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SUPPLEMENTARY DECLARATION XIII-A

TO THE

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS.

OF

TIPTON LAKES COMMUNITY ASSOCIATION, INC.

(Cluster #13, Commonly Known as Winterberry Place)

THIS DECLARATION made this 1<sup>st</sup> day of July, 1988 by Tipton Lakes Company, Inc., an Indiana Corporation (hereinafter referred to as the "Developer")

WITNESSETH:

Preamble

WHEREAS, Developer is the owner of the land contained in Winterberry Place as recorded in Plat Book "O", Page 192 of the Bartholomew County Recorder's Office which may in whole or in part be subjected to the provisions of the Declaration of Covenants, Conditions, and Restrictions of Tipton Lakes Community Association, Inc., hereafter the "Declaration," recorded in the Office of the Recorder of Bartholomew County, Indiana in Record 59, Page 992.

NOW THEREFORE, the Developer hereby declares that Lots 1 through 19 of Winterberry Place together with the parcels serving as Cluster Common Areas, if any, or serving as Common Areas and Limited Common Areas, and such additions thereto as may hereafter be made pursuant to Article III hereof, shall be annexed to Tipton Lakes Community Association, Inc., and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens of the aforesaid Declaration and of this Supplementary Declaration hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner thereof.

Article I

Definitions

The definitions as set forth in the Declaration and Bylaws of Tipton Lakes Community Association, Inc. are hereby incorporated in full by reference.

Article II

Cluster and Neighborhood Designation

Section 1. Cluster Designation. The aforementioned Lots and Common Areas are hereby designated as a Cluster or portion thereof of Tipton Lakes Community Association, Inc. which is designated as Cluster #13.

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Section 2. Neighborhood Service District Designation. The aforesaid Cluster or any portion thereof may be incorporated into a Neighborhood Service District in accordance with the Declaration, at which time the Neighborhood Service District shall be established and designated by Supplementary Declaration.

Article III

Property Subject to this Supplementary Declaration

Section 1. Existing Property. The aforementioned land in Mallard Point is hereby subjected to the Declaration and this Supplementary Declaration.

Section 2. Common Areas. The Common Areas hereby subjected to the Declaration by this Supplementary Declaration shall include no Cluster Common Areas owned by the Association; however, the entry landscaping and cul-de-sac islands, although owned by individual lot Owners or by the City of Columbus as shown on the plats, shall be deemed Cluster Common Areas and maintained as further defined herein out of Cluster Assessments. No Common Areas to be owned by the Association and for general Association use and enjoyment, nor Limited Common Areas are currently planned for this Cluster. Other Common Areas may exist in this Cluster as defined and provided for in the Governing Documents. The foregoing listing of Common Areas within this Cluster may be changed from time to time in accordance with the Governing Documents.

Section 3. Additions to Existing Property. All or any part of the land described in the Development Plan, or land which is contiguous thereto, may be added to this Cluster by the Developer, without the consent of the Owners, within five years of the date of this instrument, by the filing of record a Supplementary Declaration with respect to such land which designates it as part of this Cluster and by filing with the Association the plat plans for such addition. For this purpose, "Contiguous" land shall also mean land which is separated from land already described in the Development Plan by an area dedicated to public use.

Article IV

Cluster Assessments

Section 1. Purpose of Assessments. The Board of Directors may establish an Annual Cluster Assessment as provided for in the Declaration and impose such upon the Lots and Living Units subjected to this Supplementary Declaration which may be used to defray the costs of construction, maintenance, repair or replacement of Cluster Common Areas and facilities and to provide for differentials in services and benefits unique to this Cluster which may include but shall not be limited to the following, and which may be changed from time to time in accordance with the Governing Documents:

- A. Maintenance of the pond and any related facilities and improvements, the cul-de-sac island together with its mailbox cluster structure, and any other Cluster Common Areas and facilities.

B. Taxes and Insurance allocable to this Cluster as provided for in the Governing Documents.

C. Others as provided for in the Governing Documents.

Section 2. Method of Assessment. The method of assessment shall be in accordance with that established in Section 5.01(d) of the Declaration.

Section 3. Maximum Cluster Assessment. The maximum allowable Annual Cluster Assessment for 1988 is hereby established in the amount of \$120.00 per assessment year per Lot or Living Unit situated within this Cluster, which shall be effective until the first day of the following fiscal year.

Section 4. Change in Maximum. Changes in the maximum allowable Annual Cluster Assessment for this Cluster shall be effected in accordance with Section 5.04(iv) of the Declaration.

#### Article V

##### Protective Covenants

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one Single-Family dwelling not to exceed two and one-half stories in height, a private garage for not more than three cars, and other outbuildings incidental to residential use of the premises.

##### Section 2. Design.

- A. Materials. For each home no more than three basic exterior materials, in addition to glass, will be used, unless this is specifically waived by the Design Review Committee. Materials shall be subject to Design Review Committee review.
- B. Color. External color schemes are subject to review and Approval by the Design Review Committee. Use of a wide range of secondary colors for doors, windows, window shutters, architectural trim, or other details is permissible but also subject to Approval.
- C. Driveways. All driveways must be paved with asphalt, concrete, or brick unless otherwise Approved by the Design Review Committee. It is preferable to have driveways organized in group patterns to allow longer green areas between them.
- D. Fences. Fences may only be of materials and design Approved by the Design Review Committee. Exposed metal fences are not acceptable. No fences shall be placed between the principal residence and the street right-of-way, without the Approval of the Design Review Committee.

- E. Out Buildings. Storage sheds and other buildings or structures, such as gazebos, greenhouses, kennels, swimming pools and their accompanying facilities must be of a design and location Approved by the Design Review Committee. No wholly above-ground pools will be allowed without the Approval of the Design Review Committee.
- F. Dwelling Size. All Lots shall contain a primary residential dwelling unit having a total finished area exclusive of open porches, breezeway or garage of at least 1,800 square feet.
- G. Building Coverage. Building coverage shall not exceed 25% of the Lot's land area.
- H. Signs. No sign of any kind shall be displayed to the public view of any Lot or the Common Areas without the prior Approval of the Design Review Committee, except ordinary 2 foot by 2 foot real estate "For Sale" signs.
- I. Exterior Lighting. Any exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of the adjacent property. Ornamental post lights shall be designed to be in harmony with the lighting fixtures at the street or road corners. Exterior lighting must be Approved by the Design Review Committee.
- J. Mechanical and Electrical Equipment. Objects, such as water towers, storage tanks, stand fans, skylights, cooling towers, communications towers, vents or any other structures or equipment shall be architecturally compatible with the building or screened from public view and must be Approved by the Design Review Committee.
- K. Building Placement. Houses shall be sited to minimize the loss of existing trees, to minimize disturbance of the natural grades and other vegetation, and to maximize available views. Building placement should show consideration for neighbors.
- L. Building Location. Building setback lines are hereby established as shown on the plat or by City Ordinance and between said lines and the property lines, there shall be erected no building or permanent structure except approved fencing.

Section 3. Construction Regulations. Trailers, field offices, etc. shall be parked in Approved locations and removed upon completion of construction. Contractors are permitted to store construction materials on their site, but all materials shall be neatly stacked and any such storing shall be at the contractor's risk.

No tracked vehicle shall be permitted on any paved road. Contractors shall clean up all debris on their construction sites on a regular basis. Loose paper, cardboard, etc. shall be covered or weighted down to prevent its blowing across the site. No trash shall be dumped, burned, or buried, except in Approved areas. All dirt, mud, or debris shall be promptly removed from public and private streets. Upon completion the contractor shall remove any unused materials, equipment, and

debris and shall clean all streets and repair all property damaged by him including, but not limited to, restoration of grades, grass, trees, repair to all streets, pathways, curbs, drains, signs, lighting and fencing.

Topsoil shall be separated from subsoil and be stockpiled in a mound and will be replaced where needed after construction is complete. Temporary berms shall be constructed around the topsoil to prevent erosion. The contractor shall establish erosion control measures which will prevent sedimentation of materials off site. A minimal amount of existing vegetation shall be disturbed during excavation and grade. Dikes, benches, berms, checkdams, level spreaders, straw bale barriers or other common erosion control measures shall be used where necessary and appropriate.

Section 4. Trees. Generally, no living trees more than 4 inches in caliper and beyond 10 feet of any planned physical improvement shall be removed without the express written approval of the Design Review Committee. The Design Review Committee may require that these clearing limits be staked with continuous tape and that significant trees be protected by snow fence barriers. The Design Review Committee may require replacement of any excessive loss of trees due to carelessness or accident by an equal number of 3-1/2 to 4 inch trees. These must be of a species recommended by the Design Review Committee.

Section 5. Parking. The parking of junk or disabled vehicles or vehicles which are not properly registered or licensed on the Lots or Common Areas is expressly prohibited unless such vehicles are kept from public view in private garages, if any. The Board may issue additional regulations pertaining to parking.

Section 6. Damage or Destruction of Living Unit. In the event of damage to or destruction of a Living Unit or other improvements situated in a Lot by fire or other means, any repair or replacement of such Living Unit or improvement shall be done in accordance with the original Approved plans and specifications therefor unless otherwise approved by the Design Review Committee.

Section 7. Temporary Structures. No house trailer or mobile home, either with or without wheels, shall be permitted to remain on any Lot other than for, and during such reasonable period of, construction of the Living Units or for bona fide visits by guests of the occupants of the main house and then only one such vehicle at a time.

After the construction period, such vehicles may not be present on any Lot for more than such reasonable period of time as the Board by resolution may establish. Any use of house trailers and mobile homes must be in accordance with local zoning ordinances. No trailer, basement, tent, shack, garage, barn, or other outbuilding shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. Recreational vehicles, motor boats, house boats and similar water borne vehicles may be maintained, stored, or kept on any Lot only if housed completely within a permanent structure. No Lot shall at any time be used for the parking of semi-trailer trucks.

Section 8. Garbage and Refuse Disposal. Trash, garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be located in areas concealed from view from outside the lot. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All Living Units must be equipped with garbage disposals. Trash, leaves and other similar material shall not be burned without the written approval of the Association, and any such burning shall be in accordance with all local, state or federal laws. The Board may promulgate additional regulations for waste disposal procedures.

Section 9. Maintenance by Owner.

- A. Lot Maintenance. As further provided herein, every Owner shall promptly perform all maintenance and repair within his own Lot, which, if neglected, would affect the value of the Property, or any Lot or Living Unit thereon, and which is the responsibility of the Owner to perform personally. Each Lot shall be maintained neat and clean and free of paper, trash, uncut weeds or unsightly growth or other debris. No Owner or Occupant shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of any building, 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 building without the prior approval of the Design Review Committee. No permanent clotheslines, equipment, service yards, or storage piles visible from outside the Lot shall be permitted upon any Lot, Living Unit or Common Area.

Owners of Lots abutting the landscaped berm bordering Northlake Shores are responsible for maintaining their side of the berm, up to its crown, but not the spruce trees already planted there. The Northlake Shores Cluster is responsible for maintaining their side of the berm including the existing spruce trees.

Owners of Lots abutting Goeller Road and Tipton Lakes Boulevard and the respective rights-of-way and vegetation easements are responsible for maintaining, but may not alter, the trees and landscaping in place there up to the nearest hard surface, be it road surface or pedestrian walkway. Tipton Lakes Community Association maintains the landscaping between the pedestrian walkway and the road surface out of the General Assessment.

