER.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 13 of this Declaration and to adhere to and abide by the same.

- (f) Lawn Care Assessment and Snow Removal Assessment. Each Owner who elects at his option for Lawn Care Service and/or Snow Removal Service shall pay a special assessment ("Lawn Care Assessment or Snow Removal

Assessment") payable each and every month at the same time as and along with the payment of the Regular Assessment. Any election for Lawn Care Service and/or Snow Removal Service shall be binding upon the electing Owner not less than one (1) calendar year, and each such election shall be deemed to be renewed annually as of January 1 of each year ("Renewal Date") unless the Owner desiring termination of such service notifies the Corporation in writing of termination of his election for Lawn Care Service and/or Snow Removal Service not less than forty-five (45) days prior to the Renewal Date. With respect to any Owner electing the Lawn Care Service and/or Snow Removal Service, the Lawn Care Assessment and/or Snow Removal Assessment for the current fiscal year of the Corporation shall become a lien on the applicable separate Lot and Home of such electing Owner as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Lawn Care Assessment and/or Snow Removal Assessment may not have been made by that date.

(g) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular or Special Assessments, or, if applicable upon election, from the Lawn Care Assessment and/or Snow Removal Assessment including contributing toward the expenses of administration and of maintenance and repair of the Common Area and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Home belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments and, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment when due, the lien for such assessment on the Owner's Home may be foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of an Owner to make payments of any Regular or Special Assessments or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment, within ten (10) days after such are due, the Board, in its discretion, may:

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



Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Home shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Home, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Home and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment, without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Home.

- (h) **Subordination of Assessment Lien to Mortgage.** Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale transfer or conveyance shall relieve the Lot and Home or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof from liability for any installments of Regular Assessments or Special Assessments or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or, if applicable upon election, the Lawn Care Assessment and/or Snow Removal Assessment, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

20. **Mortgages.**

- (a) **Notice to Corporation.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms

of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise. The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement.
- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.
- (d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Benjamin Square or any Home. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.
- (f) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

21. Insurance.

- (a) Casualty Insurance. The Corporation shall purchase a casualty insurance policy or policies affording fire and extended coverage insurance insuring the Common Area in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Common

Area. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall hold such proceeds for the benefit of the Corporation and individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

Such casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are reasonably obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to all Owners and at least ten (10) days prior written notice to the Corporation.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but not less than \$1,000,000 for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract and Additional Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Home. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be canceled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation and occupational disease insurance, and such other

insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

- (d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees, if to do so would be in violation of the Indiana Nonprofit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

- (e) Insurance by Owners. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, and fixtures, furniture, furnishings, and other personal property.
- (f) Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Corporation which shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.
22. Casualty and Restoration of Common Areas. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and

reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this paragraph 22, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as nearly as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

23. **Covenants and Restrictions.** The following covenants and restrictions on the use and enjoyment of the Lots, Homes and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat, which are incorporated herein by reference, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) Homes shall be used exclusively for residential purposes and the occupancy of a single family, all as permitted under local zoning ordinances. "Single Family" is defined as a single housekeeping unit, operating on a nonprofit, non-commercial basis between its occupants with a common kitchen and dining area.
- (b) No more than one (1) Home shall be erected or maintained on each Lot.
- (c) No nuisance shall be permitted, including without limitation any activities which are unsafe or hazardous with respect to any person or property, and no waste shall be committed in the Homes or Common Areas.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or balconies or placed on the outside walls of the Home, and no sign, awning, canopy, shutter, or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Home without the prior written consent of the Board of

Directors. The placement, installation, and maintenance of antennas, including satellite dishes, shall be subject to rules and regulations promulgated by the Board of Directors.

- (e) No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any part of the Tract or Additional Tract, except that small dogs, cats or customary household pets in reasonable numbers may be kept in a Home subject to rules and regulations adopted by the Board of Directors; provided that such pet is not kept, bred, or maintained for any commercial purpose and does not create a nuisance. All pets (including cats) shall be taken outdoors only under leash or other restraint and while attended by its owner, and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his pet. The Owner shall be responsible for the cleaning of any Common Area made dirty by his pet's excrement and shall be fully liable for the expenses of any cleaning not performed by the Owner. The tethering of pets in any area outside the Owner's Home does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Tract or Additional Tract upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Tract or Additional Tract to enforce local animal control laws and ordinances.
- (f) No Lot or Home shall be used in any unlawful manner or in any manner to cause injury to the reputation of the Tract or Additional Tract or to be a nuisance, annoyance, inconvenience or damage to other residents of the Tract or Additional Tract, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines, or by loud persons and objectionable odors.
- (g) The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (h) No industry, business, manufacturing, mercantile, storing, trade, or any commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Tract or Additional Tract; provided, however, that an Owner may maintain an office or home business in the Home if: (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's Home; (3) there are no employees or independent contractors within the Home other than the Owner or other resident; (4) such Owner

has obtained approvals for such use as may be required by the appropriate local and state governmental agencies; (5) the Owner has obtained written approval from the Board of Directors; and (6) all other provisions of these By-Laws, the Declaration and the rules and regulations are complied with. The Board may require the Owner to pay any increase in the rate of insurance or other costs for the Corporation which may result from such use. No Home shall be used or rented for transient, motel or hotel purposes.

- (i) No "For Sale", "For Rent" or "For Lease" signs or other window or advertising display shall be maintained or permitted on any part of the Tract or Additional Tract or any Home without the prior written consent of the Board.
- (j) All Owners and members of their families, their guests, or invitees, and all occupants of any Home or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Homes and Common Areas.
- (k) No boats or other watercraft, snowmobiles, campers, recreational vehicles, trailers of any kind, buses, mobile homes, tractor trailers, commercial or business trucks or vans, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles or any other vehicles of any description other than normal passenger trucks less than one ton, vans or automobiles (including station wagons and small trucks such as pickups and vans) shall be permitted, parked or stored anywhere within the Tract or Additional Tract; provided, however, that nothing herein shall prevent: (1) the parking or storage of such vehicles completely enclosed within a garage, or (2) the driving or using of such vehicles for ingress and egress to and from such Owner's Home provided the shortest route to and from a public road is used. No Owners or other residents shall repair or restore any vehicle of any kind within the Tract, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. "Commercial" vehicles are vehicles on which commercial lettering or equipment is visible or which are larger than normally used for noncommercial purposes. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept on the Tract or Additional Tract.
- (l) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with the express written permission from the Board.
- (m) No garage shall be erected on any Lot which is not permanently attached to the Home, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any Lot which is not permanently attached

to the Home.

- (n) No trailers, shacks, outhouses, detached storage sheds or toolsheds of any kind shall be erected or situated on any Lot, except that used by a builder during the construction of a Home, which temporary construction structures shall be promptly removed upon completion of construction of the Home.
- (o) Each driveway on a Lot shall be of concrete or asphalt material.
- (p) No above-ground swimming pools shall be permitted in the Tract or Additional Tract.
- (q) No solar heat panels shall be permitted in the Tract or Additional Tract.
- (r) No fence, wall, hedge 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 on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said lines, or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage lines are maintained at sufficient height and girth to prevent obstruction of such sight line.
- (s) No gas or oil storage tanks shall be buried or located on the Tract or Additional Tract.
- (t) Outside storage of any items, including, but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot upon which the same are located. The design of such screened enclosure must be approved by the Architectural Review Board in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal vegetation or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened.

Notwithstanding anything to the contrary contained herein or in the Articles or



By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Homes owned by Declarant and other portions of the Tract (other than individual Homes and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Homes and the sale of Lots and Homes or for the conducting of any business or activity attendant thereto, including, but not limited to, model Homes, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract or Additional Tract at any time.

24. **Amendment of Declaration.**

- (a) **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:
- (i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
  - (ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
  - (iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
  - (iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Home is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
  - (v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 21 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 22 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 17 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 19 of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such

circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration and the By-Laws.

- (vi) Additional Special Amendments. No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area, or (3) right to use the Common Area, or (4) annexation to Benjamin Square (other than as provided in Paragraph 25), or (5) the boundaries of any Lot, or (6) the leasing of Homes, or (7) termination of the applicability of this Declaration, or (8) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of the Owners for the twenty (20) years after recording of this Declaration and thereafter by at least seventy-five percent (75%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Lots subject to mortgages.
  - (vii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
  - (viii) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.
- (a) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Homes, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 24 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or

Home and the acceptance thereof shall be deemed to be a grant and acknowledgement of and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 24 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Tract.

- (b) **Amendment Prior to the Applicable Date.** Notwithstanding anything to the contrary contained in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Dale without the consent and approval of Declarant.

25. **Annexation of Additional Tract.** In addition to Benjamin Square, Section 1, Declarant is the owner of certain real estate described in the attached Exhibit B which is incorporated herein by reference and which is located contiguous to Benjamin Square, Section 1 ("Additional Tract").

At any time prior to December 31, 2005, Declarant, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or any part thereof, in substantially the same manner as Benjamin Square, Section 1 and file one or more Supplemental Declarations and Plats for such Additional Tract; provided, however, that the maximum number of Homes which may be contained in the total development of the Tract and Additional Tract shall be not more than Two Hundred Twenty (225) and such Homes shall be consistent with the quality of construction of previous Homes. Improvements (excluding Homes) within the area to be annexed must be substantially completed prior to annexation.

In the event the Additional Tract or any part of it is planned in a manner similar to Benjamin Square, Section 1, the owners of such Lots in the Additional Tract or parts thereof, shall have the same rights and obligations as the Owners herein, and the Corporation shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Additional Tract or any part of it in a manner similar to Benjamin Square, Section 1, Declarant shall file a Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein; provided, however, any part of the Additional Tract for which a Supplemental Declaration has not been filed by December 31, 2005 shall be automatically removed from the possibility of having a common entity provide for the maintenance, repair, replacement, administration and operation of such part of the Additional Tract, unless such is established by the Owners in the Tract and those in the Additional Tract.

Regardless of the method of development of the Additional Tract and whether or not all or any part of the Additional Tract comes within the jurisdiction of the Corporation or subject to the Declaration, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Tract

not coming within the jurisdiction of the Corporation or subject to the Declaration, the right and easement to enter upon the streets and Common Area of Benjamin Square, Section 1, to provide ingress and egress to the Additional Tract.

