

**CANARY CREEK ESTATES  
RESTRICTIVE COVENANTS**

We, the undersigned Dura Development Corporation, (hereinafter referred to as "Declarant"), owner of the real estate described on Exhibit "A" attached (the "Real Estate"), do hereby declare that all of the Lots and lands in Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following terms, covenants, conditions and restrictions. All of the terms, covenants, conditions and restrictions shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

The subdivision on the Real Estate shall be known and designated as "Canary Creek Estates" Subdivision, an addition to the City of Franklin, Johnson County, State of Indiana.

1. No residential structures shall be less than 1000 square feet of living space. No residential structure shall be constructed closer than six feet to any side lot line, and have an aggregate side setback of 14 feet. No residential structure shall be constructed closer than 25 feet from any street right-of-way, and no residential structure shall be constructed closer than 15 feet to any rear property line.
2. Lots designated in this plat are hereby reserved for single-family residential use and may be single or two story structures; provided, however, that no two story structure shall be less than 1300 square feet of living space.
3. No plot plan shall be approved by the architectural control committee for Canary Creek Estates (hereinafter referred to as "the Committee") nor any building permit issued without the inclusion of the planting of two trees (2 inch diameter minimum and must be from the approved tree list of the Franklin Tree Board) in the front yard of each lot, the construction of a four foot wide four inch thick sidewalk in the right-of-way one foot from the right-of-way line along all street fronts, and the payment of all applicable sewer tap on fees and building permit fees.
4. In the event of a dispute or controversy as to any matter within or arising out of these covenants, such dispute or controversy shall be submitted to the arbitration of the Committee, and the arbitration of such matters shall be an express condition precedent to any legal or equitable action or proceeding of any nature whatsoever.
- 4A. All residential structures shall have an enclosed attached garage sufficient to house one full sized American made car.
5. Lots are subject to drainage easements, sewer easements and utility easements, either separately or in any combination of the three, as shown on the plat, which are reserved for the use of lot owners, public utility companies and governmental agencies as follows:

(A) Drainage Easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage system; and it shall be the individual responsibility of each land owner to maintain the drainage across his or her lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvements; nor, shall any lot grading restrict, in any manner, the designed waterflow. Said areas are subject to construction or reconstruction to any extent, necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the developer of the subdivision. Said easements are for the mutual use and benefits of the owners of all lots in the subdivision and are a servitude upon such land for the benefit of the owners of other land included within upstream or downstream, affected by such use. (B) Sewer Easements (S.E.) are created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system designated to serve the addition for the purpose of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect his or her improvement with any public sanitary sewer available. (C) Utility Easements (U.E.) are created for the use of public utility companies, not including transportation companies, for the use of installation, maintenance, repair and replacement of mains, ducts, poles, lines and wires, meters, and meter boxes. All such easements include the right of reasonable ingress and egress for the exercise of the rights, including reading of the meters. No structure, including fences, shall be built on any drainage, sewer or utility easement. (D) Landscape Easements (L.E.) are created to maintain landscaping.

6. No building or other structure shall be erected, placed upon, altered or repainted on any lot in the subdivision until building plans, specifications, plot plans, and color schemes are approved as to the conformity and harmony of external design and color schemes with existing structures within the subdivision, and as to the building with respect to topography and finished ground elevation, by the Architectural Control Committee for Canary Creek states ("the Committee") composed of three members appointed by Dura Development Corporation, their designees, or by their successors. In the event of the death, disability or resignation of any member of said committee, Dura Development Corporation shall have the right to appoint a successor member, and until such appointment any remaining member or members shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority. If the committee fails to act upon any plan submitted to it for its approval within a period of thirty (30) days from the submission date of the same, the lot owner may proceed then with the building according to the plans submitted, without approval. Neither the Committee members nor the designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. Upon the sale of all platted lots in the subdivision, all rights and powers of the Committee shall be transferred to, and vested in, the Association (as hereinafter defined).

7. No outside storage barns or sheds will be allowed on any lot until at least 90% of the lots in the subdivision section have been built upon. In any case, storage barns or sheds shall not exceed 150 square feet in floor area and the siding and roofing shingles shall match the house on that lot.
8. Front building lines (B.L.) are hereby established, between which lines and the front property lines, no permanent or other structure, other than drives and sidewalks, shall be erected and maintained. Side and rear building lines are established in accordance with the zoning ordinances applicable to the subdivision and variances therefrom as may have been granted by the Franklin Plan Commission or Franklin Board of Zoning Appeals.
9. If the parties hereto, or any of them, or their heirs or assigns shall violate or attempt to violate any of these covenants, restrictions, provisions or conditions herein, it shall be lawful for any other person owning any real property situated in the subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate such covenant, and either to prevent him or them from doing so, or to recover damage or other dues for such violation.
10. No fence shall be allowed except in the rear yard of the lot. Only fences of wood or black vinyl covered chain link shall be allowed, with any such fences also meeting all of the regulations for fences as established in the City's zoning ordinance.
11. No rear yard basketball goals or basketball courts shall be allowed. Basketball goals may be free standing, next to the driveway in front of the house with a clear acrylic backboard only. Goals may not be attached to the house or garage.
12. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and twelve (12) feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way 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 sightline 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 line is maintained at sufficient height to prevent obstruction of such sight lines. No fence shall be erected on or along any lot line, nor on any lot, the purpose or result of which will be to obstruct reasonable vision, light or air, and all fences shall be kept in good repair and reasonably erected so as to enclose the property and decorate the same without hindrance or obstruction to any other property.
13. All driveways shall be hard surfaced with either concrete or asphalt. Any changes and alterations of structures or driveways are subject to Committee's approval.
14. No hotel building, boarding house, mercantile or factory building or buildings of any kind for commercial use shall be erected or maintained on any lot in the subdivision.