- B. Maintenance of Common Areas and Other Areas. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Areas. The Owners and Occupants shall endeavor to keep the Common Areas free and clear of rubbish, debris, and other unsightly materials. Except as otherwise provided, the Owner of each Lot shall be responsible for the maintenance of the unpaved right-of-way adjacent to his Lot.

Section 10. Utilities. All utilities along the internal roads and serving individual Lots shall be placed underground.

Section 11. Sewage Disposal. No Living Unit shall be erected unless it contains inside flush toilets connected with sewage disposal services provided by the City of Columbus, or other systems Approved by the City of Columbus and by the Design Review Committee.

Section 12. Water Supply. No individual primary water supply system shall be permitted on any Lot. Primary water shall be obtained from the City of Columbus.

Section 13. Oil and Mining Operations. No gas, oil, mineral, quarry, or gravel operations shall be engaged in on any Lot except as provided in the Declaration.

Section 14. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or in the Common Areas, except that dogs, cats, or customary household pets may be kept on a Lot, provided that such pets are not kept, bred or maintained for any commercial purpose, and do not create a nuisance. An Owner shall be fully liable for any damage to the Common Areas caused by his pet. The Board may adopt such other rules and regulations regarding pets as it deems necessary from time to time. Any pet which, in the judgment of the Board based on a decision of the Covenants Committee following procedures ensuring due process, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon three (3) day's written notice from the Board to the respective Owner.

Section 15. Antennas. Exterior antennas are discouraged, particularly in areas served by Cable TV. All such antennas must be specifically Approved by the Design Review Committee. Such Approvals, if given, will be limited to antennas not exceeding thirty square feet of grid area and not extending more than ten (10) feet above the highest point of the roof, unless unusual circumstances prevail.

Section 16. Nuisances. No noxious or offensive activity shall be carried on or permitted upon any Lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 17. Applicable Laws. All applicable Federal, State and Local codes, regulations, ordinances, and laws shall be complied with.

Section 18. Hazardous Use. Nothing shall be done or kept on or in any Lot or in the Common Areas which will create a hazard, threat thereof, or actual damage to other Lots, Living Units or the Common Areas.

Section 19. Structural Soundness. Nothing shall be done or permitted on any Lot or in any Living Unit which will impair the structural integrity of any building, structurally change any building or impair any easement or hereditament, except as otherwise provided in the Declaration, the Bylaws, or this Supplementary Declaration.

Section 20. Garage Doors. For security, energy efficiency, and the appearance of the neighborhood, garage doors shall be maintained closed to the extent it is reasonably convenient in the actual use of the garage.

Section 21. Access Limitations. Lots 1 through 13 shall have access only from Winterberry Place. Lots 14 through 19 shall have access from Winterberry Court.

Section 22. Setbacks. Front yard setbacks shall be as shown on the plat.

Section 23. Mailboxes and Newspaper Tubes. Mail delivery shall be to the designated mailboxes in the installed mailbox clusters. The mailbox cluster housings are maintained by the Cluster; however, the operational aspects of the individual mailboxes are the individual's responsibility. The Association does not keep extra mailbox keys and is not responsible for locksmith functions. Newspaper tubes are not permitted unless specifically Approved by the Design Review Committee.

Section 24. Damage to Common Areas by Owner. In the event that the need for maintenance or repair of Common Areas is caused through the willful or negligent act of the Owner, Occupant, his family or guests, or invitees, as determined by the Board or Covenants Committee, and not covered or paid for by insurance on such Common Areas, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the applicable Lot or Living Unit is subject.

Section 25. Exceptions. The Board of Directors may issue permits to except any prohibitions expressed or implied by this Supplementary Declaration, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures.

So long as the Developer is engaged in developing or improving any portion of the Properties, it shall be exempted from the provisions of this Supplementary Declaration affecting movement and storage of building materials and equipment, erection and maintenance of directional and promotional signs and conduct of sales activities, including maintenance of model Living Units. Such exemption shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and the general appearance of the Properties.

Section 26. Pollution Control. The Board may adopt regulations prohibiting or restricting activities in Clusters in reasonably close proximity to the lake system or other bodies of water which may, in the Board's judgment, pose a threat of pollution to same. Among other activities, the Board may so regulate landscape fertilization, bug spraying, and other activities which may result in the contamination of the lake system and ponds and activities which may result in the flow of sediments into same.

Section 27. Insurance Responsibilities of Board. The Board of Directors of the Association shall purchase insurance in accordance with Section 3.04(ii)(b) (4)(d) of the Declaration.



## Article VI

### Easements

Section 1. General. General easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat or plats. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of natural drainage channels in the easements. The easement area of each Lot and all improvements within it shall be maintained continuously and kept free of debris by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 2. Pedestrian Easements. There are hereby created easements for pedestrian rights-of-way, if any, over and across Lots as shown on the plat.

Section 3. Vegetation. Vegetation easements, if any, are shown on the aforementioned plat or plats. The Association may enter said areas to maintain, alter or replace vegetation within the easement. No Lot Owner may alter, remove or replace any shrub or tree within the easement without the express written Approval of the Design Review Committee.

Section 4. Encroachment Easements. Each Lot shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings, fences and walls. Said encroachment easements shall normally be minimal and incidental except in the case of overhangs which may encroach up to a maximum of 30 inches. A valid easement for said encroachments and for the maintenance for same, so long as such encroachments stand, shall and does exist. In the event any structure or fence is partially or totally destroyed and then rebuilt, the Owners so affected agree that minor encroachments due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

## Article VII

### General Provisions

Section 1. Duration. The foregoing Supplementary Declaration is to run with the land and shall be binding on all parties and all persons claiming under it until January 1, 2030, at which time said Declaration shall be automatically extended for successive periods of ten years unless changed in whole or in part by an instrument signed by at least two-thirds of the Owners in this Cluster, Approved by the City of Columbus and recorded.

Section 2. Amendment. This Supplementary Declaration may be amended by an instrument signed by the Developer so long as the Developer continues to hold Developer's rights as provided in the Declaration and not less than two-thirds of the remaining Owners of Lots or Living Units in this Cluster. Any amendment must be recorded in the Office of the Recorder of Bartholomew County, Indiana. No such Agreement shall be effective unless written Notice of the proposed agreement is

sent to every Owner of a Lot or Living Unit in the Cluster at least thirty (30) days in advance of any action taken and no such agreement shall be effective with respect to any permanent easement or other permanent rights or interests relating to the Common Area, Cluster Common Area, Limited Common Area, or Lake Property created in the Declaration or this Supplementary Declaration. However, because development and recordation of this Supplementary Declaration preceded final results of marketing and budget analysis and final Approval of Federal Mortgage Agencies, for a period of two years from the date of Recordation of this Supplementary Declaration the Developer reserves the right to amend the provisions of this Supplementary Declaration including but not limited to modifying the stated maximum Annual Cluster Assessments or other changes in response to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by: (1) giving Notice to the Association and Cluster Owners other than Developer of proposed changes; (2) securing the Approval of appropriate local governmental bodies; and (3) securing Approval of the Federal Mortgage Agencies.

Section 3. Severability. Invalidation of any one of the provisions of this Supplementary Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

July, 1988, witness the signature of Developer this 1<sup>st</sup> day of

TIPTON LAKES COMPANY, INC.

By

*William A. Folkert*

William A. Folkert,  
Vice President

ATTEST:

*Robert L. Elwood*

Robert L. Elwood, Vice President

STATE OF INDIANA )  
 ) S:  
COUNTY OF BARTHOLOMEW )

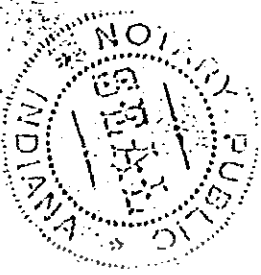
Before me, a Notary Public in and for said County and State, personally appeared William A. Folkert and Robert L. Elwood, Vice Presidents of Tipton Lakes Company, Inc., who, for and in behalf of said corporation, acknowledged the execution of the foregoing Supplementary Declaration XIII-A to the Declaration of Covenants, Conditions, and Restrictions of Tipton Lakes Community Association, Inc.

Subscribed and sworn to before me this 1 of JULY, 1988.

*Jean Donica*  
Notary Public JEAN DONICA

County of Residence: BARTHOLOMEW

My Commission Expires: 2-10-91



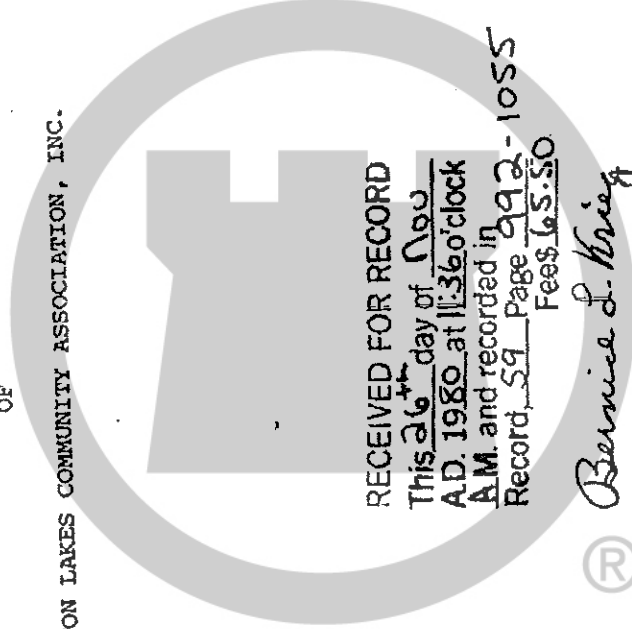
CHICAGO TITLE

This instrument was prepared by Robert L. Elwood, Esq., 235 Washington Street, Columbus, Indiana 47201.

6399

# CHICAGO TITLE

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
TIPTON LAKES COMMUNITY ASSOCIATION, INC.



RECEIVED FOR RECORD

This 26<sup>th</sup> day of Nov  
A.D. 1980 at 11:36 o'clock  
A.M. and recorded in  
Record 59 Page 992-1055  
Fees 65.50

*Bernice L. Krieg*  
Bernice L. Krieg  
Recorder, Bartholomew County



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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
TIPTON LAKES COMMUNITY ASSOCIATION, INC.

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# CHICAGO TITLE



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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

TIPTON LAKES COMMUNITY ASSOCIATION, INC.

THIS DECLARATION made this 26<sup>th</sup> day of November, 1980, by Miller & Company, an Indiana General Partnership (hereinafter referred to as the "Developer").