Declarant hereby grants to the Owners in Benjamin Square, Section 1, the right and easement to enter upon any streets and roadways that may exist in the Additional Tract to provide ingress and egress to Benjamin Square, Section 1 as may be necessary.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use and access across the roadways and streets of the Tract and Additional Tract, no matter how developed, for the owners of the Tract and Additional Tract, their guests, invitees, and all public and quasi-public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Corporation, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until such Lot has been conveyed by Declarant and the Home thereon is occupied for residential purposes.

HOWEVER, THE DECLARANT SHALL BE OBLIGATED TO PAY TWENTY-FIVE PERCENT (25%) OF THE REGULAR ASSESSMENT TO THE CORPORATION ON ANY LOT DECLARANT OWNS WITHIN THE PLAT AFTER THE FIRST LOT WITHIN SUCH PLAT HAS BEEN CONVEYED TO AN OWNER OTHER THAN THE AUTHORIZED BUILDER. BUILDER SHALL PAY NO ASSESSMENT FOR A PERIOD OF SIX (6) MONTHS FROM THE DATE OF PURCHASE. THEREAFTER SUCH BUILDER SHALL PAY THE REGULAR ASSESSMENT AS ANY OTHER OWNER.

26. **Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities

which may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

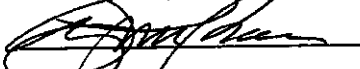
27. **Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.
28. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.
29. **No Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.
30. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.
31. **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate.
32. **Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.
33. **The Plat.** The Plat of Benjamin Square, Section I is incorporated into this Declaration by reference, and the Plat has been filed In the Office of the Recorder of Marion County, Indiana, as of the 30<sup>th</sup> day of April, 1999 as Instrument No. 99-0070075.

(Signatures appear on the following page.)

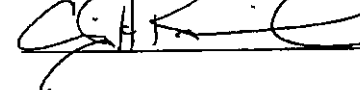
IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first written above.

**LAWRENCE/FORT HARRISON DEVELOPMENT CORPORATION**

By: ~~J. Lynn Boese, President~~



By: Craig H. Romeril, Secretary



STATE OF INDIANA        )  
  ) SS  
COUNTY OF MARION     )

Before me, a Notary Public in and for said County and State, personally appeared J. Lynn Boese and Craig H. Romeril, by me known to be the president and secretary, respectively, of Lawrence/Fort Harrison Development Corporation an Indiana nonprofit corporation, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Benjamin Square, Section 1, on behalf of said corporation and who, having been duly sworn, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 8 day of April, 1999.



Notary Public

Sherrilyn Jo Branaman

Printed

My Commission Expires: April 28, 2001 County of Residence: marion

This instrument prepared by, and should be returned to, J. Lynn Boese, Attorney at Law, 5830 North Post Road, Suite 100, Indianapolis, IN 46216. (317-377-3400).

CHICAGO TITLE



EXHIBIT "A"  
LAND DESCRIPTION  
(Benjamin Square Section 1)

Part of the Northwest Quarter of Section 7 Township 16 North, Range 5 East in Marion County, Indiana, of the Second Principal Meridian, being more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of Section 7, being in the center of Franklin Road; thence North 00 degrees 55 minutes 31 seconds West along the West line of said Section 7 a distance of 950.06 feet; thence North 89 degrees 35 minutes 12 seconds East (passing a Corps of Engineers monument at 75.00 feet, being on the east right-of-way line of Franklin Road as described in Instrument No. 74-77415, and also being the Northwest corner of lands conveyed to the City of Lawrence by the United States as described in Instrument No. 74-84359, both recorded in the Office of the Recorder for Marion County) a distance of 82.63 feet; the next four described courses being along the new East right-of-way line of Franklin Road: thence North 00 degrees 39 minutes 35 seconds West a distance of 863.44 feet; thence North 00 degrees 44 minutes 37 seconds East a distance of 19.59 feet to the Point of Beginning; thence continuing North 00 degrees 44 minutes 37 seconds East a distance of 213.33 feet; thence North 03 degrees 56 minutes 21 seconds East a distance of 78.22 feet; thence North 89 degrees 49 minutes 53 seconds East a distance of 876.20 feet; thence North 00 degrees 10 minutes 07 seconds West a distance of 79.84 feet; thence North 16 degrees 12 minutes 03 seconds West a distance of 92.92 feet; thence North 06 degrees 03 minutes 44 seconds West a distance of 255.56 feet to a point on the new South right-of-way line of East 56<sup>n</sup> Street; thence North 85 degrees 03 minutes 33 seconds East along said south right-of-way a distance of 80.02 feet; thence South 06 degrees 03 minutes 44 seconds East a distance of 253.97 feet; thence South 02 degrees 07 minutes 48 seconds West a distance of 97.60 feet; thence North 89 degrees 49 minutes 53 seconds East a distance of 502.32 feet; thence South 00 degrees 10 minutes 07 seconds East a distance of 596.03 feet; thence South 89 degrees 49 minutes 53 seconds West a distance of 184.32 feet; thence South 00 degrees 10 minutes 07 seconds East a distance of 80.00 feet; thence South 89 degrees 49 minutes 53 seconds West a distance of 571.55 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 00 degrees 10 minutes 07 seconds West; thence northwesterly along said curve an arc distance of 185.25 feet to a point which bears South 32 degrees 29 minutes 24 seconds West from said radius point; thence North 57 degrees 30 minutes 36 seconds West a distance of 352.58 feet to a curve having a radius of 400.00 feet, the radius point of which bears South 32 degrees 29 minutes 24 seconds West; thence northwesterly along said curve an arc distance of 221.59 feet to the Point of Beginning said point bearing North 00 degrees 45 minutes 00 seconds East from said radius point, containing 18.506 acres, more or less.

EXHIBIT "B"  
**LAND DESCRIPTION**  
**(Benjamin Square Section 2)**

Part of Section 7 Township 18 North, Range 5 East in Marion County, Indiana, of the Second Principal Meridian, being more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 7, being in the center of Franklin Road; thence North 00 degrees 55 minutes 31 seconds West (bearing per Indiana State Plane Coordinate System – East Zone NAD27) along the West line of said Section 7 a distance of 950.06 feet; thence North 89 degrees 35 minutes 12 seconds East (passing a Corps of Engineers monument at 75.00 feet, being on the east right-of-way line of Franklin Road as described in Instrument No. 74-77415, and also being the Northwest corner of lands conveyed to the City of Lawrence by the United States as described in Instrument No. 74-84359, both recorded in the Office of the Recorder for Marion County) a distance of 82.63 feet to the Point of Beginning (the next two described courses being along the new East right-of-way line of Franklin Road); thence North 00 degrees 39 minutes 35 seconds West a distance of 863.44 feet; thence North 00 degrees 44 minutes 37 seconds East a distance of 19.59 feet to a curve having a radius of 400.00 feet, the radius point of which bears South 00 degrees 45 minutes 00 seconds West; thence southeasterly along said curve an arc distance of 221.59 feet to a point which bears North 32 degrees 29 minutes 24 seconds East from said radius point; thence South 57 degrees 30 minutes 36 seconds East a distance of 352.58 feet to a curve having a radius of 400.00 feet, the radius point of which bears North 32 degrees 29 minutes 24 seconds East; thence southeasterly along said curve an arc distance of 185.25 feet to a point which bears South 00 degrees 10 minutes 07 seconds East from said radius point; thence North 89 degrees 49 minutes 53 seconds East a distance of 571.55 feet; thence North 00 degrees 10 minutes 07 seconds West a distance of 80.00 feet; thence North 89 degrees 49 minutes 53 seconds East a distance of 184.32 feet; thence South 00 degrees 10 minutes 07 seconds East a distance of 651.98 feet to a capped rebar on the north line of said land described in Instrument No. 74-84359; thence South 89 degrees 35 minutes 12 seconds West along said north line a distance of 1430.45 feet to the Point of Beginning, containing 21.879 acres, more or less.

J:\4261016\DOCS\SEC2PL.WPD April 9, 1999



CHICAGO TITLE



4

MARTIN 11/11/00

Cross Reference:

Instr. No. 99-0070076

85313 11/18/01

FOR TRANSFER

**SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS OF BENJAMIN SQUARE SUBDIVISION**

This Supplemental Declaration of Covenants and Restrictions of Benjamin Square Subdivision (the "Supplemental Declaration") is made this 18<sup>th</sup> day of April, 2001, by Lawrence/Fort Harrison Development Corporation, an Indiana nonprofit corporation ("Declarant"), and

Witnesses:

WHEREAS, Declarant has previously filed a Declaration of Covenants and Restrictions of Benjamin Square Subdivision (the "Master Declaration"), dated April 8, 1999 and recorded April 13, 1999, as Instrument No. 99-0070076, in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant, pursuant to Paragraph 25 of such Master Declaration, as the owner of the real property referred to in the Master Declaration as the "Additional Tract" and described on "Exhibit B" attached thereto, has decided to develop the Additional Tract in a manner similar to Benjamin Square, Section 1 (as defined in the Master Declaration); and

WHEREAS, Declarant, has platted such Additional Tract, to be known as Benjamin Square, Section 2, in a manner similar to Benjamin Square, Section 1, the plat of which was filed on March 6, 2001 as Instrument No. 2001-0034059; and

WHEREAS, Declarant, pursuant to Paragraph 25 of such Master Declaration, as the owner of the Additional Tract, has the unilateral right to annex and subject to the provisions of the Master Declaration such Additional Tract; and

WHEREAS, such annexation shall be effective upon the filing for record of this Supplemental Declaration; and

WHEREAS, Declarant wishes to subject to the Master Declaration the Additional Tract, being more specifically described on Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, Declarant, pursuant to the provisions of Paragraph 25 of the Master Declaration, hereby declares that the real property comprising the Additional Tract, being more particularly described on Exhibit A attached hereto and made a part hereof, is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and approved, subject to the Master Declaration. The Master Declaration shall run with the real property described on Exhibit A attached hereto and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real

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property described on Exhibit A attached hereto or any part or parts hereof, and shall inure to the benefit of successors entitled to the real property described on Exhibit A attached hereto.