15. No trailers, shacks or outhouses of any kind shall be erected or situated on any lot herein, except that for use by the builder during the construction of a proper structure.
16. No farm animals, fowls, or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in the subdivision.
17. No noxious, unlawful, or otherwise offensive activity shall be carried out on any lot in the subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
18. No private, or semi-private water supply or sewage disposal system, may be located upon any lot in the subdivision.
19. The repair or storage of inoperative motor vehicles, or material alteration of motor vehicles shall not be permitted on any lot, unless the activity is entirely within a garage permitted by these covenants.
20. No school, preschool, day-care facility, church or similar institution of any kind shall be maintained, conducted or operated upon any lot.
21. No exterior lighting shall be directed outside the boundaries of any lot, nor shall any lighting be used which constitutes more than normal convenience lighting, unless the same is approved by the Committee.
22. No signs of any nature, including for sale or for rent signs (unless such signs are 2' x 2', or less), or other advertisement, shall be displayed on any lot, right-of-way or any part of the subdivision, except as approved by the Committee, or as used by the undersigned, and its agents in the development of the properties and the maintenance thereof during such development.
23. All television or other antennas shall be affixed to improvements located on the respective lot involved. No freestanding antennas for any purpose shall be permitted unless approved by the Committee. No outside television antennas will be permitted if a master antenna is available for a lot. All radio and television antennas, including satellite television antennas, shall also comply with all of the radio and television antenna regulations of the city's zoning ordinance of the City of Franklin. No satellite dishes either free standing or attached shall be allowed.
24. Owners shall not dump any trash, waste, refuse or other objectionable matter upon any lot, easement or common area within the subdivision. All trash, garbage and refuse stored on any lot shall be stored in covered receptacles. Owners must provide approved receptacles for garbage and trash. There shall be no burning of trash and no open fires, except fires in an approved grill or fire ring. All open fires are prohibited unless written approval is obtained from the affected fire department.

25. It shall be the responsibility of the owner of any lot or parcel of land within the subdivision to comply at all times with the provisions of the drainage plan as approved for this plat by the Plan Commission of the City of Franklin and the Johnson County Drainage Board and the requirements of all drainage permits for the plat issued those agencies. Failure to so comply, including failure to comply with the approved grading plan and Federal Housing Administration lot grading regulations and recommendations, or construction of any building shall be subject to action by appropriate authority.
26. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the Franklin Board of Public Works and Safety. Property owners must maintain these swales as sodded grassways, or as other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways must be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Franklin Board of Public Works and Safety.
27. Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, the Franklin Board of Public Works and Safety will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for immediate payment. Failure to pay will result in a lien against the property.
28. Unless a delay is caused by strikes, war, court injunction or acts of God, the exterior of any dwelling or structure built upon any lot shall be completed within one (1) year after the date of commencement of the building process, after which time, the Committee may without notice re-enter, take possession of said lot, sell the lot together with improvements; and after payment of liens and expenses, pay the balance of the sale proceeds to the owner of said lot at the time of sale.
29. No campers, motor homes, truck (other than pick-up trucks), trailers or boats may be stored on any lot in open public view.
30. Lot owners shall not permit the growth of weeds and involuntary trees and bushes, and shall keep their lot reasonably clear from unsightly growth at all times. Failure to comply shall warrant the Committee to cut weeds and clear the lot of such growth at the expense of the lot owner, and the Committee shall have a lien against said real estate for the expense thereof.
31. Any gas or oil storage tanks used in connection with a lot shall be either buried, or located in a garage or house, in such a manner that the tanks are completely concealed from public view.

32. Walk easements (W.E.) may hereby be established as set forth on the recorded plat for the purposes of construction and maintenance of sidewalks to allow public passage therein.

33. It is expressly understood that the Committee may make assessments to cover any costs incurred in enforcing these covenants, and in undertaking any maintenance or other activity which is a responsibility of a lot owner, but which such lot owner has not undertaken as required hereunder, and in undertaking the maintenance of common areas in the subdivision. Any such assessment to cover costs incurred in enforcing these covenants, or undertaking any maintenance or other activity which is the responsibility of a lot owner shall be assessed only against those lot owners whose failure to comply with the requirements of these covenants has necessitated the action to enforce these covenants or the undertaking of the maintenance or other activity.

34. Each owner of a lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay assessments as the same become due in a matter herein provided. All such assessments, together with the interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made until paid in full. Such assessments shall also be the personal obligation of the owner of the lot at the time which the assessment became due and payable. Any assessment not paid within thirty (30) days after the date the same became due and payable shall bear interest from the due date at a percentage rate not greater than twelve percent (12%) per annum. The Committee, or any member thereof, shall be entitled to institute in any court of competent jurisdiction such procedures, at law or in equity, by foreclosure or otherwise, to collect the delinquent assessment, plus any expenses or costs, including attorney fees, incurred by the Committee, or such member, in collection the same. If the Committee has provided for collection of any assessment in installments, upon default in the payment of anyone or more installments, the Committee may accelerate payment and declare the entire balance of said assessment due and payable in full. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his lot or otherwise. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage covering such lot and to any valid tax or special assessment lien on such lot in favor of any governmental taxing or assessing authority. Sale or transfer of any lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. The Committee shall, upon demand, at any time, furnish a certificate in writing, signed by a member of the Committee, that the assessments on a lot have been paid, or that certain assessments remain unpaid, as the case may be. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid. Any easement granted herein or any property shown on the within easement granted herein or any property shown on the within plat as dedicated and intended for

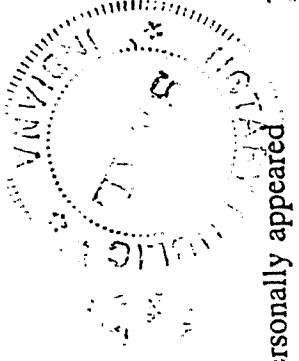
acceptance by the local public authority and devoted for public use shall be exempt from the assessments, charge and lien created herein. All rights of the Committee set forth in this paragraph 34 shall be transferred to and vested in the Association, upon the formation thereof.