Preamble

WITNESSETH:

WHEREAS, Developer is the owner of the land contained in the area described as Lot 7 of Woodcrest, a Replat of Lots 5, 6, and 7 as recorded in the Office of the Recorder of Bartholomew County in Plat Book K, Page 64, which lands will be subdivided and, with the exception of that portion thereof described in Exhibit D hereof, will become the first section of Tipton Lakes Community (hereinafter, "Lot 7"). Further Developer is the owner of all lands illustrated by legal description as Exhibit A, attached hereto and made a part hereof, which land Developer plans to develop in phases as planned unit developments or through zoning classifications, in accordance with the Zoning Ordinance of the City of Columbus as it may from time to time be amended, and which phases may be automatically incorporated into this Declaration of Covenants, Conditions, and Restrictions in whole or in part by Supplementary Declaration and may be more particularly described on the plats of the various sections, or by other legal description, when recorded in the Office of the Recorder of Bartholomew County, Indiana; and,

WHEREAS, the Developer desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community contributing to the personal and general health, safety, and welfare of the residents and for the maintenance of the land and improvements thereon, and to this end desires to subject the real property described as Lot 7 above, together with such additions as may hereafter be made thereto (as provided in Article II), to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth and the intents and requirements of the applicable governmental bodies, the Developer has incorporated under the laws of this State the Tipton Lakes Community Association, Inc.;

NOW, THEREFORE, the Developer declares that the real property described as Lot 7 above, and such additions thereto as may hereafter be made, pursuant to Article II hereof, is and are and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens herein after set forth; all of the provisions of this Declaration shall run with the land and shall be binding upon Developer and upon parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to this Declaration and shall inure to the benefit of Developer and every one of Developer's successors in title to any real estate which is hereby made or becomes subject to this Declaration.

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AND FURTHER, the Developer hereby delegates and assigns to the Tipton Lakes Community Association, Inc. the power of owning, maintaining, and administering the Common Area and facilities, administering and enforcing the covenants, conditions and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the recreation, health, safety, and welfare of the residents.

## Article I

### Definitions

- 1.01 "Approvals," determinations, permissions or consents required herein or by public agencies shall be deemed given if they are given in writing signed, with respect to Developer, by the President or Vice President thereof; with respect to the Design Review Committee and the Covenants Committee, by two members thereof; and with respect to public agencies, by the issuance of written approval, or any waiver of approval rights, or a letter of "no objection."
- 1.02 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Tipton Lakes Community Association, Inc.
- 1.03 "Assessable Unit" shall mean and refer to any lot, living unit or other unit of real property within the properties which is subject to assessments, as provided hereinafter.
- 1.04 "Association" shall mean the Tipton Lakes Community Association, Inc., an Indiana not-for-profit corporation, the membership and powers of which are more fully described in this Declaration and its Articles of Incorporation and Bylaws, and its successors and assigns.
- 1.05 "Board of Directors" shall mean and refer to the Board of Directors of Tipton Lakes Community Association, Inc., as established herein.
- 1.06 "Book of Resolutions" shall mean and refer to the document containing the rules, regulations, and policies of the Association adopted by the Board of Directors, as they may from time to time be amended.
- 1.07 "Bylaws" shall mean and refer to the Bylaws of the Tipton Lakes Community Association, Inc.
- 1.08 "Cluster" shall mean and refer to a group of lots or living units with Cluster Common Areas, if any, which are subject to one or more Supplementary Declarations establishing such Cluster.
- 1.09 "Cluster Common Area" shall mean and refer to portions of the Common Area which are designated as Cluster Common Area in the Governing Documents and which are intended primarily or exclusively for the use and enjoyment of Members residing in such Cluster.
- 1.10 "Cluster Committee(s)" shall mean and refer to the Cluster Committees of Tipton Lakes Community Association, Inc., enabled and established in accordance with the Governing Documents as representative bodies for the various Clusters.
- 1.11 "Common Area" shall mean and refer to all property and improvements thereon, including Cluster Common Area and Limited Common Area owned or leased by the association or otherwise, to which the Association or its Members have the right to use and enjoyment, or over which the Association has an easement or right of

duty for maintenance (excepting lots and dwelling units thereon) for the use and enjoyment of the Members, and for the use, maintenance, repair, and/or replacement of which the Association may apply assessment monies as further provided for herein.

- 1.12 "Condominium" and "Condominium Unit" shall mean and refer to those terms as defined consistent with the Indiana Horizontal Property Act as it may from time to time be amended.
- 1.13 "Cooperative" shall mean and refer to any Multi-Family Rental Structure in which the Living Units in which proprietary leases are granted are leased by and subject to the control of shareholder members of a residential housing cooperative, or as defined by applicable laws, if any, as they may from time to time be amended.
- 1.14 "Covenants Committee" shall mean and refer to the Covenants Committee of Tipton Lakes Community Association, Inc. as established in the Governing Documents.
- 1.15 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions of the Tipton Lakes Community Association, Inc., as it may be amended from time to time.
- 1.16 "Design Review Committee" shall mean the Tipton Lakes Community Association, Inc. Design Review Committee, established as herein provided.
- 1.17 "Developer" shall mean and refer to Miller & Company and its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or unless such rights and obligations pass by operation of law. The rights and obligations of the Developer set forth herein shall cease when new Living Unit construction contemplated by the Development Plan is substantially complete or after five years have lapsed since the filing of the Last Supplementary Declaration, establishing or annexing a parcel or Cluster. In the event that a developer other than the first Developer comes to stand in the same relation to the project as the first Developer, that Developer shall hold the same rights and obligations as would then have been held by the first Developer.
- 1.18 "Development" shall mean all lands which may be subjected to this Declaration, inclusive of dwelling units, apartments, Condominiums, commercial and industrial lands, parks, playgrounds, public and institutional uses, properties designated and undisturbed areas and such other uses and areas as logically may be included in the lands described in Exhibit A hereto and those lands added thereto, less those deleted therefrom as herein provided.
- 1.19 "Development Plan" shall mean and refer to the total general scheme of intended uses of land in the Development approved by the City of Columbus, as illustrated in Exhibit B hereof, as it may be amended from time to time, and as further defined herein.
- 1.20 "Elections Committee" shall mean and refer to the Elections Committee of Tipton Lakes Community Association, Inc., as provided for in the Governing Documents.

- 1.21 "Federal Mortgage Agencies" shall mean and refer to those federal agencies which have an interest in the Properties, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, the Government National Mortgage Associations, or successors to their interests.
- 1.22 "First Mortgagee" shall mean and refer to an Institutional Lender who holds the first mortgage or deed of trust on a Lot or Living Unit and who has notified the Association of its holdings.
- 1.23 "Founding Documents" shall mean and refer collectively and severally to the Articles of Incorporation of the Association, this Declaration, Supplementary Declarations, and the Association Bylaws, all as initially drawn up by the Developer and filed and recorded, as the case may be, and all as may be duly amended from time to time.
- 1.24 "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.
- 1.25 "Institutional Lender" shall mean and refer to one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any private or governmental institution which has insured the loan of such a lender, or any combination of any of the foregoing entities.
- 1.26 "Lake Property" shall mean and include the three major lakes, dams, connecting canals and integrally related bodies of water constructed within the Property (inclusive of the lakes and land thereunder at normal pool stage (667 feet elevation) together with a construction and maintenance easement ten feet in lateral width and adjacent thereto).
- 1.27 "Lead Lender" shall mean and refer to the First Mortgagee holding the greatest number of first mortgages on Lots on the Properties.
- 1.28 "Limited Common Area" shall mean the Common Area (including improvements thereto) of the Association restricted in use to the Lot or Lots appurtenant thereto or in close proximity thereto as may be more particularly defined in provisions of the Governing Documents particularly applicable to any Cluster or parcel thereof or future phase of development.
- 1.29 "Living Unit" shall mean and refer to all or any portion of a structure situated upon the Properties and designed and intended for use and occupancy as a residence by a Single Family.
- 1.30 "Lot" shall mean any parcel of real estate, whether residential or otherwise with the exception of Common Area as hereinbefore defined, described by one of the plats of the Properties which has received final plat approval by the City of Columbus Plan Commission or its successor. Lot shall further include Living Units for sale under the provisions of the Indiana Horizontal Property Act, including any amendments thereto, and to each Living Unit within a Cooperative.
- 1.31 "Member" shall mean and refer to every person or entity who holds membership in the Association, which shall consist of all Owners, Occupants, and the Developer, whose rights and responsibilities are further defined herein.



- 1.32 "Membership Agreement" shall mean and refer to an agreement in the form attached as Exhibit C hereto or any other form specified by the Board.
- 1.33 "Modifications Committee" shall mean and refer to the Modifications Committee of the Design Review Committee of Tipton Lakes Community Association, Inc., a subcommittee of the Design Review Committee enabled and established in accordance with the Governing Documents for the purposes set forth therein.
- 1.34 "Multi-Family Rental Structure" shall mean and refer to a structure owned by a single entity with two or more Living Units under one roof on one Lot, except when such a structure is a Cooperative or a Condominium.
- 1.35 "Neighborhood Service District" shall mean and refer to a portion of the Properties which is a coherent and defined geographic area, containing more than one Cluster, within which the Owners and Occupants by virtue of provisions contained in the Governing Documents may share the enjoyment of certain services or rights of use or other rights which are not enjoyed by all Members as may be established in accordance with the Governing Documents.
- 1.36 "Neighborhood Service District Council(s)" shall mean and refer to the Neighborhood Service District Councils, if any, of Tipton Lakes Community Association, Inc., enabled in accordance with the Governing Documents as representative bodies for the Neighborhood Service Districts, if any.
- 1.37 "New Construction Committee" shall mean and refer to the New Construction Committee of the Design Review Committee of Tipton Lakes Community Association, Inc., a subcommittee of the Design Review Committee enabled and established in accordance with the Governing Documents for the purposes set forth therein.
- 1.38 "Notice" shall mean and refer to (1) written Notice delivered personally or mailed to the last known address of the intended recipient, or (2) notice published at least once each week for two consecutive weeks in a newspaper having a general circulation in Bartholomew County, or (3) where provided for in the Governing Documents, notice published in the Tipton Lakes Community Association, Inc. newsletter, if any.
- 1.39 "Occupant" shall mean and refer to an occupant of a Living Unit who is the Owner or contract purchaser or lessee or sublessee, or otherwise a resident of a Living Unit.
- 1.40 "Owner" shall mean and refer to (1) the record holder of the fee simple title to any Lot, whether one or more persons or entities, and (2) shareholders/members of a Cooperative; the term shall not include those having such an interest merely as security for the performance of an obligation.
- 1.41 "Participating Builder" shall mean and refer to a person or entity who or which acquires a portion of the Properties for the purpose of improving such portion in accordance with the Development Plan for resale to future Owners.
- 1.42 "Property" or "properties" shall mean all the lands which are hereby subjected to this Declaration and which are described as Lot 7 of Woodcrest, a Replat of Lots 5, 6, and 7, less that portion thereof described in Exhibit D hereof, in addition to other real estate which is annexed by Supplementary Declaration as herein provided.

1.43 "Quorum of Members" shall mean and refer to the representation by presence or proxy of Members who hold twenty-five percent of the outstanding votes of each voting class, unless otherwise provided in the Founding Documents.

1.44 "Quorum of Owners" shall mean and refer to the representation by presence or proxy of Members who hold twenty-five percent of the outstanding Class A votes and the representation by presence or proxy of the Class C member, unless otherwise provided in the Founding Documents.

1.45 "Registered Notice" shall mean and refer to any Notice which has been signed for by a recipient or has been certified by the U.S. Postal Service or other entity as having been delivered (or the delivery of which has been certified by the Postal Service or other entity to have been attempted) to the address of the intended recipient or Notice sent by first class mail which is not returned. Failure by refusal of an intended recipient to acknowledge such Notice shall nevertheless constitute receipt when such refusal is witnessed by two other people, or by one person if that person is a Postal Service representative.