For purposes of the Master Declaration, the real property comprising the Additional Tract described on Exhibit A attached hereto shall become part of Benjamin Square as defined in the Master Declaration and shall be known as Benjamin Square, Section 2.

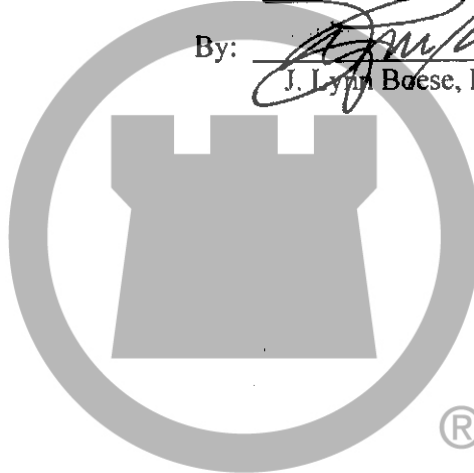
IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration as of the date first above written.

LAWRENCE/FORT HARRISON  
DEVELOPMENT CORPORATION, an Indiana  
nonprofit corporation

By: \_\_\_\_\_



J. Lynn Boese, President



CHICAGO TITLE

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared J. Lynn Boese the president, of Lawrence/Fort Harrison Development Corporation, an Indiana nonprofit corporation, and acknowledged the execution of the foregoing instrument as such officer acting for and on behalf of said corporation.

Witness my hand and Notarial Seal this 18<sup>th</sup> day of April \_\_\_\_, 2001.

Heather D Millikan  
(signature)

HEATHER D. MILLIKAN  
(printed name) Notary Public

My Commission Expires:

11/21/2008

County of Residence:

Marion

This instrument was prepared by April Sparks Pyatt, Esq., ICE MILLER, One American Square, Box 82001, Indianapolis, Indiana 46282, (317) 236-2100.



CHICAGO TITLE

## EXHIBIT A

### Legal Description

**Part** of Section 7 Township 16 North, Range 5 East in Marion County, Indiana, of the Second Principal Meridian, being more particularly described as follows:

**Commencing** at the Southwest corner of the Northwest Quarter of said Section 7, being in the center of Franklin Road; thence North 00 degrees 55 minutes 31 seconds West (bearing per Indiana State Plane Coordinate System – East Zone NAD27) along the West line of said Section 7 a distance of 950.06 feet; thence North 89 degrees 35 minutes 12 seconds East (passing a Corps of Engineers monument at 75.00 feet, being on the east right-of-way line of Franklin Road as described in Instrument No. 74-77415, and also being the Northwest corner of lands conveyed to the City of Lawrence by the United States as described in Instrument No. 74-64359, both recorded in the Office of the Recorder for Marion County) a distance of 82.63 feet to the **Point of Beginning** (the next two described courses being along the new East right-of-way line of Franklin Road); thence North 00 degrees 39 minutes 35 seconds West a distance of 863.44 feet; thence North 00 degrees 44 minutes 37 seconds East a distance of 19.59 feet to a curve having a radius of 400.00 feet, the radius point of which bears South 00 degrees 45 minutes 00 seconds West; thence southeasterly along said curve an arc distance of 221.59 feet to a point which bears North 32 degrees 29 minutes 24 seconds East from said radius point; thence South 57 degrees 30 minutes 36 seconds East a distance of 352.58 feet to a curve having a radius of 400.00 feet, the radius point of which bears North 32 degrees 29 minutes 24 seconds East; thence southeasterly along said curve an arc distance of 185.25 feet to a point which bears South 00 degrees 10 minutes 07 seconds East from said radius point; thence North 89 degrees 49 minutes 53 seconds East a distance 571.55 feet; thence North 00 degrees 10 minutes 07 seconds West a distance of 80.00 feet; thence North 89 degrees 49 minutes 53 seconds East a distance of 184.32 feet; thence South 00 degrees 10 minutes 07 seconds East a distance of 651.98 feet to a capped rebar on the north line of said land described in Instrument No. 74-64359; thence South 89 degrees 35 minutes 12 seconds West along said north line a distance of 1430.45 feet to the **Point of Beginning**, containing 21.679 acres, more or less.

CHICAGO TITLE

**CODE OF BY-LAWS  
OF  
BENJAMIN SQUARE NEIGHBORHOOD ASSOCIATION, INC.**

**An Indiana Nonprofit Corporation**

**ARTICLE I  
NAME**

Section 1. Name. The name of the corporation is Benjamin Square Neighborhood Association, Inc. (hereinafter referred to as "Corporation").

**ARTICLE II**

**IDENTIFICATION & APPLICABILITY**

Section 2.1. Identification and Adoption. The provisions of these By-Laws shall apply to the Tract and Additional Tract as those terms are defined in the Declaration of Covenants & Restrictions for Benjamin Square Subdivision, said Declaration being recorded in the Office of the Recorder of Marion County on APRIL 13, 1999 as Instrument No. 99-70076 (hereinafter "Declaration"), and the administration and conduct of the affairs of the Corporation.

Section 2.2 Individual Application. Each of the Owners within the Tract and Additional Tract shall automatically and mandatorily be Members in the Corporation and be entitled to all of the privileges and subject to all of the obligations thereof. All Owners, by their acceptance of their respective deeds to their Lots, covenant and agree to be bound by the conditions, restrictions, and obligations contained in the Declaration, together with all amendments or supplements thereto, the Articles of Incorporation, the rules and regulations of the Corporation and of the provisions hereof. All of the Owners, future Owners, tenants, future tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Lot or any part of the Common Areas shall be subject to the Declaration, the Articles of Incorporation, these By-Laws, and the Indiana Nonprofit Corporation Act of 1991 (the "Act"), all as the same may be amended from time to time, and to any rules and regulations adopted by the Board of Directors as herein provided. The Declaration is incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Declaration shall apply to and govern the interpretation of the Articles of Incorporation and these Code of By-Laws. The definitions and terms, as defined and used in the Declaration, shall have the same meaning in the Articles of Incorporation and these Code of By-Laws, and reference is specifically made to Paragraph 1 of the Declaration containing definitions for terms, unless otherwise indicated herein.

### ARTICLE III MEETINGS OF CORPORATION

Section 3.1. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, a meeting of the Members shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, these By-Laws, the Articles, or the Act.

Section 3.2. Annual Meeting. The annual meeting for the Members of the Corporation shall be held in the month of November of each year, with the specific date, time and place to be determined by the Board of Directors. At each annual meeting, the Members shall elect the Board of Directors of the Corporation in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 3.3. Special Meetings. A special meeting of the Members of the Corporation may be called by the President, by resolution of the Board of Directors or upon a written petition of the Owners of not less than ten percent (10%) of the total number of Lots. The resolution or petition shall be presented to the President or Secretary of the Corporation and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 3.4. Notice and Place of Meetings. All meetings of the Members of the Corporation shall be held on the Tract or Additional Tract or at any suitable place in Marion County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, and place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Corporation to each Member entitled to vote thereat not less than fourteen (14) days prior to the date of such meeting. Any written notice delivered to the Members as part of a newsletter or other publication regularly sent to the Members constitutes a written notice. If at any meeting an amendment of the Declaration, the Articles of Incorporation, or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. All notices shall be mailed by first-class US Mail, postage prepaid, or delivered to the Members at their respective addresses as the same shall appear upon the records of the Corporation. If an annual or special meeting of Members is adjourned to a different date, time or place, written notice is not required to be given of the new date, time or place so long as the new date, time and place are announced at the meeting pursuant to the Act before adjournment. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Corporation to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Corporation with its name and address in accordance with Section 8.1 of these By-Laws. Such Mortgagee may designate in writing a representative to attend the meeting.

Section 3.5. Voting.

(a) Number of Votes. To avoid fractional votes and to facilitate the orderly conduct of the meeting, each Member shall be entitled to cast one (1) vote for each Lot of which such Member is the Owner. In voting for Directors, each Owner (or his representative) shall be entitled to cast one (1) vote for each directorship being filled at that meeting, and the candidate(s) receiving the highest number of votes shall fill the available directorship(s); provided that no Owner shall be allowed to accumulate his votes. To the extent provided in the Act, and except as otherwise provided in the Declaration, the Articles of Incorporation or these By-Laws, plurality voting shall be permitted such that at a meeting, if a quorum exists, action on a matter is approved if the votes cast in favor of the action exceeds the votes opposing the action.

(b) Multiple Owners. When more than one (1) person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be Members of the Corporation, but all of such persons or entities shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled. The secretary of such corporation or a trustee of such trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary of the Corporation stating who is authorized to vote on behalf of said corporation or trust.

(d) Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Corporation prior to the commencement of the meeting. No such proxy shall remain valid for longer than eleven (11) months from the date of its execution, unless a longer term is specified in the proxy.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, the Articles or the Act, the presence of Owners or their duly authorized representatives owning at least twenty-five percent (25%) of the total number of Lots shall constitute a quorum at all meetings. Unless otherwise required herein or by the Act, the Owners at a meeting at which a quorum is initially present may continue to do business until adjournment, notwithstanding the withdrawal of enough Owners to leave less than a quorum. As used elsewhere in these By-Laws, the term "Majority of Owners" shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total number of Lots, and the term "Majority of the Vote" shall mean a majority of the votes of the Owners present or represented at a meeting at which a quorum is present.

Section 3.6. Conduct of Annual Meeting. The Chairman of the annual meeting shall be the President of the Corporation. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

(1) Presentation of Minutes. The Secretary shall present the minutes of the last annual meeting and the minutes of any regular or special meeting of the Members held subsequent thereto.

(2) Treasurer's Report. The Treasurer shall report to the Members concerning the financial condition of the Corporation and answer relevant questions of the Members concerning the Common Expenses and financial report for the current year and the proposed budget for the next fiscal year.