35. Upon the transfer of ownership of all platted lots in the subdivision, Declarant or their assigns will cause, to be incorporated under the laws of the State of Indiana, a not-for-profit corporation under the name "Canary Creek Estates, Inc.", or a similar name ("the Association"), as such agency for the purpose of ownership and maintenance of all common areas as designated on the recorded plat, to assume the rights and duties of the Committee as specified in the recorded covenants, and administer and enforce said covenants, to disburse the assessments and charges imposed and created hereby and hereunder or by and under any other agreement to which the property may at any time be subject, and to promote the health, safety and welfare of the owners of the property, and all parts thereof. Declarant, at its option, may cause the sooner formation of the Association. The Association shall have the power to establish bylaws, duly recorded in the Office of the Recorder, Johnson County, Indiana, establishing procedures and rules for the efficient execution of these recorded covenants. All lot owners in the subdivision shall be members in the Association when formed.
36. Lot owners are prohibited from remonstrating against commercial or business development of property retained by Declarant, within the City of Franklin.
37. The right of enforcement of each of the foregoing restrictions by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is reserved to the Committee, and the owners of the lots in the subdivision, their heirs and personal representatives, their successors or assigns, who are entitled to such relief without being required to show any damage of any kind to the Committee, or to any other owner or owners.
38. The foregoing restrictions may be amended at any time by the owners of at least two-thirds of the lots subject to such restrictions. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph, and recorded in the Office of the Recorder of Johnson County. The foregoing covenants, as the same may be amended from time to time, will be in full force and effect until October 1, 2020, at which time they will be automatically extended for successive periods of ten (10) years, unless by a vote of the majority of the then owners it is agreed that these covenants shall terminate in whole or in part.
39. Invalidation of any of these covenants and restrictions or any part thereof by judgment or court order shall not affect or render the remainder of said covenants and restrictions invalid or inoperative.

WITNESS OUR HANDS AND SEALS THIS 24 DAY OF Feb  
1995.

Dura Development Corporation, an Indiana  
Corporation


By:   
Paul Shoopman, President



STATE OF INDIANA )  
                          ) SS:  
COUNTY OF JOHNSON )

Before me, the undersigned Notary Public, in and for the County and State, personally appeared Paul Shoopman, known to me to be the President of Dura Development Corporation, and acknowledged the execution of the foregoing instrument for and on behalf of said corporation.

WITNESS MY HAND AND NOTARIAL SEAL THIS 24 DAY OF Feb  
1995.

  
Notary

Robin R. Hornickel  
Typed or written

Residing in Johnson County

My commission expires: 5-23-97

This document prepared by:  
Franklin Engineering Company  
151 W. Jefferson Street  
Franklin, Indiana 46131



LEGAL DESCRIPTION

A part of the Northeast Quarter of Section 15, Township 12 North, Range 4 East of the Second Principal Meridian, City of Franklin, Johnson County, Indiana, described as follows:

Commencing at the Southwest corner of the Northeast Quarter of the said Section 15; thence North 88 degrees 14 minutes 15 seconds East along the South line thereof 613.80 feet to the Point of Beginning of this described tract; thence North 02 degrees 39 minutes 00 seconds West a distance of 325.04 feet; thence North 88 degrees 14 minutes 15 seconds East a distance of 342.86 feet; thence North 01 degree 45 minutes 45 seconds West a distance of 70.00 feet; thence North 88 degrees 14 minutes 15 seconds East a distance of 125.00 feet; thence North 36 degrees 40 minutes 35 seconds East a distance of 67.34 feet; thence North 70 degrees 41 minutes 16 seconds East a distance of 123.90 feet; thence South 89 degrees 42 minutes 22 seconds East a distance of 162.93 feet; thence North 00 degrees 17 minutes 38 seconds East a distance of 110.00 feet; thence North 06 degrees 05 seconds East a distance of 50.25 feet; thence North 00 degrees 17 minutes 38 seconds East a distance of 110.00 feet; thence South 89 degrees 12 minutes 22 seconds East a distance of 329.86 feet to a point on a non-tangent curve to the right, having a radius of 175.00 feet and an arc subtended by a chord bearing North 74 degrees 47 minutes 33 seconds East a distance of 93.54 feet; thence Northeasterly along said curve a distance of 94.69 feet to the end of said curve; thence South 89 degrees 42 minutes 22 seconds East a distance of 10.00 feet; thence South 00 degrees 17 minutes 38 seconds West a distance of 758.95 feet; thence South 88 degrees 14 minutes 15 seconds West a distance of 1203.67 feet to the Point of Beginning, containing 14.483 acres, more or less, subject to all legal rights-of-way and easements of record.

MAR 2 4 00 PM '95

RECEIVED FOR RECORD  
BOOK 68 PAGE 279  
JEAN HARMON  
JOHNSON COUNTY RECORDER

95007309

Cross Reference Book No. 68, Page 279, Inst. No. 95003123

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANARY CREEK ESTATES

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANARY CREEK ESTATES (the "Supplemental Declaration"), is made as of the 8 day of May, 1995, by DURA DEVELOPMENT CORPORATION, an Indiana corporation (hereinafter referred to as "Declarant").