1.46 "Single Family," when it refers to Living Unit, shall mean and refer to a residential dwelling unit designed for and occupied by one family only; and as further defined by the Zoning Ordinance of the City of Columbus and other applicable laws, rules and regulations, as they may be amended from time to time, to the extent that such laws, rules and regulations aid in the understanding of this definition within the context of this Association.

1.47 "Supplementary Declaration" shall mean and refer to any declaration of covenants and restrictions which may be recorded by the Developer, which extends the provisions of this Declaration to a Cluster or parcel thereof or which contains such supplementary provisions for such Cluster or parcel as are deemed appropriate by the Developer and/or as are herein required.

1.48 "Tenant" shall mean and refer to an individual who actually resides as an Occupant in a Living Unit on the Property under a lease from an Owner.

1.49 "Zoning Ordinance" shall mean the provisions pertaining to Planned Unit Developments and zoning classifications contained in the Zoning Ordinance of the City of Columbus, as amended from time to time, and as such shall be applicable to the Properties.

Article II

Property Subject to This Declaration;  
Additions Thereto

2.01 The "Properties." The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Bartholomew and is more particularly described as Lot 7 of Woodcrest, a Replat of Lots 5, 6, and 7 except that portion thereof described in Exhibit D hereof, and represents the first stage of the planned comprehensive development known as Tipton Lakes, a community within the City of Columbus, Indiana, ("Tipton Lakes.")

2.02 Additions to the Properties. Additional Properties may become subject to this Declaration in the following manner.

(i) Additions by the Developer. After Notice to the Association and to the Federal Mortgage Agencies, the Developer shall have the right to subject to this Declaration by Supplementary Declaration any additional Property which lies within the land area represented by Exhibit A hereto, as it may be amended from time to time, provided that not more than five years have lapsed since the filing of the last Supplementary Declaration which subjected a Cluster or parcel of land to this Declaration, unless extensions of time are granted by the Columbus Plan Commission. Upon request of the Federal Mortgage Agencies or the Association, the Developer shall provide a statement which shall set forth an estimate of the net additional operating cost expected to result from the annexation and an estimate of the expected increase in user load, if any, upon existing developed Association recreational facilities.

(ii) Other Additions. Additional land, other than that described above, may be annexed to the Properties. The additions authorized under this subsection (ii) shall be made by securing the Approval of the Federal Mortgage Agencies, by filing of record one or more Supplementary Declarations of covenants and restrictions with respect to the additional Property, by filing with the Association the preliminary plat for such additions, and by securing the Approval of the Developer and seventy-five percent of the votes of a Quorum of Owners.

Notwithstanding any of the above, Developer may, without the aforementioned Approvals, annex to the Properties any or all of the lots in the real estate described as follows upon execution by the then owners thereof of the Membership Agreement and any other required instruments, provided that the total of such lots so annexed shall not exceed one hundred:

The Clara Thompson Plat as recorded in the Office of the Recorder of Bartholomew County, Indiana in Plat Book "I", page 26 on the 29th day of September, 1976;

Lots numbered 1, 2, 4, 7, 8, 9, 10, 19, 20, 21, 23, 24, 25, 26, 31, 33, 34, 41, 43, 44, 45, 46, 47, 48, 49, 51, 60, and 61 of Harrison Ridge, a subdivision in Section 28, Township 9 North, Range 5 East, as recorded June 7, 1979 in Plat Book "J", page 79 in the office of the Recorder of Bartholomew County, Indiana.

The Bessie E. Boyd property containing 2.35 acres north of Bartholomew County Road 150 South described in a deed recorded in Book 300, Page 533, 534 on November 9, 1979 in the office of the Recorder of Bartholomew County, Indiana;

Harrison Hills First Section recorded in Plat Book "H", page 35, on the 26th day of December, 1973 (which includes Lots 1-21) as recorded in the Office of the Recorder of Bartholomew County, Indiana;

Lexington Green Plat, a subdivision of Sections 29 and 32, Township 9 North, Range 5 East, lying in Harrison Township, Bartholomew County, Indiana as recorded on December 7, 1976, in Plat Book "I", Pages 30-31 in the Office of the Recorder of Bartholomew County, State of Indiana;

Land described in Exceptions (1), (4), and (5) on pages 4 and 5 of Exhibit A hereto, including 1.000 acres, 0.294 acres, and 0.865 acres respectively.

#### 2.03 The Development Plan

(i) Purpose. The Development Plan, generally illustrated in Exhibit B, is the planned design for the staged development of the Properties which may be regularly modified and amended, as provided herein, during the several years required to build Tipton Lakes. Because the Development Plan is an illustrative design, it shall not bind the Developer to make any of the additions to the Properties which are shown on the Development Plan or to improve any portions of such lands in accordance with the Development Plan unless and until a Supplementary Declaration is filed by the Developer subjecting such Property to this Declaration. Thereupon, the Developer shall be obligated to complete the development of the annexed Property in accordance with the Development Plan currently in effect, unless seventy-five percent of the votes of a Quorum of Owners, Bartholomew County, and the Federal Mortgage Agencies consent to a change.

(ii) Amendments. The Developer hereby reserves the right to add land to or amend the Development Plan for lands which have not yet been made subject to this Declaration, in response to changes in technological, economic, environmental, or social conditions related to the development or marketing of the Properties or in response to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by (1) giving Notice of the proposed changes to the Association, (2) securing the Approval of the appropriate local governmental bodies, and (3) securing Approval of the Federal Mortgage Agencies.

2.04 Development in Phases. As each Cluster or parcel within the Development is platted, Developer may record a Supplementary Declaration as hereinbefore described annexing and adding such Cluster or parcel to the Properties and subjecting it to this Declaration. Each Owner, by acceptance of a deed to a Lot or Living Unit, acknowledges, consents and agrees as to each Supplementary Declaration that is recorded.

(i) Non-annexation of Additional Parcel--Removal of Parcel. In the event Developer decides not to annex to the Properties a certain parcel of land located within the Development as permitted herein, Developer may file a Supplementary Declaration which shall permanently remove said parcel of land from any right to be made a part of the Properties; provided, however, any parcel of land within the Development for which a Supplementary Declaration has not been filed within twenty-five years from the date of recordation hereof, shall automatically be removed from the possibility of becoming a part of the Properties, unless by a majority of the votes of the Class A Members, such time may be extended for a fixed period of time.

(ii) Non-annexation of Additional Parcel--Rights of Ingress and Egress. In the event a parcel of land within the Development is not annexed to Tipton Lakes, owners of that parcel not annexed, their guests, invitees, lessees and agents, 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 shall have the right and easement to enter upon the streets and Common Area of the Properties to provide ingress and egress to the said parcel as is necessary in the interests of health, safety, and general welfare of the inhabitants of said parcel.



Article III

Tipton Lakes Community Association, Inc.

3.01 Organization

- (i) General. There has been or will be created under the laws of the State of Indiana, a not-for-profit corporation to be known as the Tipton Lakes Community Association, Inc., which is charged with the duties and vested with the powers described by law and set forth in the Governing Documents, as such may be amended from time to time, provided no other Governing Documents than this Declaration shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- (ii) Institutional Plan. As the operational responsibilities of the Association expand from those related to the Properties as originally constituted to those required by the fully developed Tipton Lakes, this Declaration and the Governing Documents shall guide the controlled and orderly evolution of the Association into a comprehensive community institution with one or more major operating and administrative levels, each with associated membership rights and assessment obligations which may include:
- (a) Cluster level refers to the administrative and operational activities construed to be of material benefit primarily to Members within a single Cluster. A Cluster shall be established by recording one or more Supplementary Declarations which set forth its boundaries, purposes, and membership constituency and the rights and obligations which may be unique to the Members of such Cluster. A Cluster Committee shall be established for each Cluster in accordance with the Bylaws and shall serve to advise the Board of Directors on matters pertaining to such Cluster.
- (b) Neighborhood level refers to the administrative and operational activities construed to be of material benefit primarily to Members of a Neighborhood Service District. A primary purpose of a Neighborhood Service District is to foster a sense of community at a neighborhood level by establishing an institutional identity at a scale less than that represented by the entire community. Neighborhood Service District boundaries, if any, shall be established by the Developer, and one or more Supplementary Declarations shall designate in which Neighborhood Service District each Cluster is to be located. A Neighborhood Service District shall be established for each Neighborhood in accordance with the Bylaws to advise the Board of Directors on matters pertaining to such Neighborhood.
- (c) Community level refers to the administrative and operational activities construed to be of material benefit to the Members at large without respect to the type or location of Lot or Living Unit which they own or in which they reside.

(iii) Subsidiary Corporations. With the Approval of the Developer, as long as Developer's rights exist under this Declaration, the Association shall have the right to form one or more subsidiary corporations, for any purpose or purposes deemed appropriate by a majority vote of the Board of Directors. Without limiting the generality of the foregoing, one or more subsidiary corporations may be formed for the operation and maintenance of any specific area or to perform any function within the Properties; however, such subsidiary corporation shall be subject to this Declaration and may not take any action to lessen or abate the rights of Members.

(iv) Merger. In accordance with its Articles of Incorporation, the property, rights, and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the property, rights and obligations of an association similar in corporate nature and purposes may by operation of law be added to the property, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger, or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Properties except as hereinafter provided. Such a merger or consolidation shall require the assent of the Developer and seventy-five percent of the votes of a Quorum of Owners.

### 3.02 Purposes of the Association.

- (i) On-going Legal Entity. The general purpose of the Association is to create an on-going legal entity responsible for the continuous and adequate maintenance of the Lake Property and appurtenant works thereto, and to provide any other services that the Board of Directors of the Association may deem appropriate for the health, safety and welfare of the Members and the protection and enhancement of property values within the Properties.
- (ii) Operation of Common Areas. Another purpose of the Association is to provide a means whereby the Common Areas and such other areas and recreational facilities within the Development or in proximity thereto as may be conveyed to the Association, established by it, or used by it may be operated, maintained, repaired or replaced.
- (iii) Enforcement of Regulations. An additional purpose of the Association is to provide a means for the promulgation and enforcement of regulations necessary to govern the use and enjoyment of such Common Areas and other areas and recreational facilities within the Properties as may be conveyed to or used by the Association.
- (iv) Regulation of Design and Construction. Another purpose of the Association is to regulate design and construction throughout the Common Area and Properties during the initial development stages and afterwards, in order to promote a high quality, aesthetically pleasing, architecturally sound environment and to generally maintain and enhance property values throughout the Properties.
- (v) Regulation of Offensive Activities. Furthermore, it is the Association's purpose to regulate noxious or offensive activities throughout the Common Area and Properties which may become unreasonable annoyances or nuisances to Members of the Association.