(3) Budget. The proposed budget for the following calendar year shall be presented to the Members for approval or amendment as more fully described in the Declaration.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by a Member from those persons eligible to serve. Such nominations may be in writing and presented to the Secretary of the Corporation at least ten (10) days prior to the annual meeting. Nominations for the Board of Directors will also be accepted from the Members attending the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Member may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, no Member shall be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Corporation at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a Majority of the Vote as defined in Section 3.5(e) hereof

(6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations prescribed in the Declaration or assigned by the Board of Directors shall be presented.

(7) Adjournment. Upon completion of all business before the Corporation, the President, upon the motion of any Member, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Owners for the upcoming year.

Section 3.7. Conduct of Special Meeting. The President of the Corporation shall act as Chairman of any special meetings of the Corporation. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be in consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.



**ARTICLE IV  
BOARD OF DIRECTORS**

Section 4.1 Initial Board of Directors. The Initial Board of Directors shall be J. Lynn Boese, Craig H. Romeril and Warren W. White, Jr. (herein referred to as the "Initial Board,"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of these By-Laws or the Declaration or the Act or elsewhere:

(a) the Initial Board shall hold office until:

- (i) the date upon which the written resignation of the Class B Members as such is delivered to the registered agent of the Corporation,
- (ii) thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or
- (iii) January 1, 2006

(Such date when the Initial Board shall no longer hold office being herein referred to as the "Applicable Date), and

(b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Lot by any type of juridic acts, *inter vivos* or *causa mortis*, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these By-Laws, the Act, or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 4.2. Board of Directors. The affairs of the Corporation shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). After the Applicable Date, the Board of Directors shall be composed of five (5) persons who each own at least one (1) Lot. After the Applicable Date, the number of Directors comprising the Board may be increased by resolution adopted by not less than a majority of the Board of Directors, but said number shall not exceed nine (9). If the number of Directors is ever greater than five (5) said number may be decreased by resolution adopted by not less than a majority of the Board. In no event shall the number of Directors be less than five (5) nor more than nine (9) and no reduction in the number of Directors shall have the effect of removing a Director from office prior to the

expiration of his term. In the event the number of Directors is increased as provided herein, the election of the additional Director or Directors shall be by a vote of the Members according to a procedure established by the Board by resolution.

Section 4.3. Additional Qualifications. After the Applicable Date, where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

Section 4.4. Term of Office and Vacancy. After the Applicable Date, Members of the Board of Directors shall be elected at each annual meeting of the Corporation. Each Director shall serve a term of two (2) years. The term of the Directors elected at the annual meeting shall commence on January 1 of the calendar year immediately following his election. One-half (1/2) of the persons on the Board of Directors shall be elected at each annual meeting of the Corporation. In the event the number of persons on the Board is not divisible by two, the number of Directors' positions available for election at the annual meetings shall be such number as to as closely approximate as possible the one-half requirement. For example, with a Board consisting of five (5) persons, three positions shall be elected at the annual meeting and two shall be elected at the following annual meeting. Initially, three persons shall be elected for a term of one (1) year and two persons shall be elected for of term of two (2) years. Any vacancy or vacancies occurring in the Board caused by a death, resignation, or otherwise other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining Directors. At the first annual meeting of the Members following any such vacancy, a Director shall be elected by the Owners to serve for the balance of the term of the Director in respect to whom there has been a vacancy. Each Director shall hold office throughout the term of his election until his successor is elected and qualified.

Section 4.5. Removal of Directors. After the Applicable Date, a Director or Directors elected by the Owners, or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors may be so removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon removal of the Director(s). In such case, his or their successor(s) shall be elected at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director(s).

Section 4.6. Duties of the Board of Directors. The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment, the following:

(a) Protection, repair and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of the Owners; provided, however, that this duty shall

not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(b) Procuring of utilities, removal of garbage and waste if not provided by the municipality, and snow removal from the Common Areas;

(c) Landscaping, painting, decorating, and furnishing of the Common Areas;

(d) Surfacing, paving, and maintaining private streets, driveways, parking areas, and sidewalks, to the extent the same are not included within the description of a Lot, and the regulation of the use thereof;

(e) Assessment and collection from the Owners of the Owners' pro-rata share of the Common Expenses;

(f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time the notice of annual meeting is mailed or delivered;

(g) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred during each year, which accounting shall be delivered to each Owner simultaneously with delivery of the notice of the annual meeting of the Owners;

(h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Areas, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

(i) Procuring and maintaining in force all insurance coverage <sup>®</sup> required by the Declaration;

(j) Performing such other duties as may be reasonably inferred from the provisions of the Declaration.

Section 4.7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:

(a) To employ a reputable and recognized professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties; provided, however, any management agreement shall be terminable for cause upon thirty (30) days written notice and terminable without cause upon ninety (90) days written notice, and any such agreement may not exceed three (3) years;

(b) To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

(c) To procure for the benefit of the Owners fire and extended coverage insurance covering the Common Areas to the full insurable value thereof, to procure public liability and property damage insurance and Workers Compensation insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners, and the Corporation, and the Mortgagees;

(d) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(e) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas;

(f) To include the costs of all of the above and foregoing as Common Expenses of the Corporation and to pay all of such costs therefrom;

(g) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto; and

(h) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Tract and Additional Tract provided that the Board shall give advance written notice to the Owners of such rules, and any revision, amendment, or alteration thereof.

Section 4.8. Limitations on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a Majority of Owners (as defined in Section 3.5(e) hereof) is obtained, except in the following cases:

(a) The replacement or restoration of any portion of the Common Areas damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received;

(b) Proposed contracts and proposed expenditures expressly set forth in and which do not exceed by more than 10% in aggregate the annual budget as approved by the Owners at the annual meeting. However, specific items within the budget need not be approved separately by the Owners at the annual meeting. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded by more than 10% and by doing so, the total budget will not be increased by more than 10%; and

(c) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Section 4.9 Compensation. No Director or Officer shall receive any compensation for his services as such except to such extent as may be expressly authorized by a Majority of Owners as defined Section 3.5(e) hereof. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 4.10. Meetings and Notice. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. No written or verbal notice need be given to Directors for regularly scheduled Board meetings of which the Directors are already aware. For all other Board meetings, the Secretary shall give notice of such meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meetings. Special meetings of the Board may be called by the President or any two (2) members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice. To the extent provided in the Act, a Director may conduct or participate in a regular or special meeting of the Board of Directors through the use of conference telephone or any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is considered to be present in person at the meeting.

Section 4.11. Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 4.12. Quorum. At all meetings of the Board, unless the Act or these By-Laws provide otherwise, a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 4.13. Bond. The Board of Directors may require the Managing Agent, Treasurer and such other officers of the Board as the Board deems necessary to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bond shall be a Common Expense.

Section 4.14. Informal Action by Directors. Any action required or permitted to be taken

at any meeting of the Board of Directors may be taken without a meeting, if prior to such action a written consent to such actions is signed by all members of the Board and such written consent is filed with the minutes of proceedings of the Board or committee.

Section 4.15. Standards of Conduct and Liability of Directors and Officers. The standard and duty of conduct for and the standard or requirements for liability of the Directors and Officers of the Corporation shall be as set forth in the Act, as the same may be amended from time to time.

## ARTICLE V

### OFFICERS

Section 5.1. Officers of the Corporation. The principal officers of the Corporation shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 5.2. Election of Officers. The officers of the Corporation shall be elected annually by the Board at the first meeting of the Board following each election thereof. Each officer shall hold office for one (1) year or until his successor shall have been duly elected and qualified, unless earlier removed by the Board of Directors. Upon recommendation of a majority of all members of the Board or upon an affirmative vote of a Majority of Owners (as defined in Section 3.5(e) hereof), any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. ®

Section 5.3. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Corporation. The President shall preside at all meetings of the Corporation and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Corporation and to perform such other duties as the Board may from time to time prescribe.

Section 5.4. The Vice-President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 5.5. The Secretary. The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Corporation and of the Board and shall keep or

cause to be kept a true and complete record of proceedings of such meetings, shall authenticate the Corporation's records, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Corporation or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 5.6. The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Corporation and such other duties incident to the office of Treasurer. The Treasurer shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Corporation. The Treasurer may permit the Managing Agent, if any, to handle and account for monies and other assets of the Corporation to the extent appropriate as part of its duties.

Section 5.7. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

## ARTICLE VI

### ADDITIONAL RIGHTS AND DUTIES OF BOARD

Section 6.1. Right of Entry. An Owner or occupant of a Lot shall be deemed to have granted the right of entry to his Lot to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening his Lot, the building located thereon, or any other property or person, whether the Owner is present at the time or not. Any Owner shall permit persons authorized by the Board to perform any work, when required, to enter his Lot for the purpose of performing installations, alterations, or repairs to the mechanical or electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

Section 6.2. Right of Board to Adopt Rules and Regulations. The Board may promulgate such reasonable rules and regulations regarding the operation of the Tract and Additional Tract as the Board may deem desirable, including but not limited to the use of the Common Areas and Lots. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1. Indemnification of Directors. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereafter amended.

Section 7.2. Indemnification of Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation as provided in the Indiana Nonprofit Corporation Act of 1991, as it now exists or as hereinafter amended. In addition, every person (and the heirs and personal representatives of such person) who is or was an officer of the Corporation shall be indemnified by the Corporation to the same and fullest extent that directors are indemnified by the Corporation as provided for in the Indiana Nonprofit Corporation Act of 1991, as it now exists or is hereinafter amended.

## ARTICLE VIII

### NOTICES AND MORTGAGES

Section 8.1 Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot or the Mortgagee thereof shall notify the Secretary of the Corporation and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration or these By-Laws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgages and the name and address of the Mortgagee are furnished to the Secretary, either by Owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these By-Laws shall be required, and no Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or By-Laws or proxy granted to such Mortgagee in connection with the mortgage.

Section 8.2 Notice of Unpaid Assessments. Upon ten (10) days written notice to the Corporation and the payment of a reasonable fee, the Corporation shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company, purchaser or other prospective transferee of a Lot, a written statement setting forth the amount of all unpaid assessments, if any, with respect to the subject Lot, together with the amount of the current assessments for Common Expenses and the date(s) such assessments become due and payable. Any such written statement shall be binding upon the Corporation in favor of any person relying thereon in good faith, and any Mortgagee or grantee of the Lot shall not be



liable for nor shall the Lot conveyed be subject to any lien for any unpaid assessments in excess of the amount set forth in such statement.