RECITALS

- A. Declarant is the owner of the real estate described on Exhibit A attached hereto.
- B. Declarant subjected such real estate to that certain Canary Creek Estates Restrictive Covenants, dated February 24, 1995, and recorded March 24, 1995, in the Office of the Recorder of Johnson County, Indiana in Book No. 68, Page 279 (the "Original Declaration") (the Original Declaration, as supplemented by this Supplemental Declaration, as the same may be amended from time to time, being hereinafter collectively referred to as the "Declaration").
- C. Declarant desires to supplement the Canary Creek Estates Restrictive Covenants pursuant to this Supplemental Declaration

DECLARATION

NOW, THEREFORE, Declarant, as the owner of the real estate described on Exhibit A attached hereto, hereby declares that all of the Real Estate (as hereinafter defined), and such additional real estate that is hereinafter made subject to this Supplemental Declaration pursuant to Article X hereof, shall be held, occupied, sold, conveyed, hypothecated or encumbered, leased, rented, used, and improved subject to the following easements, restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions"), all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land 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 Estate or any part or parts thereof subject to this Supplemental Declaration, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate.

ARTICLE I

DEFINITIONS AND APPROVALS

Section 1.1 Definitions. The following are the definitions of the terms as they are used in this Supplemental Declaration:

- a. "Association" shall mean "Canary Creek Estates Homeowner's Association, Inc.", its successors and assigns, which has been or will be created as an Indiana not-for-profit corporation. Its membership shall consist of Owners who pay mandatory assessments for insurance and taxes, landscape maintenance, fertilizing and weed control of the Common Area.
- b. "Board of Directors" shall mean the Board of Directors of Canary Creek Estates Homeowner's Association, Inc.

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c. "Common Area" shall mean those areas designated as common area on a Plat and set aside for conveyance to the Association.

d. "Development" shall mean the Real Estate.

e. "Development Date" shall mean the date upon which dwellings have been substantially completed on all Lots in the Development.

f. "Expansion Real Estate" shall mean the real estate described on Exhibit B attached hereto.

g. "Lot" shall mean any parcel of the Real Estate described as such and numbered upon a Plat.

h. "Mortgagee" shall mean any institutional holder, insurer or guarantor of any first mortgage on any Lot.

i. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to a Lot, including contract sellers, but excluding those persons having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Declarant as the record owner of a Lot.

j. "Plat" shall mean a subdivision plat of the Development or a part thereof which is recorded in the Office of the Recorder of Johnson County, Indiana, as the same may be hereafter supplemented by law or pursuant to this Supplemental Declaration.

k. "Real Estate" shall mean the real estate described in Exhibit A attached hereto, together with such additional real estate as may from time to time be made subject to the Declaration pursuant to Article X hereof.

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

Every numbered Lot in the Development, unless it is otherwise designated by Declarant, is a residential lot and shall be used exclusively for single family residential purposes. All tracts of land designated on a Plat as Common Area shall be used in a manner consistent with applicable zoning and the use designated by such Plat.

## ARTICLE III

### RESTRICTIONS CONCERNING SIZE, SETBACK PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES

Section 3.1 Diligence in Construction. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. Every building whose construction or placement on any Lot is begun shall be completed within nine (9) months after the beginning of such construction or placement.

Section 3.2 Maintenance of Lots and Improvements. The Owner of a Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:

- a. Mow the Lot and remove weeds and underbrush at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and noxious weeds.
- b. Remove all debris and rubbish.
- c. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- d. Cut down and remove dead trees.
- e. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- f. Within sixty (60) days following completion of a house on a Lot, landscape the Lot, weather permitting, in accordance with the Restrictions.

An Owner's obligations hereunder shall not be relieved by the failure of the Association to provide any of such services for the Common Area, as provided for hereunder.

**Section 3.3 Declarant's Right to Perform Certain Maintenance.** In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Declarant shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Restrictions. The cost therefor to Declarant shall be collected in any reasonable manner from Owner. Neither Declarant nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Upon and after the Development Date, the Association shall succeed to the rights of the Declarant hereunder.

#### **ARTICLE IV**

##### **COMMON AREA**

#### **Section 4.1 Certain Obligations and Access Rights to the Common Area.**

- a. Except as otherwise set forth in this Supplemental Declaration, the Association, subject to the rights of the Owners as set forth in this Supplemental Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of all of the Common Area and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.
- b. The Association shall have and is hereby granted a general right of access and easement to all of the Common Area and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Supplemental Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Real Estate. This blanket easement may only be used where any defined ingress and egress easement to the Common Area is inadequate for the performance

of the obligations and duties set forth in this Supplemental Declaration.

Section 4.2 Easements Across the Common Area. The Association shall have the right to grant further reasonable utility easements across and through the Common Area for the benefit of its members.

Section 4.3 Dedication of Common Area. The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members (as hereinafter defined) or otherwise allowed pursuant to this Supplemental Declaration, as amended, provided that no such dedication or transfer, except as allowed pursuant to this Supplemental Declaration, shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded.

#### ARTICLE V

#### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Membership. Every Owner shall be a member of the Association (the "Members"). Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 5.2 Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no such event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease on the happening of either of the following events, whichever occurs earlier:

a. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

b. on December 31, 2000.

Section 5.3 Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be Members of the Association.

Section 5.4 Professional Management. No contract or agreement for professional management of the Association nor any other contract between Declarant and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without the payment of any termination fee by written notice of ninety (90) days or less.

Section 5.5 Responsibilities of the Association.

- a. The Association shall maintain and repair the Common Areas, including improvements thereon.
- b. The Association shall provide for the mowing of the Common Area's grass.
- c. The Association shall provide for the operation of any facilities located or to be located within the Common Area.
- d. The Association shall maintain all landscaping within the Common Area.
- f. The Association may contract for management of the Common Area.

Section 5.6 Association Maintenance. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area as it deems necessary. If, due to the willful, intentional or negligent acts or omissions of an Owner or a Member of his or her family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the expense of the Association, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, 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.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Development, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. regular annual assessments or charges (for maintenance, repairs and ordinary operating expenses); and
- b. special assessments for capital improvements and operating deficits.

Such assessments will be established and collected as hereinafter provided. The annual and special assessments payable in respect of a Lot, together with interest, costs, and reasonable attorneys' fees, shall be a charge on such Lot and shall be a continuing lien upon and against such Lot. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title unless expressly assumed by them.