### 3.03 Membership

- (i) General Rights and Duties. Except as otherwise provided in the Governing Documents all Members shall have general rights:
- (a) of access to and use of their property, the property of the Association and the Common Areas of Tipton Lakes Community subject to any rules, regulations, and user charges, which may be imposed by the Governing Documents, or other applicable rules and regulations;
  - (b) of delegation of such rights of access, use and enjoyment to their families, their Tenants, or contract buyers who reside on their property;
  - (c) to inspect any of the minutes, books, records, Governing Documents, or other official Association documents for good purpose and at reasonable time and place as may hereafter be established in the Governing Documents, and other applicable rules and regulations;
  - (d) to run for election to the Board of Directors or other elective positions as provided in the Governing Documents;
  - (e) to participate in hearings held by the Association not otherwise requiring executive sessions;
  - (f) to serve on committees of the Association; and
  - (g) shall have such other rights and duties as shall be contained in the Governing Documents and other applicable rules and regulations as they may be amended from time to time.
- (ii) Class A. Every person, group of persons or entity, other than Developer initially, who is a record Owner of a fee interest in any Lot or Living Unit which is or becomes subject to this Declaration shall be a Member of the Association; except that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit which is subject to assessment. Class A Members shall vote in all elections and votes where otherwise permitted and shall be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot or Living Unit, then the vote for the membership appurtenant to such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Living Unit. In the event agreement is not reached, the vote attributable to such Lot or Living Unit shall not be cast. Any Owner of Lots on which Multi-Family Rental Structures are or will be constructed may cast no more than ten percent of all other Class A votes cast on any issue other than elections. In the case of elections such Owner shall be entitled to cast for each elective office vacancy one vote for each Lot owned plus one vote for each 25 Assessable Units owned.



- (iii) Class B. Each Occupant of a Living Unit which is or becomes subject to this Declaration, whether or not a Class A Member also, shall be a Class B Member of the Association. Class B Members shall be entitled to one vote on the basis of occupancy only in votes concerning amendments of the Articles or Bylaws, in elections of the Board of Directors, and, within each Cluster, election of the Cluster Committee and representatives to the Neighborhood Council, if any. In the event that more than one person or group of persons are the Occupants of a Living Unit, then the vote for the membership appurtenant to occupancy of such Living Unit shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to the occupancy of any Living Unit. In the event that agreement is not reached, the vote attributable to occupancy of such Living Unit shall not be cast.
- (iv) Class C. The Class C Member shall be the Developer and shall be entitled to two votes for each platted and unplatted Lot or Living Unit owned. However, the Class C Member shall not be entitled to cast its votes in elections to the Board of Directors but the Developer, so long as it shall have rights as Developer, shall be entitled to appoint a certain number of Directors as further provided in the Founding Documents. For purposes of determining voting rights and duties, it shall be assumed there will be a total of four thousand five hundred (4,500) Class A votes upon completion of residential development within the Property. The number of Class C votes will equal nine thousand (9,000) less the number of Class A and Class B votes until final platting of lots in the entire property is completed. Should Developer by Supplementary Declaration, as provided herein, permanently remove a portion of land from the Development, the number of Class C votes shall be proportionately reduced. The Class C membership shall cease and be converted to Class A membership on the happening of either of the following two events, whichever occurs earlier:
- (a) On January 1, 2005 A.D., in the event all the Lots and Living Units have not been conveyed to the Owners or the Class C membership has not been surrendered by the then holder(s) thereof for cancellation on the books of the Association, then the Class C membership shall automatically terminate and become a Class A membership with as many votes as there are Platted Lots or Living Units owned by the Developer, or
- (b) After 1985 or when there are at least 500 Class A members, whichever occurs earlier, Developer may, by written instrument, voluntarily surrender its Class C membership in exchange for Class A membership.
- (v) Membership Agreement. Each Member other than the Developer must execute a Membership Agreement and deliver the same to the Association prior to or concurrently with the recording of a deed conveying fee title to a lot or Living Unit to such Member, or the execution or recording of an installment land sales contract conveying equitable title, or the execution or recording of a lease conveying leasehold title to a Lot or Living Unit to such Member. Each Member must notify the immediate transferee of his Lot or Living Unit of such transferee's obligation to so execute and deliver a Membership Agreement, but the failure to so notify a transferee shall not relieve such transferee of his obligations under this Section.

The provisions of this Section shall not restrict or restrain in any way Member's ability to transfer his Lot or Living Unit to a person who refuses to execute a Membership Agreement, nor shall the failure to execute a Membership Agreement prevent any person from being a Member under the terms of the Governing Documents or excuse any Member from the payment of Assessments as provided in the Governing Documents. A Member who has not executed and delivered a Membership Agreement shall automatically for a period of three (3) months or such longer period as the Board may provide, but in no event to exceed one (1) year, forfeit his right to vote as a Member and additionally forfeit his right to the use and enjoyment of the Common Areas and facilities thereon and, subject to the following provisions of this Section, such rights shall not be restored until the expiration of such period, notwithstanding such Member's execution and delivery of a Membership Agreement prior to such expiration. If such Member has not executed and delivered a Membership Agreement on or before the expiration of such period, subject to the following provisions of this Section, his voting privileges and rights in the Common Areas and facilities thereon shall not be restored until such execution and delivery. However, the Board may provide that Members shall be entitled to the full privileges of membership in the Association notwithstanding the failure to execute a Membership Agreement, or may further provide that upon the execution of a Membership Agreement a Member's voting and other privileges shall immediately attach, notwithstanding the automatic forfeitures described above. In the event Members are entitled to a key, membership card or other token evidencing or facilitating the right to use the Common Areas or facilities thereon, the Board may require any Member who has not executed a Membership Agreement to return the same to the Board. Nothing contained in this Section shall interfere with a Member's right to use private streets or other access ways, if any, to gain ingress and egress to his Lot or Living Unit.

### 3.04 Board of Directors

- (i) Number and Composition. The affairs of this Association shall be managed by a Board of three (3) to nine (9) Directors, whose appointment, election, membership, and term shall be provided for in the Bylaws, and who are all Members of the Association, excepting the initial Board of Directors shall consist of three Directors, appointed by the Developer, who need not otherwise qualify as Members of the Association. Furthermore, until the expiration of the Class C Membership, as herein provided, Developer shall be entitled to appoint up to five (5) Directors, and from that time until the time Developer has conveyed its last Lot or Living Unit in the Development and Developer's rights as Developer have expired as herein provided, Developer shall maintain the right to appoint up to three (3) Directors to the Board, who need not otherwise qualify as Members of the Association.

(ii) Powers and Duties.

(a) Powers. The Board of Directors shall have the power to:

- (1) Adopt and publish rules and regulations, which rules and regulations shall be entered into the Book of Resolutions, governing the use of the Lake Property, Common Area and facilities, and the personal conduct of the Members and their guests thereon and throughout the Properties, and to establish financial and non-financial penalties for the infraction thereof;
- (2) After due process is afforded, suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any Member (1) for any period during which any of the Association's charges assessed or imposed under this Declaration owed by the Members remains unpaid; (2) during the period of any continuing violation of the Governing Documents, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (3) for a fixed period of time, as a penalty for violations of the Governing Documents;
- (3) Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board of Directors;
- (4) Appoint committees, elect officers and appoint other agents and employ a manager, independent contractor, or such other employees as it deems necessary, and to prescribe its duties and delegate powers to such committees, officers, employees and other agents;
- (5) Raise funds through assessments, user fees, rents, license fees, and other means as provided in the Governing Documents and other rules and regulations as they may be amended from time to time and to spend such funds for the purpose of carrying out its management powers and duties;
- (6) Hear and finally decide properly petitioned appeals of Covenants Committee decisions and decisions of the Design Review Committee as further provided for in the Governing Documents, and to delegate such power to hear such appeals to a committee if the Board should determine the case load to be too burdensome;

- (7) Grant easements;
- (8) Enforce by legal means the Governing Documents;
- (9) Invest the funds of the Association in accordance with the Governing Documents; and
- (10) Otherwise to exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of this Declaration, the Articles of Incorporation, or the Bylaws.
- (b) Duties. It shall be the duty of the Board of Directors to:
- (1) Enforce by legal means the Governing Documents;
  - (2) Cause to be prepared an annual budget and statement of its financial receipts, expenditures, and condition and to present a statement thereof to the Members, at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by more than fifty percent of the votes of the Class A Members who are entitled to vote;
  - (3) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
  - (4) As more fully provided herein to:
    - a. fix the amount of the Annual Assessments against each Lot or Living Unit at least thirty days in advance of each Annual Assessment period;
    - b. send written Notice of each assessment to every Owner subject thereto at least thirty days in advance of each Annual Assessment period;
    - c. take prompt action to collect by legal means and by any remedy allowed or not prohibited by the Governing Documents any past due assessments or other charges against any Lot or Living Unit;
    - d. purchase, if obtainable, a master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of any improvements that in whole or in part comprise the Common Area, Lake Property, facilities and maintenance of buildings and structures, paid as part of the common expenses. The Board of Directors, on behalf of the Members, shall also, if obtainable, purchase through the Association a master liability policy in an amount required by the Governing Documents or revised from time to time by a decision of the Board of Directors, which policy shall cover the Association, the Directors, officers, and committee members, the managing agent, if any, and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association and its Properties, if any.

Such other policies as may be required or desired in the interest of the Members and the Association may be obtained by the Board of Directors for the Association, including without limitation, workmen's compensation insurance, liability insurance on motor vehicles owned by the Association, and specialized policies covering lands or improvements on which the Association has or shares ownership or other rights, and officers' and directors' liability policies. To the extent obtainable the Board shall purchase insurance policies which meet the applicable requirements of the Federal Mortgage Agencies; and

- e. reconstruct, replace, and repair the Common Areas and facilities thereon as the need may from time to time arise.

(iii) Common or Interested Directors. Each member of the Board of Directors shall exercise his powers and duties in good faith and with a view to the interests of the Association. Any contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association (including the Developer) in which any of the Directors of the Association are directors or officers or are pecuniarily or otherwise interested, is not void or voidable because any such Director is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

- (a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- (b) The fact of the common directorate or interest is disclosed or known to at least a majority of the Members and the Members approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- (c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if such Director were not such Director or officer of such Association or not so interested.

3.05 Tipton Lakes Design Review Committee

(i) Statement of Purposes and Powers. The Board of Directors shall establish a Tipton Lakes Design Review Committee (the "Committee") which shall regulate the external design, appearance, development, construction, use, location and maintenance of the Common Areas, Property and Lake Property and improvements thereon subject to this Declaration in such a manner as to preserve and enhance property values and to maintain a harmonious relationship among structures and the natural vegetation and topography. The Committee may establish such sub committees as it deems necessary and advisable. The number and manner of selection of the members of the Committee will be as provided in the Bylaws.

(a) Generally, no dwelling, building, structure or improvement of any type or kind shall be constructed or placed on any Common Areas, Property, or Lake Property without the prior Approval of the Committee. Such Approval shall be obtained only after written application has been made to the Committee by the appropriate Owner, the Association, or the Developer, as the case may be, requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee. To help defray the costs of processing said application the Committee, through the Board of Directors, may from time to time establish fees for said applications.

(b) The Committee is empowered to research and propose rules and regulations to further its purposes as defined herein which may be adopted by the Board of Directors and published in the Book of Resolutions in accordance with the procedures established in the Governing Documents.

(ii) Separation of Committee Functions. At the time the Board determines that there are a sufficient number of Members of the Association, but in any event no later than the establishment of the first Neighborhood Service District, as provided for in the Governing Documents, the Committee shall be split by the Board into two distinct subcommittees, the New Construction Committee and the Modifications Committee.