Section 8.3 Financial Statements. The Corporation, upon the request of any Mortgagee, shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

Section 8.4. Notices of Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under Section 8.1 of these By-Laws of any of the following:

- (a) Any condemnation that affects a material portion of the Common Property;
- (b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Lot on which said holder, insurer, or guarantor holds a mortgage, if said delinquency continues for more than sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and,
- (d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

Section 8.5. Availability of Information. The Corporation shall keep and shall make available to prospective purchasers of Lots, upon request at reasonable business hours and upon payment of a reasonable fee to defray copying expenses, copies of the Declaration, Articles of Incorporation, By-Laws, together with all amendments thereto, current rules and regulations, if any, and the most recent financial statement of the Corporation.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Fiscal Year. The fiscal year of the Corporation shall be the calendar year.

Section 9.2. Personal Interests. Except as permitted under Section 4.9 hereof, no Member of the Corporation shall have or receive any earnings from the Corporation; provided, however, that a Member who is an officer, director, employee, or agent of the Corporation may be reimbursed for actual expenses incurred on the Corporation's behalf

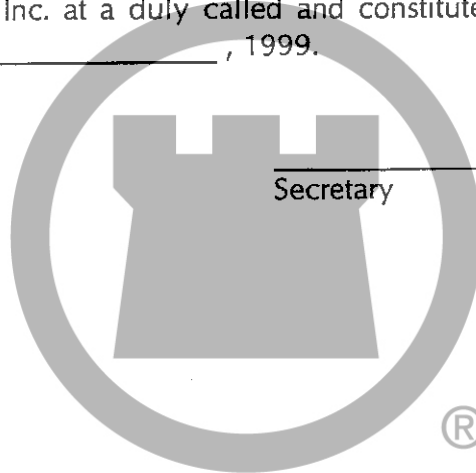
Section 9.3 Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the Treasurer and at least one other officer of the Corporation.

**ARTICLE X**

**AMENDMENT TO BY-LAWS**

Section 10.1 Amendment. These By-Laws may be amended in the same manner, and subject to the same restrictions as amending the Declaration.

This Code of By-Laws was adopted by the Board of Directors of the Benjamin Square Neighborhood Association, Inc. at a duly called and constituted meeting thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 1999.



**CHICAGO TITLE**

ARTICLES OF INCORPORATION  
OF  
BENJAMIN SQUARE NEIGHBORHOOD ASSOCIATION, INC.

The undersigned Incorporator, desiring to form a nonprofit corporation pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991, as amended (the "Act"), and incorporated under the terms and conditions of a certain "Declaration of Covenants, Conditions, & Restrictions of Benjamin Square Subdivision", said Declaration being recorded in the Marion County Recorder's Office on April 13, 1999, as Instrument No 99-0070076, (said Declaration and all amendments and supplements thereto hereafter referred to as "Declaration"), executes the following Articles of Incorporation. The Declaration is incorporated herein by reference. All of the covenants, rights, restrictions, and liabilities contained in the Declaration shall apply to and govern the interpretation of these Articles of Incorporation and the Code of By-Laws. The definitions and terms, as defined and used in the Declaration, shall have the same meaning in these Articles of Incorporation and the Code of By-Laws, and reference is specifically made to Paragraph 1 of the Declaration containing definitions of terms.

ARTICLE I  
NAME

The name of the corporation is Benjamin Square Neighborhood Association, Inc. (hereafter referred to as "Corporation").

ARTICLE II  
TYPE OF CORPORATION

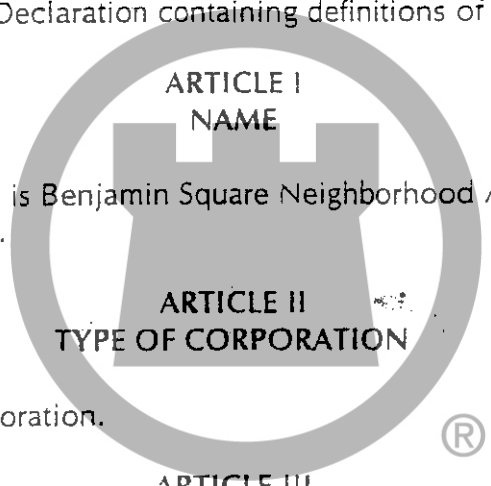
This is a mutual benefit corporation.

ARTICLE III  
PURPOSES AND POWERS

**Section 3.1. Purposes.** The purposes for which the Corporation is formed are to provide for the maintenance, repair, upkeep, replacement, administration, operation and management of the Common Areas and such other portions of the Property as designated in the Declaration, to pay any other necessary expenses and costs in connection with the same in accordance with the Declaration and to perform such other functions as may be designated to it by the Declaration.

**Section 3.2. Powers.** Subject to any limitation or restriction imposed by the Act, any other law, the Declaration, or any other provision of these Articles of Incorporation, the Corporation shall have the power:

(a) To exercise all of the powers and privileges and perform all of the duties and obligations of the Corporation as set forth in the Declaration and By-Laws, as the same may



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CHICAGO TITLE

be amended from time to time;

(b) To establish, levy, collect and enforce payment by any lawful means of any charges or assessments made against Owners or others pursuant to the terms of the Declaration; to pay all expenses in connection with such collection and all office and other expenses incident to the conduct of the business of the Corporation including any license fees, taxes or other governmental charges levied or imposed against the property of the Corporation;

(c) To borrow money and, with the consent of two-thirds (2/3) of the Owners and Mortgagees, mortgage, pledge, deed in trust or hypothecate any and all of its real or personal property as security for money borrowed or debts incurred;

(d) To enter into, make, perform and carry out, or cancel and rescind, contracts for any lawful purposes pertaining to its business;

(e) To acquire by gift, purchase or otherwise, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for the public use or otherwise dispose of real or personal property which is held in title by this Corporation in connection with the affairs of the Corporation in accordance with the terms of the Declaration;

(f) To dedicate, sell or transfer 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 Owners. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the Owners agreeing to such dedication, sale or transfer, except as otherwise provided in the Declaration;

(g) Sue, be sued, complain, and defend in the Corporation's corporate name;

(h) Make and amend By-Laws not inconsistent with the Corporation's Articles of Incorporation, the Act, the Declaration or with Indiana law for managing the affairs of the Corporation;

(i) Elect directors, elect and appoint officers, and appoint employees and agents of the Corporation, define the duties and fix the compensation of directors, officers, employees and agents;

(j) Purchase and maintain insurance on behalf of any individual who:

(1) is or was a director, an officer, an employee, or an agent of the Corporation; or

(2) is or was serving at the request of the Corporation as a director, an officer, an employee, or an agent of another entity;

against any liability asserted against or incurred by the individual in that capacity or arising

from the individual's status as a director, an officer, an employee, or an agent, whether or not the Corporation would have power to indemnify the individual against the same liability under this article;

(k) To have, hold, exercise and enjoy in furtherance of the purposes set forth hereinabove and hereinbelow, all of the rights, powers, privileges and immunities granted, and not expressly denied, by the Act as now or hereafter amended and under the common law as may be necessary, convenient or expedient in order to accomplish the purposes set forth hereinabove and hereinbelow, but subject to any limitation or restriction imposed by the Act, by any other law, by these Articles of Incorporation, or by the Declaration; provided further, however, that if there is any conflict between the powers established in these Articles of Incorporation and the terms and provisions of the Declaration, the terms and provisions of the Declaration shall govern;

(l) To do everything necessary, proper, advisable, or convenient for the accomplishment of any of the purposes, or the attainment of any of the objects or the furtherance of any of the powers herein set forth, and to do every other act and thing incidental thereto or connected therewith, which is not forbidden by the laws of the State of Indiana, or by the provisions of these Articles of Incorporation or the Declaration;

(m) To do all acts and things necessary, convenient or expedient to carry out the purposes for which the Corporation is formed.

**Section 3.3. Limitation of Activities.** The Corporation shall not possess the power of engaging in any activities for the purpose of or resulting in the pecuniary remuneration to its members as such. This provision shall not prohibit fair and reasonable compensation to members for services actually rendered; nor shall it prohibit the Corporation from charging a fee for services rendered; nor shall it prohibit the Corporation from charging a fee for admission to any presentation it may make or other undertakings so long as any funds so raised do not inure to the profit of its members.

ARTICLE IV  
REGISTERED AGENT REGISTERED OFFICE AND PRINCIPAL OFFICE

**Section 4.1 Registered Agent and Registered Office.** The name and street address of the Corporation's registered agent and registered office for service of process shall be:

David F. Rees  
Attorney at Law  
5830 North Post Road, Suite 103  
Indianapolis, IN 46216

**Section 4.2 Principal Office.** The post office address of the principal office of the Corporation is:

Benjamin Square Neighborhood Association, Inc  
c/o David F. Rees  
Attorney at Law  
5830 North Post Road, Suite 103  
Indianapolis, IN 46216

## ARTICLE V MEMBERSHIP

**Section 5.1. Members.** Every person or entity who owns one or more Lots, including contract sellers, shall automatically upon becoming an Owner of a Lot be and become a member of the Corporation; provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

**Section 5.2. Rights, Preferences, Limitations and Restrictions of Classes.** All members shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other members. All members shall abide by the Articles of Incorporation, the Code of By-Laws, the rules and regulations adopted by the Board of Directors, and all covenants, restrictions and other provisions contained in the Declaration

**Section 5.3. Classes of Members.** The Corporation shall have two classes of membership, Class A, of which all members shall be a part, and Class B, of which the Declarant shall be a part, all as more fully set forth in the Declarations.

**Section 5.4. Voting Rights of Members.** Each member shall be entitled to voting rights as follows:

(a) **Number of Votes.** Each Class A member shall be entitled to cast one (1) vote for each Lot owned on each matter coming before the meeting. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the registered agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, as defined in the Declaration.