Section 6.2 Purpose of Assessments. The regular annual assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors, to promote the health, safety and welfare of the residents in the Development, for the improvement, operation and maintenance of the Common Area and street lights (if any), for the performance of any obligations relative

to street lights in the Development, if any, not otherwise maintained or paid for by any governmental entity, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided for herein. A portion of the regular annual assessments (in amounts determined in the reasonable discretion of the Board of Directors) shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area and any capital improvements to the Common Area which the Association is required to maintain.

### Section 6.3 Maximum Annual Assessments.

a. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment on any Lot conveyed by Declarant shall not exceed One Hundred Fifty Dollars (\$150) per Lot.

b. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by no more than Twenty Percent (20%) above the maximum regular annual assessment for the previous year, without a vote of the Members.

c. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by more than Twenty Percent (20%) above the maximum regular annual assessment for the previous year, with the approval of two-thirds (2/3) of those Members of each class of Members who cast votes in person or by proxy, at a meeting duly called for this purpose.

d. The Board of Directors from time to time may fix the regular annual assessment, without any vote of the Members, at an amount not in excess of the maximum provided for in this Section 6.3.

Section 6.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the regular annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement to or for the Common Area or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of those Members of each class of Members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 6.5 Notice and Quorum for Any Action Authorized Under Sections 6.4 and 6.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.4 or 6.5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.6 Uniform Rate of Assessment. Regular annual assessments and special assessments for capital improvements and to recover operating deficits shall be fixed at a uniform rate for all Lots; provided, however, that no assessment (regular or special) shall be payable in respect of any Lot owned by Declarant or any individual or entity purchasing a Lot solely for the purpose of construction of a for-sale residence thereon (a "Builder") on a Lot owned by it until such Lot has been conveyed to an owner other than the Declarant or such Builder, or the Lot and residence thereon is leased to an individual or entity

for use as a residence. No Lot shall be assessed a regular annual assessment or special assessment in excess of that assessed any other Lot.

**Section 6.7 Date of Commencement of Annual Assessments; Due Dates.** Except as provided in Section 6.6, the regular annual assessment provided for herein shall commence for each Lot on the date of conveyance of such Lot to an Owner, which assessment shall be pro-rated according to the number of days remaining in the calendar year of the conveyance. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

**Section 6.8 Effect of Nonpayment of Assessments; Remedies of the Association.** If any assessment is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his or her heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments due prior to transfer, however, shall remain his or her personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her Lot.

**Section 6.9 Subordination of the Lien to Mortgages; Sale or Transfer.** The lien of the assessments provided for herein payable in respect of a Lot shall be subordinate to the lien of any mortgage on such Lot held by a Mortgagee. The sale or transfer of any Lot pursuant to the foreclosure of any mortgage held by a Mortgagee on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 6.7 hereof, as to whether or not such assessments have been paid.

**Section 6.10 Declarant's Responsibility to Cover Deficits.** The Declarant shall cover any deficit or shortage in the funds necessary to operate the Association that may arise until such time as control of the Association is transferred to the Class A Members.



## ARTICLE VII

### GENERAL PROHIBITIONS

Section 7.1 Docks and Piers. No Owner shall construct on his or her Lot or on the Common Area abutting such Lot, any dock, pier or other structure which extends into any retention pond forming a part of the Common Area.

Section 7.2 Water Retention or Detention Areas. No Owner shall have access to the water retention or detention areas (the "Detention Ponds") in the Common Area, except through such Owner's Lot. No one shall do or permit any action or activity which could result in pollution of any detention or retention ponds, diversion of water, elevation of pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper pond management. The Detention Ponds may not be used for swimming.

Section 7.3 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the Common Area and access to and use of the Detention Ponds. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board of Directors to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Development as well as its own books, records and financial statements available for inspection by Owners or by holders, insurers and guarantors of first mortgages, that are secured by Lots in the Development. These documents shall be available during normal business hours or under other reasonable circumstances.

## ARTICLE VIII

### INSURANCE

Section 8.1 Casualty Insurance On Insurable Common Area. The Association shall keep any insurable improvements and fixtures of the Common Area owned by the Association, as opposed to property designated as Common Area for the purpose of maintenance only, insured for one hundred percent (100%) of their insurable value against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as are customarily covered for similar types of projects, including those covered by the standard "all risk" endorsements. The Association may also insure any other property whether real or personal, owned or maintained by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to such Common Area owned by the Association and property maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the regular monthly assessments made by the Association.

Section 8.2 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association and shall contain in the policy or an endorsement thereto a "severability of interest" endorsement precluding the

insurer's denial of an Owner's claim because of negligent acts by the Association or other Owners. It shall also cover all Common Area and any other areas under the Association's control or supervision.

**Section 8.3 Fidelity Bonds.** The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a common expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force, but must be no less than the sum of three (3) months of monthly regular assessments, plus reserves. If available, the fidelity bonds must include a provision that provides for ten (10) days written notice to the Association or insurance trustee before the bond can be cancelled or substantially modified for any reason.

**Section 8.4 Miscellaneous Insurance Provisions.** The Association shall obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance and additional coverage as the Board of Directors shall from time to time deem necessary, advisable or appropriate. 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 the Association, its Board of Directors and any managing agent acting on behalf of the Association. The insurance required hereunder or by the Board of Directors shall not have deductibles in excess of Ten Percent (10%) of the applicable amount of coverage. Funds for any such deductibles shall be set aside or otherwise allocated in a reserve fund so designated from the monthly regular assessments in amounts determined in the reasonable discretion of the Board of Directors.

**Section 8.5 Casualty and Restoration.** Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster to property maintained by the Association shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

**Section 8.6 Insufficiency of Insurance Proceeds.** If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

**Section 8.7 Surplus of Insurance Proceeds.** In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Common Area. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

## ARTICLE IX

### MORTGAGEES

Section 9.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of the Lot on which such Mortgagee holds its first mortgage, if any, in the performance of such Owner's obligations under the Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in Section 6.7.