(a) The members of the New Construction Committee shall be appointed by the Developer until Developer has sold its last Lot or Living Unit which is to be subject to this Declaration, at which time it is to be dissolved. The New Construction Committee shall have jurisdiction over all new construction on the Common Areas, Property, and Lake Property, and among its duties shall be review of plans for such new construction proposed by individual Owners, Participating Builders, Developer, and the Association.

(b) Each Neighborhood Service District, once established, shall nominate a member of the Modifications Committee, subject to approval by the Board of Directors, except that unless and until there are at least three Neighborhood Service Districts the Board of Directors shall directly nominate the balance of

committee members needed to ensure the committee shall have at least three members. The Modifications Committee shall have the duty to review applications for alterations or additions to improvements on the Property and Lake Property, except for Common Areas and to monitor compliance with the Association's design standards.

- (iii) Alterations or Improvements on the Common Areas. Notwithstanding any of the above, all alterations or improvements (modifications) on the Common Areas shall be reviewed by the Design Review Committee as a whole.
  - (iv) Appeals. Properly petitioned appeals of decisions of the Modifications Committee, and of the Design Review Committee after dissolution of the New Construction Committee as herein provided, may be heard by the Board in accordance with the procedures set forth in the Governing Documents.
  - (v) Liability of Committee. Neither the Committee, nor the Association, nor the Board of Directors, nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, the materials to be used, or compliance with local and state building codes.
- 3.06 Elections Committee.
- (i) Establishment. Prior to annual meetings in which there shall be elections to the Board of Directors or other elective positions, the Board shall appoint an Elections Committee to handle the orderly administration of the election or elections.
  - (ii) Composition. The number and method of selection of the Elections Committee shall be as provided in the Bylaws.
- 3.07 Covenants Committee
- (i) Establishment. The Board of Directors shall establish a Covenants Committee to aid the Board in interpreting, administering, and enforcing the Governing Documents of the Association.
  - (ii) Composition. The number and method of selection of the Covenants Committee shall be as provided in the Bylaws.
  - (iii) Powers and Duties. The Covenants Committee shall have the power and duty to:
    - (a) Hear and decide properly petitioned cases of alleged infractions of the Governing Documents and thereupon, through Board action, to compel action, enjoin further action of parties or impose financial and non-financial penalties upon those parties found in violation of the Governing Documents; and

- (b) Pursuant to Board action, charge reasonable application fees for petitions of cases of alleged infractions of the Governing Documents; and
  - (c) Pursuant to Board action, adopt procedures for the exercise of its duties in accordance with principles of due process, and enter them in the Book of Resolutions; and
  - (d) Aid the Association and its Members in the interpretation of the provisions of the Governing Documents; and
  - (e) Such additional duties, powers and authority as the Board of Directors may from time to time provide by resolution.
- (iv) Limitations. The Covenants Committee may act upon a case or interpretation initiated by a Member or Members only upon written petition by said Member or Members and shall act in accordance with the Bylaws and the Book of Resolutions. The Board of Directors, upon its own motion, may by a two-thirds majority reverse or modify a decision of the Covenants Committee.

3.08 Liability of the Board of Directors, Officers, Members, Members of the Covenants Committee, Design Review Committee or other Committees, and the Association.

- (i) Indemnification Generally: Contracts. The officers, members of the Board of Directors, or members of the Covenants Committee, Design Review Committee or other committees the Board may establish shall not be liable to the Association or any Member for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the officers and Directors from and against all contractual liability to others arising out of contracts made by the officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to applicable laws, the Declaration, Bylaws, or other Governing Documents, except to the extent that such liability is satisfied by directors and officers liability insurance. Officers and members of the Board of Directors shall have no personal liability with respect to any contract approved by the Board of Directors on behalf of the Association. Every agreement made by the officers, the Board of Directors or the managing agent, if any, on behalf of the Association shall, if obtainable, provide that the officers, the members of the Board of Directors or the managing agent, as the case may be, are acting only as agent for the Association and shall have no personal liability thereunder. The Association shall indemnify and hold harmless each of the members of the Covenants Committee, Design Review Committee, and any other committees established by the Board from and against all liability to others arising out of the exercise of their responsibilities unless their action shall have been taken in bad faith or contrary to the provisions of applicable law, the Declaration, the Bylaws, or other Governing Documents.



(ii) Association Liability in Connection with Provision of Services. The Association shall not be liable for any failure of services to be obtained by the Association or paid for as a common expense, or for injury or damage to person or property caused by the elements or by any Member, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the Common Areas or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Areas. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or from any action taken by the Association to comply with the Governing Documents, any law, ordinance or with the order or directive of any municipal or other governmental authority.

CHICAGO TITLE



Article IV

Common Areas

**4.01 Obligations of the Association.** The Association, subject to the rights of the Members set forth in this Declaration and the other Governing Documents, shall be responsible for the management and control, for the exclusive benefit of the Members, of the Common Area conveyed or leased to it, or to which it has rights of use or maintenance rights or obligations, and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management and the standards established in the Governing Documents.

**4.02 Easement of Enjoyment of Common Areas.**

- (i) Common Area. Subject to the provisions of the Governing Documents, to general property rights, and to applicable laws, every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, and every Member shall have a right of enjoyment to the Common Area.
- (ii) Cluster Common Area. Members within a Cluster may be granted priority or exclusivity with respect to use and enjoyment of Cluster Common Areas, if any, by the respective Supplementary Declarations.

**4.03 Extent of Easements and Rights.** The easements and rights of enjoyment created hereby shall be subject to the following:

- (i) Regulation. The right of the Association to regulate the use of the Common Area for the benefit of Members.
- (ii) User Fees. The right of the Association to charge reasonable user fees for the use of Common Area, Lake Property, and the common facilities and improvements thereon.
- (iii) Suspension of Rights for Nonpayment. The right of the Association to temporarily suspend rights of use for non-payment of assessments or other violations of the Governing Documents.
- (iv) Association's Right to Grant Easements for Use. The right of the Association to grant easements for use of the Common Area.
- (v) Conveyance of Common Area. The right of the Association to mortgage, encumber, convey, dedicate or transfer all or any part of the Common Area, subject to the prior approval of the Developer, so long as Developer's rights as Developer continue, to assent of seventy-five percent of the votes of a Quorum of Owners, to the prior approval of all applicable governmental bodies, and to the rights of First Mortgagees, as further provided in the Governing Documents.

**4.04 Delegation of Use.** Any Member entitled to the use and enjoyment of the Common Area, whose right is not at the time otherwise suspended in accordance with the Governing Documents, may delegate such right of use to members of family and guests in their presence, subject to the Governing Documents and such other applicable rules and regulations as may be established from time to time by the Association and included within the Book of Resolutions.

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2.05 Title to Common Area

- (i) Legal Title. The Developer may retain the legal title to areas designated as open space on the Development Plan, or portions thereof. Any real property denominated as Common Areas, Cluster Common Areas, or Limited Common Areas in a Supplementary Declaration which are to be conveyed to the Association shall be conveyed to the Association on or before the first conveyance of a Lot or Living Unit located within the real property or phase thereof which is annexed to the coverage hereof by such Supplementary Declaration to an Owner who is neither a Participating Builder nor an Owner of a Multi-Family Rental Structure. The Developer hereby covenants that such open space or portions thereof that it may convey or cause to be conveyed to the Association as Common Area or to a governmental agency as parkland, open space, school ground or similar uses shall be free and clear of liens and financial encumbrances at the time of conveyance. Assessments and user fees may be used to defray operating and maintenance costs of improved open space to which the Association and its Members have rights of use and enjoyment or maintenance or other duties.

- (ii) Conveyance to Association. When Common Areas are to be conveyed to the Association, the following requirements must be met:

- (a) The Developer is responsible for building or having built all Common Areas and facilities thereon to approved City plans and for assuring that improvements are substantially complete and approved by the City of Columbus and a certified engineer or architect, as appropriate, before the Association is to assume operational and maintenance responsibilities therefor. Developer may assign this obligation to Participating Builders within specific Clusters.
- (b) The Developer shall endeavor to give written Notice of intent to convey land and improvements to the Association not less than thirty (30) days prior to such conveyance.
- (c) In cases where land has already been conveyed, but improvements thereon have not been completed, the Developer shall endeavor to give to the Association written Notice of completion not less than thirty (30) days prior to the date on which the Association is to assume full operational and maintenance responsibility.
- (d) Upon receipt of such Notice and no less than two (2) weeks prior to conveyance or completion, the Developer shall arrange with the Board for a joint inspection tour of the subject Common Areas and improvements. So long as the requirements of subparagraph (a) are met the Board shall have met its responsibility.

(e) On or before the date of assumption of operational and maintenance responsibilities by the Association, the Developer shall provide to the Association the following, as appropriate:

- (1) Deed to Common Areas
- (2) Construction drawings for major improvements
- (3) Site plans and specifications for major improvements
- (4) Record plat

(f) The assumption by the Association of the possession, control, and operational and maintenance responsibilities of the Common Area in question shall be deemed acceptance of said Common Area by the Association pursuant to full and satisfactory performance by Developer of the requirements herein set forth unless the Association and the Developer agree in writing to the contrary.

(iii) Non-completion of Project. Should the Developer not complete the project substantially to the full extent of the Development Plan as it may be amended from time to time, then it further covenants that it shall convey to the Association free and clear of financial encumbrances sufficient Common Areas such that the ratio of Common Area acreage to the total acreage owned by all Owners other than the Developer shall be the same ratio as required by the City of Columbus. For these purposes, the Developer shall be said to have not completed the project when five (5) years have lapsed since the recording of a Supplementary Declaration establishing a parcel or Cluster for construction of Living Units.

(iv) Right of First Refusal. In the event any open space in the Properties which is not owned by the Association is foreclosed upon, the Association shall have a right of first refusal to purchase the open space for an amount not more than the outstanding obligation and shall have a period of at least three months from date of receipt of notice of foreclosure in which to exercise its right of first refusal. If the open space is secured through the obligation on a larger tract of land, the holder shall separate the open space obligation based upon the ratio of a fair appraisal of the open space to fair appraisal of the larger tract. The open space appraisal shall take into consideration its limited developability for commercial and residential use.

#### 4.06 Use of Lake Property and Common-Areas

(i) Regulations. All use of the Lake Property and Common Areas is pursuant to a revokable license that shall be exercised in accordance with the limitations made by the Association. The Association shall adopt and may amend if circumstances so dictate, uniform regulations applicable to all Owners or Occupants of the Property concerning use

of the Lake Property and Common Areas as the Association, in its sole discretion deems appropriate. A copy of the regulations shall be obtained from the Association prior to any use of the Lake Property and Common Areas. Lake Property and Common Area use shall be restricted to Members otherwise entitled to use thereof, their family members and guests when accompanied by them.

- (ii) Violations. The Association shall have the power to impose a financial or non-financial penalty such as temporary revocation of the right to use and enjoy Common Areas and facilities, by procedures which assure due process, for violation of any regulations concerning use of Property, Lake Property, or Common Areas by a Member or its respective family members or guests, which penalty shall bear a reasonable relationship to the severity of the violation. The Owner of the Lot or Living Unit subject to the penalty shall be obligated to pay any expense, interest, and costs, including attorney's fees, if any, incurred by the Association in enforcing said penalty. Such costs shall constitute a lien upon the Lot or Living Unit. Every Owner of such Lot or Living Unit is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot or Living Unit at the time of acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a Lot or Living Unit in the Properties is hereby notified that by the act of acquiring, making such purchase, or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all costs that shall have been incurred pursuant to this paragraph of this Declaration.