(b) **Quorum.** Except where otherwise expressly provided in the Declaration, these Articles, the By-Laws, or the Act, the presence of members or their duly authorized representatives owning twenty-five percent (25%) of the total number of Lots shall

constitute a quorum at all meetings. As used elsewhere in these Articles and in the Code of By-Laws, the term "Majority of the Members" shall mean, unless otherwise expressly indicated, the Owners of more than fifty percent (50%) of the total number of Lots as determined by the applicable provisions set forth in the Declaration, and the term "Majority of the Vote" shall mean a majority of the Owners or votes present or represented at a meeting at which a quorum is represented.

(c) Definition of "Owner". The term "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who or which owns the fee simple legal title to a Lot. Persons or entities owning a single Lot as tenants in common, joint tenants or tenants by the entireties shall be deemed one Owner.

**Section 5.5. Rights, Preferences, Limitations and Restrictions of Members.** Any member who fails to comply with the requirements of these Articles, the Declaration, the By-Laws or the rules and regulations made pursuant thereto, including the payment of assessments, shall, if a majority of the Board of Directors by an affirmative vote at a Board of Directors' meeting so determine, during the time period of such failure, suspend his or its membership rights and interest to use the amenities and to vote on any matter coming before the members. However, a member may not be so suspended except under a procedure adopted by resolution of a majority of the Board of Directors that is fair, reasonable and carried out in good faith. Such a procedure shall fully comply with the Act, as amended.

**Section 5.6. Meetings of Members.** Meetings of the members may be held on the Tract or at any place inside Marion County, Indiana, which shall be designated by the Board of Directors of the Corporation, or as the By-Laws may designate.

ARTICLE VI  
TERM OF EXISTENCE ®

The period during which the Corporation shall continue as a corporation is perpetual.

CHICAGO TITLE  
ARTICLE VII  
DIRECTORS

**Section 7.1. Number of Directors.** Subject to the provisions for Initial Directors as set forth in the Declaration, the number of the Directors of this Corporation shall be not less than three (3) nor more than nine (9) as prescribed from time to time in the By-Laws of the Corporation. Whenever the By-Laws do not specify the exact number, the number of Directors shall be three (3). The qualification of Directors and the election of Directors shall be as prescribed from time to time in the By-Laws of the Corporation.

**Section 7.2. Election of Directors.** Subject to the provisions for Initial Directors as set forth in the Declaration, the Board of Directors shall be elected by ballot at the annual meeting of the Members, and each Director shall hold office for a term of two (2) years or until his successor shall have been elected and qualified.

**Section 7.3. Vacancies in the Board of Directors.** Subject to the provisions for Initial Directors as set forth in the Declaration, any vacancy occurring on the Board of Directors caused by a death, resignation or otherwise, other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining members of the Board, unless specified otherwise in the By-Laws. At the first annual meeting following any such vacancy, a Director shall be elected by the Owners to serve for the balance of the term of the Director in respect to whom there has been a vacancy.

**Section 7.4. Removal of Directors.** Subject to the provisions for Initial Directors as set forth in the Declaration, a Director or Directors, elected by the Owners or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors elected by the Owners may be removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected by the Owners at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director or Directors.

**ARTICLE VIII  
INCORPORATOR**

The name and address of the incorporator of the Corporation is as follows:

J. Lynn Boese  
c/o Fort Harrison Reuse Authority  
5830 North Post Road, Suite 100  
Indianapolis, IN 46216

**ARTICLE IX  
STATEMENT OF PROPERTY**

All assets and liabilities, real, personal, and otherwise owned by the Corporation stand for and constitute all the assets and liabilities of the Corporation.

**ARTICLE X  
PROVISIONS FOR REGULATION OF BUSINESS  
AND CONDUCT OF AFFAIRS OF THE CORPORATION**

**Section 10.1. Power Exercised by Board.** Subject to any limitations or restrictions imposed by law, by these Articles of Incorporation or by the Declaration, the Board of Directors of the Corporation is hereby authorized to exercise, in furtherance of the purposes of the Corporation, all the powers of the Corporation without prior authorization



or subsequent approval of the members of the Corporation or of any other person or entities.

**Section 10.2. Liability of Members.** Neither the individual members of the Corporation nor their individual property shall be subject to any liability for any debts of the Corporation.

**Section 10.3. Dissolution.** The Corporation may be dissolved voluntarily only with the written consent of all Owners.

**Section 10.4. Distribution of Property On the Voluntary or Involuntary Dissolution of the Corporation.** Upon the voluntary or involuntary dissolution of the Corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation by distributing and transferring same to the members of the Corporation.

**Section 10.5. Amendment of Articles of Incorporation.** Except upon dissolution, unless otherwise required by the Indiana Nonprofit Corporation Act of 1991, as amended, any amendment to the Articles of Incorporation shall require the consent of at least a Majority of the Members as defined in section 5.4 hereof.

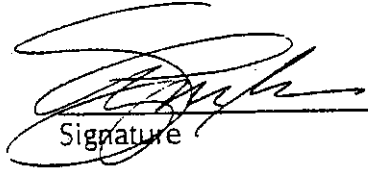
**Section 10.6. No Private Benefit.** Except upon dissolution of the Corporation, no money or property received or held by the Corporation shall ever inure, directly or indirectly, to the private benefit of any member, Director or Officer of the Corporation or to any other person whomsoever except for reasonable compensation for services actually rendered to the Corporation.

**Section 10.7. Indemnification.** The Board of Directors of this Corporation may, at its discretion, indemnify any or all directors, officers, employees, or agents or former directors, officers, employees or agents of the Corporation, as shall be prescribed from time to time in the By-Laws of the Corporation. Whenever the By-Laws of the corporation shall not specify any indemnification provisions for the benefit of such above-named persons, all such above-named persons shall have all rights of indemnification as are prescribed in the Act.

**Section 10.8. Compensation of Employees.** In order to carry out the purposes and activities of the Corporation, such individuals as are deemed necessary may be employed, and each such employee may be paid such compensation for services actually rendered in the course of such employment as may be fixed in the manner provided by the Board of Directors of the Corporation.

**Section 10.9. By-Laws.** The By-Laws of the Corporation may be amended as set forth in the By-Laws. Said By-Laws may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Corporation.

IN WITNESS WHEREOF, I, the undersigned Incorporator, do hereby execute these Articles of Incorporation and certify the truth of the facts herein stated, this 8<sup>th</sup> day of April 1999.

  
Signature

J. Lynn Boese  
Printed



This instrument prepared by J. Lynn Boese, Attorney at Law, 5830 North Post Road, Suite 100, Indianapolis, Indiana 46216

CHICAGO TITLE



MARTHA A. WOMACKS  
MARION COUNTY AUDITOR

462134 MAR 10 03

DULY ACCEPTED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER



*Handwritten initials*

FILED  
MAR 10 2003  
LAWRENCE TOWNSHIP  
ASSESSOR

**CERTIFICATE OF CORRECTION  
BENJAMIN SQUARE SECTION 1**

This instrument is filed for the purpose of correcting an erroneous width of a "DU&SE" in the plat of "BENJAMIN SQUARE SECTION 1", a subdivision in Marion County, Indiana the plat of which is recorded as instrument number 990070075 in the office of the recorder of Marion Indiana. The following easement width reduction was approved by the City of Lawrence Board of Public Works and Safety on February 27, 2003.

The 10 foot "DU&SE" as labeled along the entire North Side of Lot Number 64 in said "BENJAMIN SQUARE SECTION 1" is hereinafter labeled as a 7.50 foot "DU&SE" as the same was designed and intended to be placed on said plat.

Certified this 10th day of March, 2003.

*Edward D. Giacoletti*

Edward D. Giacoletti  
The Schneider Corporation  
Registered Land Surveyor - Indiana #S0560

State of Indiana

County of Marion

SS:

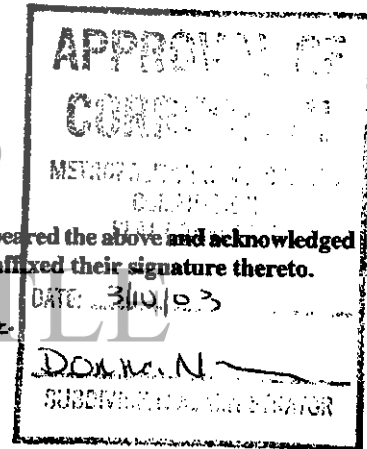
Before me, a notary public, in and for the said county and state, personally appeared the above and acknowledged the execution of the foregoing instrument as its voluntary act and deed and affixed their signature thereto.

Witness my signature and notarial seal this 7th day of March, 2003.

Notary Public Carolyn C. Thomas  
(Printed Name) - Carolyn C. Thomas

My commission expires 12-18-08

County of Marion



This instrument prepared by Edward D. Giacoletti  
Registered Land Surveyor - Indiana #S0560  
The Schneider Corporation