Section 9.2 Condemnation and Insurance Awards. No provisions of the Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the Mortgagee of a Lot pursuant to its mortgage in the case of a distribution of such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 9.3 Unpaid Dues or Charges. Any Mortgagee who obtains title to a Lot and the dwelling thereon, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Lot's unpaid dues or charges accrued before the acquisition of the title to the Lot by the Mortgagee.

## ARTICLE X

### ADDITION TO REAL ESTATE

Section 10.1 Addition to Real Estate. Declarant shall have the unilateral right, privilege, and option, from time to time, at any time until all of the Expansion Real Estate has been subjected to the Declaration, to subject to the provisions of the Declaration and the jurisdiction of the Association, all or any portion of the Expansion Real Estate. Such addition shall be accomplished by the filing in the Office of the Recorder of Johnson County, Indiana an amendment to this Supplemental Declaration subjecting such real estate to the Declaration. Such amendment(s) to this Supplemental Declaration shall not require the consent of the Association or any Owner, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration, unless otherwise provided therein.

Section 10.2 Amendment of Article X. This Article X shall not be amended without the prior written consent of Declarant, so long as Declarant owns any of the Expansion Real Estate.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.1 Effect of Becoming an Owner. The Owner of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of the such contract, the Owner acknowledges the rights and powers of Declarant with respect to these Restrictions, and also, for themselves, their heirs, personal representative, successors and assigns, such Owners covenant and agree and consent to and with Declarant and to and with the Owners and subsequent owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

Section 11.2 Titles. The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 11.3 Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2050, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless by vote of those persons who are then the Owners of a majority of the Lots, it is agreed to change the covenants, limitations and restrictions in whole or in part.

Section 11.4 Right of Enforceability. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees, title search costs, expert witness costs and the costs and all other expenses incurred as a result thereof.

The appropriate governmental body, its successors and assigns, shall have no obligation to enforce any covenants, commitments, restrictions, or other limitations contained herein. Nothing herein shall be construed to prevent or prohibit the appropriate governmental body from enforcing conditions attached to approval of a Plat of Canary Creek Estates.

Section 11.5 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in the Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedies with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him or her upon the occurrence, reoccurrence or continuation of any violation or violations of the restrictions.

Section 11.6 Amendment. During the first twenty (20) years following its recordation, the Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Johnson County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners; provided, however, that, notwithstanding anything contained herein to the contrary, any amendment to this Supplemental Declaration which would amend this Section 11.6 or which would allow the assessing of a regular annual assessment or special assessment in excess of that assessed any other Lot shall require the approval of one hundred percent (100%) of the then Owners. None of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, the Declaration may also be amended by Declarant, if it then has any ownership interest in the Development, at any time within two (2) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners nor Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Mortgagees of the Lots (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the Owners of Lots:

a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area is not a transfer in the meaning of this subsection;

b. By act or omission change, waiver or abandon any scheme of regulations or their enforcement pertaining to the maintenance of the Common Area;

c. Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

d. Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of the Common Area owned by the Association;

e. Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided for in this Supplemental Declaration;

f. Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;

g. Change the rights to the use of the Common Area, except as provided for in this Supplemental Declaration;

h. Any requirements for insurance or fidelity bonds set forth in this Supplemental Declaration;

i. Any imposition of any restriction on an Owner's right to sell or transfer such Owner's dwelling unit;

j. Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in this Supplemental Declaration;

k. Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs;

l. Any provision that expressly benefits mortgage holders, insurers or guarantors;

m. Change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner; or

n. Any termination of legal status of the Development for reasons other than substantial destruction or condemnation of the Development.

If an addition or amendment is not considered as a material change, such as the correction of a technical error or the clarification of a statement within the Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association or other constituent documents, there shall be an implied approval to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after proposal is made.

Section 11.7 Assignment. Declarant may assign or otherwise transfer any and all of his rights hereunder as Declarant.

Section 11.8 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area, or from the termination of the Development. Each Owner, by the acceptance of a deed, appoints the Association as his or her attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Owners and their mortgage holders. Any distribution of funds in connection with the termination of the Development shall be made on a reasonable and an equitable basis.

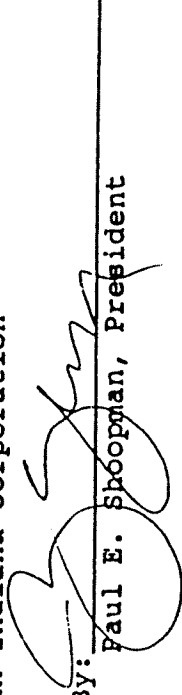
Section 11.9 Conflict with Plat Provisions. The provisions of each Plat are hereby incorporated into the Declaration. Should the other provisions of the Declaration conflict with any provisions of a Plat, the other provisions of the Declaration shall control. To the extent reasonable, the provisions of each Plat and the Declaration shall be interpreted to be consistent with each other.

Section 11.10 Continuing Effect. All other terms, conditions, provisions, representations and warranties set forth in the Original Declaration not specifically relating to those items explicitly modified by or otherwise disclosed in this Supplemental Declaration shall remain unchanged and shall continue in full force and effect. This Supplemental Declaration shall, wherever possible, be construed in a manner consistent with the Original Declaration; provided, however, in the event of any irreconcilable inconsistency between the terms of this Supplemental Declaration and the terms of the Original Declaration, the terms of this Supplemental Declaration shall control.

IN TESTIMONY WHEREOF, witness the signature of Declarant as of the date first hereinabove written.