Article V

Assessments

5.01 Covenant for Maintenance Assessments.

(i) Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Living Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual General, Cluster, and Neighborhood Service District Assessments or charges, hereinafter Annual Assessments, and (2) Special Assessments for capital improvements and emergencies, such assessments to be established and collected as hereinafter provided.

(a) The General Assessment shall be established as herein provided and shall be used exclusively to promote the health, safety, and welfare of all the Members and in particular to improve, maintain and operate the Common Areas and facilities, including the funding of appropriate reserves for future repair and replacement of Common Areas and facilities, and to provide other services to the Members as provided for in the Governing Documents.

(b) The Association may establish as hereinafter provided Neighborhood Service District Assessments to be imposed upon those Lots and Living Units within the respective Neighborhood Service Districts to provide for differentials in services or facilities, if any, among the various Neighborhood Service Districts as may be provided for in the Governing Documents.

(c) The Association may, through Supplementary Declarations, establish Cluster Assessments to be imposed only upon Lots or Living Units located within the respective Clusters which may be used to construct, maintain, repair or replace Cluster Common Areas and facilities and to provide for differentials in services benefits and facilities among the various Clusters, if any, as provided for in the Supplementary Declarations. Furthermore, Cluster Assessments may include premiums designed to reflect differentials in benefits derived from close proximity to any of the lakes, canals, or other waterways for those Clusters so situated.

(d) Method of Assessment. By a vote of two-thirds of the Directors, the Board shall fix for each assessment year the Annual General, Neighborhood Service District, and Cluster Assessments in amounts not in excess of the current maximum for each assessment as initially established and adjusted annually as provided for herein provided, however, that the Annual Assessments shall be sufficient to meet the obligations imposed by this Declaration and the Supplementary Declarations. In the event the Board fails to fix an assessment for any fiscal year, then such assessment established for the prior year shall automatically be continued as adjusted for inflation as hereinafter provided until such time as the Board acts.

(ii) Assessment Levy. Assessments will be levied on platted Lots and Living Units within the Property except with respect to the Developer Assessment as hereinafter provided. All sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The Annual and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot or Living Unit and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Living Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title and such delinquent accounts shall remain a lien upon the Lot or Living Unit, subject to foreclosure.

(iii) Replacement and Repair Reserves Fund. The proper financial management of the Association shall include the establishment and maintenance of reserves for major repair and replacement of improvements on the Common Area and Lake Property except to the extent responsibility for such repair or replacement is assigned to a Member or another party. Reserve requirements shall be based on the projected estimated remaining useful life and the estimated replacement cost of the component for which the Association is establishing the reserve. All reserve funds shall be maintained in interest-bearing accounts or instruments approved by the Board. Those reserves related to the replacement and repair of those elements of the Lake Property integral to its ecosystems and structural integrity of the lakes, dams, canals, levees, dikes, flood walls, and appurtenant works, if any, shall be fully funded and segregated from all other accounts and instruments. In addition to those reserves relative to the Lake Property, the Association shall also maintain reserves for the major repair and replacement of structural and mechanical components of the Common Area improvements. Funding shall be based upon projected total cash required from time to time to cover the costs of such repairs or replacements as such becomes necessary. The Board shall separately account for the replacement and repair reserve funds for each Cluster.

5.02 Date of Commencement of Annual Assessments; Due Dates. The Annual Assessments provided for herein shall commence as to all Lots and Living Units on the first day of the month following date of transfer of title unless otherwise specifically provided for in the Governing Documents provided, however, that in the case of Participating Builders, Annual Assessments shall commence as to all Lots or Living Units within a portion of Property covered by the applicable Supplementary Declaration, or a platted phase thereof no sooner than the sale by the Participating Builder to another Owner of the first Lot or Living Unit within said Property covered by the applicable Supplementary Declaration, or platted phase thereof. And provided further that, in the case of a Multi-Family Rental Structure, the Annual Assessments shall commence as to all Living Units within a Multi-Family Rental Structure, upon the leasing of the first Living Unit therein. The Board of Directors shall fix the amount of the Annual Assessments against each Lot or Living Unit at least thirty days in advance of each Annual Assessment period. Written Notice of the Annual Assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. Annual Assessments are due and payable on an annual basis in one payment unless otherwise agreed by the Board. A default in payment of any installment shall result in the entire balance of the Annual Assessment from the time of default to become immediately due and payable.

5.03 Uniform Rates of Assessment. Both Annual and Special Assessments shall be fixed at a uniform rate for all Lots and Living Units subject to the Declaration or within specific Neighborhood Service Districts or Clusters as the case may be, except as otherwise specifically provided in the Governing Documents.

5.04 Maximum Annual Assessments.

- (i) Maximum Annual General Assessment. The initial maximum allowable Annual General Assessment is hereby established in the amount of \$240.00 per assessment year for all Lots and Living Units in the Properties.
- (ii) Maximum Annual Neighborhood Service District Assessment. The initial maximum allowable Annual Neighborhood Service District Assessment is hereby established in the amount of \$50.00 per assessment year for all Lots and Living Units within any particular Neighborhood Service District.
- (iii) Maximum Annual Cluster Assessments. The initial maximum allowable Annual Cluster Assessments shall be as established in the respective Supplementary Declarations for all Lots and Living Units subject thereto.
- (iv) Adjustments. All maximum allowable Annual Assessments, established as herein provided, shall be adjusted as hereinafter set forth.
  - (a) Automatic Annual Adjustment. Because of uncertainties in usual and ordinary Common Area and Lake Property expenses due to the Indiana real property reassessment, the rising cost of energy, inflation and other unforeseeable operating expenses, the Board of Directors of the Association without a vote of the membership shall annually determine the increase in the maximum allowable Annual Assessments, as established herein, by applying to them the increase in the Consumer Price Index during the previous twelve months. Such increases shall be documented by normal accounting procedures and distributed to the membership. More specifically, the maximum allowable Annual Assessments per Lot or Living Unit shall be increased each year on the basis of "The Revised Consumer Price Index - Cities (1957-1959-100)" or any similar index substituted therefor (hereinafter called "CPI"), published by the Bureau of Labor Statistics of the United States Department of Labor. The CPI number indicated in the column for the City of Indianapolis, entitled "All Items," for the month of November of the year preceding the year in which the conveyance of the first Lot or Living Unit to an Owner occurs, shall be the "Base CPI Number"; and the corresponding CPI number for the month of November of the year in which the conveyance of the first Lot or Living Unit to an Owner occurs shall be the "Current CPI Number." The Current CPI Number shall be divided by the Base CPI Number. From the quotient thereof, there shall be subtracted an Integer of One (1); and the resulting positive number shall be deemed to be the maximum percentage that the maximum allowable Annual Assessment per lot or Living Unit may be increased above the maximum allowable Annual Assessment for the previous year. Each succeeding year thereafter, the maximum percentage increase of the maximum allowable Annual Assessment over the previous year shall be determined in a like manner; provided, however, the Current CPI Number for each previous year shall be deemed the



Base CPI Number for each succeeding year in the computation of the maximum percentage increase. The CPI adjustments shall be cumulative.

- (b) Adjustments in Excess of Automatic Adjustment. From and after January 1 of the year immediately following the conveyance of the first lot or Living Unit in the Properties to an Owner, the maximum allowable Annual Assessment per lot or Living Unit for any particular assessment year may be increased above the maximum determined in accordance with Section 5.04 (iv) above with consent of the Developer so long as Developer's rights exist under this Declaration, and two-thirds of the votes of a Quorum of Owners affected in the Community, Neighborhood Service District or Cluster, as the case may be, who are voting in person or by proxy, at a meeting duly called for this purpose.

#### 5.05 Special Assessments

- (i) Emergency Capital Improvements and Operating Emergencies. In addition to the Annual Assessments authorized above, the Association may levy, a Special Assessment applicable to a specific emergency occurring in any assessment year, payable as the Board shall determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon Common Area which is not provided for in the replacement reserve fund, including fixtures and personal property related thereto, and for meeting other operating emergencies not included within the budget, provided that should the additional assessments for such items exceed a total of Ten Dollars (\$10.00) per affected lot or Living Unit in any assessment year (adjusted as in Section 5.04 (iv) (a) above), then any such assessment shall have the assent of the Developer and a majority of the votes of a Quorum of affected Owners. In appropriate cases this provision may specifically apply to certain affected Neighborhood Service Districts and the Owners thereof or Clusters and the Owners thereof.
- (ii) Emergencies Concerning Lake Property, Lakes, Dams and Canals. In the event of emergencies with respect to Lake Property, lakes, dams, canals, dikes, levees, and appurtenant works thereto, which shall include actions required by the Indiana Department of Natural Resources as provided in Article VII, Sections 7.01 (ii) and 7.02 (i) herein, the Association may, on Board action alone, levy uniform Special Assessments for the purpose of defraying the cost of any construction, reconstruction, repair or replacement required by the emergency which is not provided for in the applicable replacement reserve fund.
- (iii) Desired Capital Improvements. The Association may furthermore levy, a Special Assessment applicable to the desired capital improvement in question payable as the Board shall determine, for the purpose of defraying, in whole or in part, the cost of purchasing additional Common Areas and the cost of construction of or purchasing additional desired common facilities provided that such assessment shall have the assent of the Developer and two-thirds of the votes of a Quorum of affected Owners and that such action shall otherwise be in accordance with the Governing Documents. In appropriate cases this provision may specifically apply to certain affected Neighborhood Service Districts and the Owners thereof or Clusters and the Owners thereof.

(iv) Restoration Assessment. The Association by Board action alone after due process is afforded, may levy a Restoration Assessment upon any Lot or Living Unit whose Owner fails to maintain such Lot or Living Unit as required by the Governing Documents, or who fails to provide such maintenance funds as may be required by the Supplementary Declaration for such Lot or Living Unit. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or deficiency in required funds and the cost of collection thereof.

5.06 Notice and Quorum. For any action authorized under paragraphs 5.04 and 5.05 written Notice of any meeting called for the purpose of taking any action hereunder where such meeting is required by the Governing Documents, shall be sent to all affected Members not less than fifteen days nor more than thirty days in advance of the meeting. At the first such meeting called, the presence of a Quorum of Owners affected by the action shall be required. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

5.07 Developer Assessment. The Developer shall pay an annual Developer Assessment on the aggregate of all unimproved property shown on the Development Plan which he owns or has contracted to purchase. The annual Developer Assessment shall be an amount equal to 100 times the Annual General Assessment rate for that year, less ten percent of the previous year's accrued General Assessment income; provided that the annual Developer Assessment shall not be less than zero. The Developer Assessment shall commence upon conveyance of the first Lot in the Properties to an Owner who is not the Developer.