S:\426016\DOCS\ENGCOR1



03/10/03 01:10PM MARION COUNTY RECORDER  
Inst # 2003-0049102  
P. 10.00 PAGES: 1

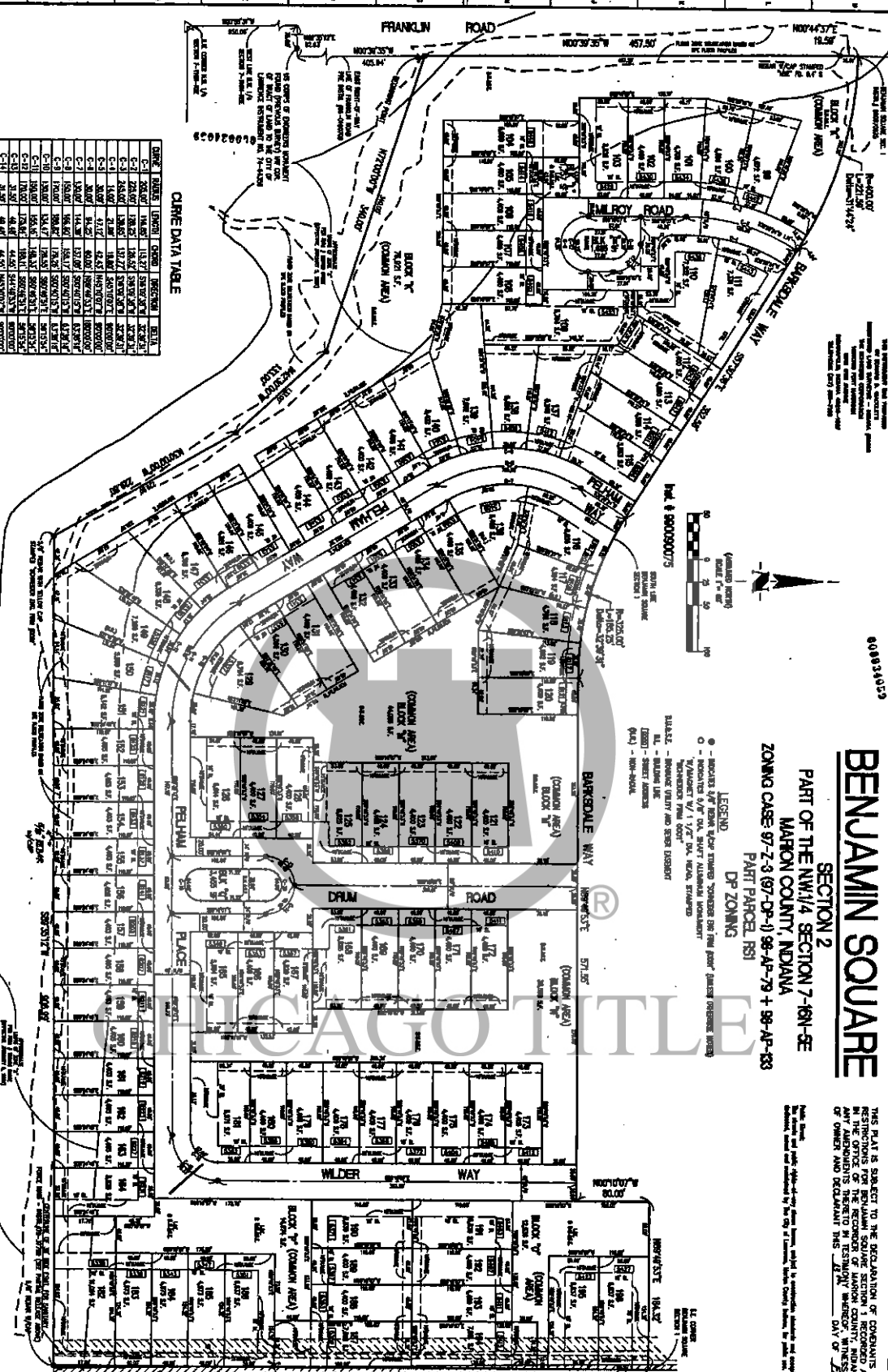
# BENJAMIN SQUARE

SECTION 2  
 PART OF THE NW 1/4 SECTION 7-16N-05E  
 MARION COUNTY, INDIANA  
 ZONING CASE: 97-Z-3 (97-DP-1) 98-AP-79 + 98-AP-83  
 PART PARCEL: R51  
 DP ZONING

**LEGEND:**  
 ○ - INDICATES AFFECTED LOT NUMBER, ZONING, AND "PLOT" (BASED ON PREVIOUS RECORDS)  
 ○ - INDICATES A "P" OR "S" SHOWN ALONG BOUNDARIES  
 W/AMOUNT W/ 1/2" OR "N/A" INDICATED  
 "CHANGING FROM 000"  
 SUBJECT - SHOWING LOT AND ZONING DESIGN  
 RL - BOUNDARY LINE  
 (L) - LOT AREA  
 (A) - AREA

**CAME DATA TABLE**

DATE	BLK	LOT	OWNER	CHG	REASON	REMARKS
1-1-80	18	1	...	...	...	...
1-1-80	18	2	...	...	...	...
1-1-80	18	3	...	...	...	...
1-1-80	18	4	...	...	...	...
1-1-80	18	5	...	...	...	...
1-1-80	18	6	...	...	...	...
1-1-80	18	7	...	...	...	...
1-1-80	18	8	...	...	...	...
1-1-80	18	9	...	...	...	...
1-1-80	18	10	...	...	...	...
1-1-80	18	11	...	...	...	...
1-1-80	18	12	...	...	...	...
1-1-80	18	13	...	...	...	...
1-1-80	18	14	...	...	...	...
1-1-80	18	15	...	...	...	...
1-1-80	18	16	...	...	...	...
1-1-80	18	17	...	...	...	...
1-1-80	18	18	...	...	...	...
1-1-80	18	19	...	...	...	...
1-1-80	18	20	...	...	...	...
1-1-80	18	21	...	...	...	...
1-1-80	18	22	...	...	...	...
1-1-80	18	23	...	...	...	...
1-1-80	18	24	...	...	...	...
1-1-80	18	25	...	...	...	...
1-1-80	18	26	...	...	...	...
1-1-80	18	27	...	...	...	...
1-1-80	18	28	...	...	...	...
1-1-80	18	29	...	...	...	...
1-1-80	18	30	...	...	...	...
1-1-80	18	31	...	...	...	...
1-1-80	18	32	...	...	...	...
1-1-80	18	33	...	...	...	...
1-1-80	18	34	...	...	...	...
1-1-80	18	35	...	...	...	...
1-1-80	18	36	...	...	...	...
1-1-80	18	37	...	...	...	...
1-1-80	18	38	...	...	...	...
1-1-80	18	39	...	...	...	...
1-1-80	18	40	...	...	...	...
1-1-80	18	41	...	...	...	...
1-1-80	18	42	...	...	...	...
1-1-80	18	43	...	...	...	...
1-1-80	18	44	...	...	...	...
1-1-80	18	45	...	...	...	...
1-1-80	18	46	...	...	...	...
1-1-80	18	47	...	...	...	...
1-1-80	18	48	...	...	...	...
1-1-80	18	49	...	...	...	...
1-1-80	18	50	...	...	...	...
1-1-80	18	51	...	...	...	...
1-1-80	18	52	...	...	...	...
1-1-80	18	53	...	...	...	...
1-1-80	18	54	...	...	...	...
1-1-80	18	55	...	...	...	...
1-1-80	18	56	...	...	...	...
1-1-80	18	57	...	...	...	...
1-1-80	18	58	...	...	...	...
1-1-80	18	59	...	...	...	...
1-1-80	18	60	...	...	...	...
1-1-80	18	61	...	...	...	...
1-1-80	18	62	...	...	...	...
1-1-80	18	63	...	...	...	...
1-1-80	18	64	...	...	...	...
1-1-80	18	65	...	...	...	...
1-1-80	18	66	...	...	...	...
1-1-80	18	67	...	...	...	...
1-1-80	18	68	...	...	...	...
1-1-80	18	69	...	...	...	...
1-1-80	18	70	...	...	...	...
1-1-80	18	71	...	...	...	...
1-1-80	18	72	...	...	...	...
1-1-80	18	73	...	...	...	...
1-1-80	18	74	...	...	...	...
1-1-80	18	75	...	...	...	...
1-1-80	18	76	...	...	...	...
1-1-80	18	77	...	...	...	...
1-1-80	18	78	...	...	...	...
1-1-80	18	79	...	...	...	...
1-1-80	18	80	...	...	...	...
1-1-80	18	81	...	...	...	...
1-1-80	18	82	...	...	...	...
1-1-80	18	83	...	...	...	...
1-1-80	18	84	...	...	...	...
1-1-80	18	85	...	...	...	...
1-1-80	18	86	...	...	...	...
1-1-80	18	87	...	...	...	...
1-1-80	18	88	...	...	...	...
1-1-80	18	89	...	...	...	...
1-1-80	18	90	...	...	...	...
1-1-80	18	91	...	...	...	...
1-1-80	18	92	...	...	...	...
1-1-80	18	93	...	...	...	...
1-1-80	18	94	...	...	...	...
1-1-80	18	95	...	...	...	...
1-1-80	18	96	...	...	...	...
1-1-80	18	97	...	...	...	...
1-1-80	18	98	...	...	...	...
1-1-80	18	99	...	...	...	...
1-1-80	18	100	...	...	...	...



**FILED**  
 MAR 18 2001  
 Recorder's Office  
 Marion County, Indiana

4-12-2002  
 [Signature]  
 [Signature]  
 [Signature]



**The Schneider Corporation**  
 10000 N. Meridian St., Suite 100  
 Indianapolis, IN 46228  
 Phone: 317-251-7000  
 Fax: 317-251-7001  
 Website: www.schneidercorp.com

**FINAL PLAT**  
 PLAT NO. 2000-217-430

Prepared By	12/1/2000	12/1/2000	12/1/2000
Checked By	12/1/2000	12/1/2000	12/1/2000
Approved By	12/1/2000	12/1/2000	12/1/2000
Recorded By	12/1/2000	12/1/2000	12/1/2000

THIS INSTRUMENT WAS PREPARED BY EDWARD D. GAGOLETTI REGISTERED LAND SURVEYOR - INDIANA LICENSE NO. 50560 THE SCHNEIDER CORPORATION HISTORIC FORT HARRISON 8001 OTIS AVENUE INDIANAPOLIS, INDIANA 46216-1087 TELEPHONE (317) 888-7100