"DECLARANT"


DURA DEVELOPMENT CORPORATION  
an Indiana corporation

By:   
Paul E. Shoopman, President

STATE OF INDIANA )  
                  ) SS:  
COUNTY OF Madison )

Before me, a Notary Public in and for said County and State, personally appeared Paul E. Shoopman, known to me to be the President of Dura Development Corporation, and acknowledged the execution of the foregoing Supplemental Declaration of Covenants, Conditions and Restrictions for and on behalf of said corporation.

Witness my hand and Notarial Seal, this 8 day of May, 1995.



Notary Public - Signature

Robin R. Hoenickel

Notary Public - Printed

My Commission Expires:

5-23-97

My County of Residence:

Johnson



This instrument prepared by Dennis A. Johnson, Attorney At Law, JOHNSON, SMITH, PENCE, DENSBORN, WRIGHT & HEATH, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204.

A part of the Northeast Quarter of Section 15, Township 12 North, Range 4 East of the Second Principal Meridian, City of Franklin, Johnson County, Indiana, described as follows:

Commencing at the Southwest corner of the Northeast Quarter of the said Section 15; thence North 88 degrees 14 minutes 15 seconds East along the South line thereof 613.80 feet to the Point of Beginning of this described tract; thence North 02 degrees 39 minutes 00 seconds West a distance of 325.04 feet; thence North 88 degrees 14 minutes 15 seconds East a distance of 342.86 feet; thence North 01 degree 45 minutes 45 seconds West a distance of 70.00 feet; thence North 88 degrees 14 minutes 15 seconds East a distance of 125.00 feet; thence North 36 degrees 40 minutes 35 seconds East a distance of 67.34 feet; thence North 70 degrees 41 minutes 46 seconds East a distance of 123.90 feet; thence South 89 degrees 42 minutes 22 seconds East a distance of 162.93 feet; thence North 00 degrees 17 minutes 38 seconds East a distance of 110.00 feet; thence North 06 degrees 00 minutes 05 seconds East a distance of 50.25 feet; thence North 00 degrees 17 minutes 38 seconds East a distance of 110.00 feet; thence South 89 degrees 42 minutes 22 seconds East a distance of 110.00 feet; thence non-tangent curve to the right, having a radius of 329.86 feet to a point on a bearing North 74 degrees 47 minutes 33 seconds East a distance of 93.54 feet; thence North 89 degrees 42 minutes 22 seconds East a distance of 94.69 feet to the end of said curve; thence South 89 degrees 42 minutes 22 seconds East a distance of 10.00 feet; thence South 00 degrees 17 minutes 38 seconds West a distance of 758.95 feet; thence South 88 degrees 14 minutes 15 seconds West a distance of 1203.67 feet to the Point of Beginning, containing 14.483 acres, more or less.



Part of the Northeast Quarter of Section 15, Township 12 North, Range 4 East of the Second Principal Meridian, in the City of Franklin, Franklin Township, Johnson County, Indiana, described as follows:

Commencing at a stone found at the Southwest corner of the said Quarter Section; thence North 88 degrees 14 minutes 15 seconds East on and along the South line thereof 613.80 feet to the Point of Beginning of this described tract; said point being the Southeast corner of a tract described in Deed Record 253, page 51, in the Office of the Recorder of Johnson County, Indiana; thence North 02 degrees 39 minutes 00 seconds West 1,720.00 feet to a point in Canary Ditch; thence generally following the said ditch the next eleven (11) calls: (1) North 79 degrees 00 minutes 00 seconds East 180.00 feet; (2) thence South 87 degrees 00 minutes 00 seconds East 100.00 feet; (3) thence North 75 degrees 00 minutes 00 seconds East 150.00 feet; (4) thence North 63 degrees 00 minutes 00 seconds East 100.00 feet; (5) thence North 71 degrees 00 minutes 00 seconds East 340.00 feet; (6) thence North 89 degrees 00 minutes 00 seconds East 30.00 feet; (7) thence North 58 degrees 00 minutes 00 seconds East 45.00 feet; (8) thence North 28 degrees 00 minutes 00 seconds East 115.00 feet; (9) thence North 37 degrees 00 minutes 00 seconds East 80.00 feet; (10) thence North 30 degrees 00 minutes 00 seconds East 80.00 feet; (11) thence North 04 degrees 30 minutes 00 seconds East 52.35 feet; thence South 75 degrees 45 minutes 47 seconds East 190.75 feet; thence North 88 degrees 00 minutes 40 seconds East 62.49 feet to the Northwest corner of a tract described in Deed Record No. 258, page 661, in the Office of said Recorder; thence South 14 degrees 14 minutes 13 seconds West 101.09 feet; thence South-westerly on a tangent curve to the right which has a radius of 620.67 feet a curved distance of 640.79 feet, said arc being subtended by a chord bearing South 43 degrees 48 minutes 48 seconds West 612.71 feet; thence South 73 degrees 23 minutes 24 seconds West 15.00 feet; thence South 00 degrees 11 minutes 30 seconds East 891.03 feet; thence South 89 degrees 42 minutes 22 seconds East 352.93 feet; thence Northeasterly on a curve to the right which has a radius of 175.00 feet a curved distance of 94.69 feet, said arc being subtended by a chord bearing North 74 degrees 47 minutes 33 seconds East 93.54 feet; thence South 89 degrees 42 minutes 22 seconds East tangent to the said curve 10.00 feet; thence South 00 degrees 17 minutes 38 seconds West 758.95 feet to the South line of the Northeast Quarter of the said Section 15; thence South 88 degrees 14 minutes 15 seconds West on and along the said South line 1,203.67 feet to the Point of Beginning.

LESS AND EXCEPT:

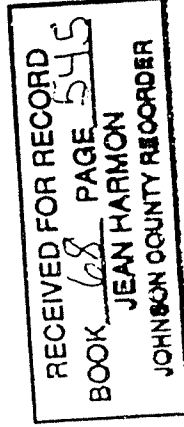
A part of the Northeast Quarter of Section 15, Township 12 North, Range 4 East of the Second Principal Meridian, City of Franklin, Johnson County, Indiana, described as follows:

Commencing at the Southwest corner of the Northeast Quarter of the said Section 15; thence North 88 degrees 14 minutes 15 seconds East along the South line thereof 613.80 feet to the Point of Beginning of this described tract; thence North 02 degrees 39 minutes 00 seconds West a distance of 325.04 feet; thence North 88 degrees 14 minutes 15 seconds East a distance of 342.86 feet; thence North 01 degree 45 minutes 45 seconds West a distance of 70.00 feet; thence North 88 degrees 14 minutes 15 seconds East a distance of 125.00 feet; thence North 36 degrees 40 minutes 35 seconds East a distance of 67.34 feet; thence North 70 degrees 41 minutes 46 seconds East a distance of 123.90 feet; thence South 89 degrees 42 minutes 22 seconds East a distance of 162.93 feet; thence North 00 degrees 17 minutes 38 seconds East a distance of 110.00 feet; thence North 06 degrees 00 minutes 05 seconds East a distance of 50.25 feet; thence North 00 degrees 17 minutes 38 seconds East a distance of 110.00 feet; thence South 89 degrees 42 minutes 22 seconds East a distance of 329.86 feet to a point on a non-tangent curve to the right, having a radius of 175.00 feet and an arc subtended by a chord bearing North 74 degrees 47 minutes 33 seconds East a distance of 93.54 feet; thence Northeasterly along said curve a distance of 94.69 feet to the end of said curve; thence South 89 degrees 42 minutes 22 seconds East a distance of 10.00 feet; thence South 00 degrees 17 minutes 38 seconds West a distance of 758.95 feet; thence South 88 degrees 14 minutes 15 seconds West a distance of 1203.67 feet to the Point of Beginning, containing 14.483 acres, more or less.

447110K

EXHIBIT B

MAY 9 2 20 PM '95



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NOV 27 12:15

Cross Reference Book No. 68, Page 279, Instrument No. 95-003123 and  
Book No. 69, Page 545, Instrument No. 95-007309

AMENDMENT 7  
CANARY CREEK ESTATES RESTRICTIVE COVENANTS AND  
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF CANARY CREEK ESTATES

THIS AMENDMENT TO CANARY CREEK ESTATES RESTRICTIVE COVENANTS AND SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CANARY CREEK ESTATES (the "Amendment") is made as of the 21st day of November, 1995, by DURA DEVELOPMENT CORPORATION, an Indiana corporation (hereinafter, "Declarant").

RECITALS

A. Declarant entered into that certain Canary Creek Estates Restrictive Covenants dated February 24, 1994, and recorded March 24, 1995, in the Office of the Recorder of Johnson County, Indiana as Instrument Number 95-003123 (the "Original Declaration").

B. Declarant entered into that certain Supplemental Declaration of Covenants, Conditions and Restrictions for Canary Creek Estates, dated May 9, 1995, and recorded May 9, 1995, in the Office of the Recorder of Johnson County, Indiana as Instrument Number 95-007309 (the "Supplemental Declaration") (the Original Declaration and the Supplemental Declaration, as the same may be amended from time to time, being hereinafter collectively referred to as the "Declaration"). The Declaration is incorporated herein by reference, and unless otherwise provided, all capitalized terms used, but not defined in this Amendment, shall have the meanings ascribed thereto in the Declaration.

C. The Declaration established that certain real estate located in Johnson County, Indiana, as more particularly described in the Declaration and defined therein as the Real Estate, shall be held, conveyed and transferred in accordance with the provisions of the Declaration.

D. Paragraph 23 of the Original Declaration specifically prohibits all satellite dishes from being located on the Real Estate.

E. Pursuant to Section 11.6 of the Supplemental Declaration, amendments to the Declaration may be made by Declarant at any time within two (2) years after the recordation of the Supplemental Declaration, provided Declarant then has an ownership interest in the Development at the time of any such amendment.

F. Declarant was the sole owner of the Real Estate at the time the Supplemental Declaration was recorded.

G. The Supplemental Declaration was recorded less than two (2) years prior to the date of this Amendment and Declarant presently has an ownership interest in the Development.

H. Declarant now desires to amend the Declaration to permit the location and use of satellite dishes in the Development, provided that any such satellite dishes do not have a diameter greater than thirty (30) inches, and provided further that any such satellite dishes are not visible from any street or roadway within the Development or adjacent thereto.

AMENDMENT


NOW, THEREFORE, Declarant declares that the Declaration is hereby amended to permit the location and use of satellite dishes in the Development, provided that any such satellite dishes do not have a diameter greater than thirty (30)

inches, and provided further that any such satellite dishes are not visible from any street or roadway within the Development or adjacent thereto.

IN TESTIMONY WHEREOF, witness the signature of the undersigned as of the date first hereinabove written.

"DECLARANT"

DURA DEVELOPMENT CORPORATION,  
an Indiana corporation

By:   
Paul E. Shoopman, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Paul E. Shoopman, known to me to be the President of Dura Development Corporation, and acknowledged the execution of the foregoing for and on behalf of said corporation.

Witness my hand and Notarial Seal, this 21 day of November, 1995.



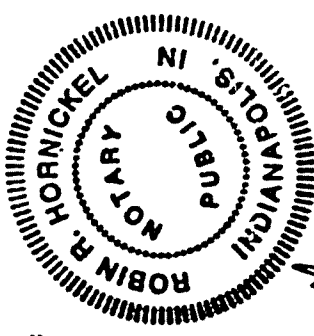
Notary Public - Signature

Robin R. Hornickel

Notary Public - Printed

My Commission Expires:  
5-23-97

My County of Residence:  
Marion



This instrument prepared by Robert T. Buday, Attorney At Law, JOHNSON, SMITH, PENCE, DENSBORN, WRIGHT & HEATH, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204.