# BENJAMIN SQUARE

000034059

FILED

MAR 06 2001

MAR 06 2001

*Martha R. Lomas*

## SECTION 2 PART OF THE N.W.1/4 SECTION 7-16N-5E MARION COUNTY, INDIANA

### LAND DESCRIPTION

Part of the Northwest Quarter of Section 7, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southwest corner of the said Northwest Quarter Section; thence North 00 degrees 35 minutes 31 seconds West (bearing per Indiana State Plane Coordinate System - East Zone NAD27) along the West line of said Section 7 a distance of 950.00 feet; thence North 80 degrees 35 minutes 12 seconds East (passing through a Curve of Engineers Invention at 75.00 feet, being on the east right-of-way line of Franklin Road as described in Instrument No. 74-77493, and also being the Northwest corner of lands conveyed to the City of Lawrence by the United States as described in Instrument No. 74-64356, both recorded in the Office of the Recorder for Marion County) a distance of 82.83 feet to the new East Right-of-Way Line for Franklin Road per Instrument No. 96-0180708 as recorded in the office of the recorder of Marion County, Indiana (the next three (3) described courses being along the new East right-of-way line of Franklin Road); thence North 00 degrees 38 minutes 35 seconds West a distance of 405.94 feet to the Point of Beginning; thence continuing North 00 degrees 39 minutes 35 seconds West a distance of 457.50 feet; thence North 00 degrees 29 minutes 24 seconds East a distance of 19.58 feet to the Southwest corner of Benjamin Square Section 1, a subdivision in Marion County, Indiana, the plot of which is recorded on Instrument Number 990000075 in the Office of the Recorder of said Marion County, Indiana (the next six described courses being along the south line of said Benjamin Square Section 1) said point also being on a curve having a radius of 400.00 feet, the radius point of which bears South 00 degrees 45 minutes 00 seconds West; thence southeasterly along said curve an arc distance of 221.58 feet to a point which bears North 32 degrees 29 minutes 24 seconds East from said radius point; thence South 57 degrees 30 minutes 38 seconds East a distance of 352.58 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 52 degrees 29 minutes 24 seconds East; thence southeasterly along said curve an arc distance of 185.25 feet to a point which bears South 00 degrees 10 minutes 07 seconds East from said radius point; thence North 88 degrees 49 minutes 53 seconds East a distance of 371.55 feet; thence North 00 degrees 10 minutes 07 seconds West a distance of 80.00 feet; thence North 80 degrees 48 minutes 53 seconds East a distance of 184.32 feet to the Southwest Corner of said Benjamin Square Section 1; thence South 00 degrees 10 minutes 07 seconds East a distance of 652.04 feet to a capped roller on the north line of said land described in Instrument No. 74-64356; thence South 80 degrees 35 minutes 12 seconds West along said north line a distance of 306.99 feet; thence North 30 degrees 00 minutes 00 seconds West a distance of 226.80 feet; thence North 42 degrees 30 minutes 00 seconds West a distance of 133.00 feet; thence North 72 degrees 00 minutes 00 seconds West a distance of 340.00 feet to the Point of Beginning, containing 18.308 acres, more or less.

THE UNDERSIGNED, LAWRENCE/PT. HARRISON REY. CORP., OWNER OF THE WITHIN DESCRIBED REAL ESTATE SHOWN AND DESCRIBED ON THE PLAT, HEREBY LAYS OFF, PLATS AND SUBDIVIDES THE SAME INTO LOTS, BLOCKS (COMMON AREAS) AND STREETS IN ACCORDANCE WITH THE WITHIN PLAT. THE WITHIN PLAT SHALL BE KNOWN AND DESIGNATED AS BENJAMIN SQUARE SECTION 2, A SUBDIVISION IN MARION COUNTY, LAWRENCE TOWNSHIP, INDIANA.

IN WITNESS WHEREOF, J. Lynn Boese HAS HERETO CAUSED HIS NAME TO BE SUBSCRIBED THIS 12th DAY OF February, 2001

LAWRENCE/PT. HARRISON REY. CORP.

BY J. Lynn Boese  
J. LYNN BOESE, PRESIDENT

STATE OF INDIANA

COUNTY OF Marion } SS

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, IN AND FOR THE COUNTY AND STATE, PERSONALLY APPEARED J. Lynn Boese AND ACKNOWLEDGED THE EXECUTION OF THE ABOVE AND FOREGOING AS HIS VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN EXPRESSED.

NOTARY PUBLIC, Kristina J. Stuckey  
(PRINTED NAME) Kristina J. Stuckey



MY COMMISSION EXPIRES 2/26/09

COUNTY OF RESIDENCE Lancaster

THIS SUBDIVISION CONSISTS OF 96 LOTS, NUMBERED 99 THROUGH 196 TOGETHER WITH BLOCKS A, K THROUGH L, STREETS AND EASEMENTS AS SHOWN HEREON.

THE SIZE OF LOTS AND BLOCKS AND WIDTHS OF STREETS AND EASEMENTS ARE SHOWN IN FIGURES DENOTING FEET AND DECIMAL PARTS THEREOF.

CROSS-REFERENCE IS HEREBY MADE TO SURVEY PLAT RECORDED AS INSTRUMENT NUMBER 990004510 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA.

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA AND THAT THE WITHIN PLAT REPRESENTS A SUBDIVISION OF THE LANDS SURVEYED. WITHIN THE CROSS REFERENCED SURVEY PLAT, AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THERE HAS BEEN NO CHANGE FROM THE MATTERS OF SURVEY REVEALED BY THE CROSS-REFERENCE SURVEY ON ANY LINES THAT ARE COMMON WITH THE NEW SUBDIVISION. I FURTHER CERTIFY THAT THE SAID SUBDIVISION WAS PLATTED UNDER MY DIRECT SUPERVISION AND CONTROL AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

WITNESS MY SIGNATURE THIS 12th DAY OF FEBRUARY, 2001

Edward D. Gagoletti  
EDWARD D. GAGOLETTI  
REGISTERED LAND SURVEYOR  
INDIANA #50560



APPROVED THIS 15th DAY OF February 2001  
LAWRENCE TOWNSHIP ASSESSOR  
Chantelle J. ... DRAFTSMAN



APPROVED THIS 16th DAY OF March 2001  
LAWRENCE TOWNSHIP ASSESSOR  
Chantelle J. ... DRAFTSMAN



IT SHALL BE THE RESPONSIBILITY OF THE OWNER OF ANY LOT OR PARCEL OF LAND WITHIN THE AREA OF THIS PLAT TO COMPLY AT ALL TIMES WITH THE PROVISIONS OF THE SANITARY SEWER CONSTRUCTION APPROVED BY THE CITY OF LAWRENCE DEPARTMENT OF PUBLIC WORKS AND THE REQUIREMENTS OF ALL SANITARY SEWER CONSTRUCTION PERMITS FOR THIS PLAN ISSUED BY SAID DEPARTMENT. OWNER FURTHER AGREES THAT NO BUILDING, STRUCTURE, TREE OR OTHER OBSTRUCTION SHALL BE (ERECTED, MAINTAINED, OR ALLOWED TO CONTINUE ON THE PORTION OF THE OWNERS REAL ESTATE IN WHICH THE EASEMENT AND RIGHT-OF-WAY IS GRANTED WITHOUT EXPRESS WRITTEN PERMISSION FROM THE DEPARTMENT. SUCH PERMISSION, WHEN DULY RECORDED, SHALL RUN WITH THE REAL ESTATE. THE DEPARTMENT, AND ITS AGENTS, SHALL HAVE THE RIGHT TO ACCESS AND EGRESS, FOR TEMPORARY PERIODS ONLY, OVER THE OWNERS REAL ESTATE ADJOINING SAID EASEMENT AND RIGHT-OF-WAY, WHEN NECESSARY TO CONSTRUCT, REPAIR OR MAINTAIN SANITARY SEWER FACILITIES."

IT SHALL BE THE RESPONSIBILITY OF THE OWNER OF ANY LOT OR PARCEL OF LAND WITHIN THE AREA OF THIS PLAT TO COMPLY AT ALL TIMES WITH THE PROVISIONS OF THE DRAINAGE PLAN AS APPROVED FOR THIS PLAT BY THE DEPT. OF PUBLIC WORKS CITY OF LAWRENCE AND THE REQUIREMENTS OF ALL DRAINAGE PERMITS FOR THIS PLAT BY SAID DEPARTMENT.

SITE OBSTRUCTION: NO FENCE, WALL, HEDGE OR SHRUB PLANTING WHICH OBSTRUCTS SIGHT LINES AT ELEVATIONS BETWEEN TWO (2) AND NINE (9) FEET ABOVE THE STREET SHALL BE PLACED OR PERMITTED TO REMAIN ON ANY CORNER LOT 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, OR IN THE CASE OF A ROUNDED PROPERTY CORNER, FROM THE INTERSECTION OF THE STREET LINES EXTENDED. THE SAME SIGHT LINE LIMITATIONS SHALL APPLY TO ANY LOT WITHIN TEN (10) FEET FROM THE INTERSECTION OF A STREET LINE WITH THE EDGE OF A DRIVEWAY PAVEMENT OR ALLEY LINE. NO TREE SHALL BE PERMITTED TO REMAIN WITHIN SUCH DISTANCES OF SUCH INTERSECTIONS UNLESS THE FOLIAGE IS MAINTAINED AT A SUFFICIENT HEIGHT TO PREVENT OBSTRUCTION OF SUCH SIGHT LINES.

METROPOLITAN DEVELOPMENT COMMISSION: THE METROPOLITAN DEVELOPMENT COMMISSION, ITS SUCCESSORS AND ASSIGNS SHALL HAVE NO RIGHT, POWER OR AUTHORITY TO ENFORCE ANY COVENANTS, RESTRICTIONS OR OTHER LIMITATIONS CONTAINED HEREIN OTHER THAN THOSE COVENANTS, RESTRICTIONS OR LIMITATIONS THAT EXPRESSLY RUN IN FAVOR OF THE METROPOLITAN DEVELOPMENT COMMISSION; PROVIDED THAT NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT THE METROPOLITAN DEVELOPMENT COMMISSION FROM ENFORCING ANY PROVISION OF THE SUBDIVISION CONTROL ORDINANCE, 58-40-13, AS AMENDED, OR ANY CONDITIONS ATTACHED TO APPROVAL OF THIS PLAT BY THE PLAT COMMITTEE.

**The Schneider Corporation**

Historic Fort Harrison  
8001 Otis Avenue  
Indianapolis, Indiana  
46216-1087  
317-888-7100 Fax  
317-888-7200 Fax

Engineering  
Surveying  
Landscape Architecture  
GIS + LRS  
Consulting

Formerly Schneider Engineering Corp. / Indiana, Super, Wilson & Co.

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**BENJAMIN SQUARE SECTION 2**  
INDIANAPOLIS, INDIANA

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**FINAL PLAT**  
DOCKET NO. 2000-PLT-030

Date 12/11/2000	Project No. 426.016	Drawn EDG	Approved
Computer File s:\city\projects		Sheet No. <b>IPL-2</b>	

000034059

RECEIVED FOR RECORD  
MAR 06 2001  
MARION COUNTY RECORDS

000034059

650820000