5.08 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty days after the due date shall become delinquent. If an assessment is not paid within fifteen days after the due date, the Association may, in addition to other remedies provided for in the Governing Documents, charge a uniform flat fee late charge to be established by the Board from time to time. The Association may bring an action at law against the Owner personally obligated to pay same, or foreclose the lien against the Lot or Living Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Areas, or Lake Property, or by abandonment of his Lot or Living Unit. The personal obligation for delinquent assessments shall pass to his successors in title.

5.09 Common Areas and Public Lands. Common Areas and publicly owned lands shall be exempt from the assessments provided for in the Governing Documents.

5.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit 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 or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Article VI

Use of Property

6.01 Protective Covenants

- (i) Nuisances. No noxious or offensive activities shall be carried out on or in any Lot, Living Unit, Common Area, or the Property in general, nor shall anything be done there that shall become or be an unreasonable annoyance or nuisance to any Owner in the Properties.
- (ii) Restriction on Further Subdivision. No platted Lot which becomes subject to this Declaration may be further subdivided unless otherwise approved by the Developer and the Design Review Committee. This covenant shall generally not apply in cases of deeds of correction, settlement of boundary line disputes, nor changing of boundaries within Condominiums.
- (iii) Garage Conversions. The conversion of garages and other parking facilities to other residential or commercial or other uses is expressly prohibited unless Approved by the Design Review Committee.
- (iv) Rules. The Association may establish rules and regulations and place them in the Book of Resolutions and elsewhere in the Governing Documents which shall generally regulate design, construction, building modifications, maintenance, noxious activities and use of and on Lots, Living Units, Common Areas, and the Property in general.

6.02 Maintenance of Property

- (i) Maintenance of Lots and Improvements. To the extent the Association is not otherwise responsible, the Owner of any Lot in the Properties 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) Maintain the Lot in such a manner as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
  - (b) Remove all debris or rubbish.
  - (c) Prevent the existence of any condition that reasonably tends to detract from or diminish the aesthetic appearance of the Properties.
  - (d) Cut down and remove dead trees.
  - (e) Where applicable, prevent debris and foreign material from entering any lakes, or when any such debris has entered any lakes from the Lot, remove same immediately.
  - (f) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid either becoming unsightly or hazardous.

- (g) In the case of a Lot unimproved with a Living Unit or other structure, landscape such Lot on or before a date six (6) months from the original conveyance of such Lot by Developer or Developer's transferee, in accordance with the standards and procedures of the Design Review Committee, unless otherwise agreed by the Design Review Committee and thereafter maintain said Lot in a clean, safe and attractive condition according to any rules promulgated by the Board.
- (h) Store and dispose of all trash, rubbish, and garbage in accordance with a trash management program approved by the Design Review Committee, which program shall be designed to minimize any unsightly appearance or offensive odors caused by such materials, and which program shall be regulated by the Governing Documents including any rules pertaining thereto promulgated by the Board. Unless otherwise approved by the Design Review Committee, all trash and garbage receptacles of any kind shall be hidden from public view at all times.
- (ii) Association's Right to Perform Certain Maintenance. Each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, including but not limited to, the items herein contained. If the Covenants Committee determines after affording due process that an Owner has failed to perform the duties imposed by the preceding sentence, the Association, after approval by a two-thirds decision of the Board of Directors and after fifteen days' written Notice to said Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof, imposed as a Restoration Assessment, shall be a binding, personal obligation of such Owner as well as a lien upon the Lot in question. Powers of enforcement of such lien shall be under the same terms and conditions of enforcement of liens generally as set forth in the Governing Documents.
- 6.03 Sale, Resale, or Lease of Lots and Living Units.
- (i) Reference to Declaration. Every sale, resale, or lease of any Lot or Living Unit subject to this Declaration shall involve documentation transferring title or leasing the premises, as the case may be, which specifically refers to and binds the parties thereto to this Declaration and the other Governing Documents.
- (ii) Notification. Every Owner of a Lot or Living Unit must notify the Board of Directors of any sale, lease or other conveyance of the respective Lot or Living Unit.
- (iii) Leases. The Board of Directors may require that all residential rental or lease arrangements within the Properties be pursuant to a written lease which may be subject to review and kept on file by the Board.

Any lease shall provide that the terms of such lease shall be subject in all respects to the provisions of the Governing Documents. Said lease shall further provide that any failure by the lessee thereunder to comply with the terms of the Governing Documents shall be a default under the lease. Any Owner who shall lease his Lot or Living Unit shall be responsible for assuring compliance by such Owner's lessee with the Governing Documents; provided, however, the obligation of the foregoing sentence shall not apply to Developer in the event Developer leases a Lot or Living Unit for a term of twenty (20) years or more and such lease is recorded. No Lot or Living Unit shall be leased or rented for transient or hotel purposes.

(iv) Contract Sales. The Board of Directors may require that all contracts for the sale of Lots or Living Units on the Properties be kept on file by the Board and be subject to review by the Board to determine whether such contracts are in conformance with the Governing Documents.

(v) Estoppel Certificate. In the case of a sale or resale, within ten (10) days after notification the Board shall prepare an estoppel certificate which shall set forth any assessments and charges due upon such Lot at the time of conveyance and certify as to whether or not there are violations of the Governing Documents remaining on the Lot as of the date of preparation of such certificate. This certificate shall be delivered to the place designated by the seller, and outstanding assessments, if any, and a reasonable charge to cover the cost of providing such certificate shall be deducted from the Seller's account at the closing and transmitted directly to the Association.

GO TITLE

Article VII

Lakes, Dams and Canals

Notwithstanding any other provisions of the Governing Documents;

7.01 Maintenance.

(i) Inspection. Pursuant to I.C. 13-2-20-4, the Indiana Department of Natural Resources, hereinafter the Department, is directed to make an inspection of all dams, levees, dikes and flood walls and appurtenant works not less often than once every two (2) years and at such more frequent intervals as the exigencies of the case may require, or upon request of any affected person or agency, and to place in the files of the Department a report of such inspection. A copy of said report shall also be placed in the files of the Association.

(ii) Repair. If the Department; or its successors or assigns, finds that any such structure (or appurtenances thereto) is not sufficiently strong, or is not maintained in a good and sufficient state of repair and/or operating condition, or is unsafe and dangerous to life and property, the Department shall issue an order directing the owner or owners of such structures and appurtenances to make or cause to be made, at his or their expense, such maintenance, alteration, repair, reconstruction, change in construction or location, or removal as may be deemed reasonable and necessary by the Department within a time to be limited by the order, and it shall thereupon become the duty of the owner or owners to comply with the provisions of such order; Provided: That the minimum time for compliance with the terms of such order shall not be less than ninety (90) days from the date of issuance thereof, except in the case of extreme danger to the safety of life and property, as provided in I.C. 13-2-20-5.

(iii) Infraction. Failure to comply with the foregoing procedures constitutes a Class B infraction, and every day of failure constitutes a separate offense pursuant to I.C. 13-2-20-6.

7.02 Budgeting/Deficits.

(i) Budgeting. Budgeting for the replacement and repair reserves fund for lakes, levees, dikes and floodwalls and appurtenant works shall be separately established in the annual budgeting procedures. At such time as the replacement reserve fund becomes adequate to fund any reasonably foreseeable capital improvement cost, upon certification of a registered professional engineer and a certified public accountant, assessments may be adjusted accordingly. Provided, however, if conditions resulting from inspections by the Department reveal that replacement reserves are inadequate, then assessments shall be readjusted. To this end, the Department shall have made available to it any statement of financial condition of the appropriate funds within fifteen (15) days of written request therefor.

(ii) Deficits. To the extent that any annual deficit occurs in the operation, maintenance, and/or replacement reserve fund for lakes, levees, dikes, flood walls, and appurtenant works after application of user fees and assessments as provided herein, Developer shall fund such deficits until the sooner of such time as Developer's control of the Board of Directors shall expire or Developer's rights as Developer shall expire, or the Class C Membership shall expire as provided herein. Emergencies, however, shall be funded by Special Assessments as provided in Section 5.05 (ii) above.

7.03 Termination of Maintenance Covenants; Dissolution of Association. The covenants of usual and ordinary maintenance and the replacement reserve fund for lakes, dams, levees, dikes and floodwalls and appurtenant works, shall not be terminated nor the Association dissolved so long as lakes or other watercourses remain upon the Property under the jurisdiction of the Department or its successors.

7.04 Conservancy District. Present freeholders or any person or legal entity who, in the future, becomes a title Owner within the Property which is the subject of this Declaration, by taking deed of the title thereto, consents to the establishment of the Property into a Conservancy District under the provisions of the Indiana Conservancy District Act (I.C. 19-3-2-1 et seq.) upon application to the Court having jurisdiction thereof by affected Owners as prescribed by statute, or the Department, in the event the Association becomes inoperative, fails to collect sufficient funds by assessments or otherwise jeopardizes assurance of continuous and adequate maintenance of any lakes, dams, levees, dikes and floodwalls and appurtenant works upon the Properties.

7.05 Amendments. Any amendment materially affecting a provision of this Declaration or other Governing Document that pertains to the installation, maintenance and replacement reserve fund for lakes, dams, levees, dikes and floodwalls and appurtenant works shall also require the Approval of the Department, its successors or assigns.

Article VIII

First Mortgagees' Rights

8.01 Right to Notice of Mortgage of a Lot or Living Unit. Upon written request to the Association by a First Mortgagee of a Lot or Living Unit, said First Mortgagee shall be entitled to receive written Notice of any default by the Owner of the Lot or Living Unit of any obligation of said Owner under the Founding Documents of the Association not cured within sixty days of its occurrence. The request for written Notice can be made by any First Mortgagee of a Lot or Living Unit, its successor or assign. The written Notice shall be sent no later than the sixty-fifth day after the occurrence of the uncured default.

8.02 First Mortgagee Veto Powers. If the Lead Lender and at least fifty percent of the remaining registered First Mortgagees (based upon one vote for each mortgage owned) shall deny their Approval after reasonable Notice, the Association shall not:

- (i) Abandonment, Partition, Subdivision, Encumbrance, Sale or Transfer of Properties. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Properties, Common Area, Lake Property or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots or Living Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties by the Association shall not be deemed a transfer within the meaning of this clause.
- (ii) Change of Method of Determining Obligations. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or Living Unit or Owner.
- (iii) Change, Waiver, or Abandonment of Regulations or Enforcement Thereof. By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Lots or Living Units, the exterior maintenance of Lots or Living Units, the maintenance of party walls or common fences, driveways or the upkeep of lawns and plantings in the Properties.
- (iv) Failure to Maintain Insurance. Fail to maintain adequate and appropriate liability insurance or to maintain fire and extended coverage insurance on insurable Common Area and Lake Property on a current replacement cost basis in an amount not less than one hundred percent of the insurable value, if reasonably obtainable.
- (v) Use of Insurance Proceeds for Other than Repair or Replacement of Improvements. Use hazard insurance proceeds for losses to Common Area or Lake Property for other than the repair, replacement or reconstruction of such Common Area or Lake Property or improvements thereon.
- (vi) Abandon or Terminate the Association. Abandon or terminate the Association.



(vii) Amendment of Declaration, Supplementary Declaration, Articles of Incorporation, or Bylaws. Materially amend the Declaration, any Supplementary Declaration, the Articles of Incorporation, or the Bylaws.

(viii) Modify or Cancel Fidelity Insurance. Modify or cancel fidelity insurance.

8.03 Notice to First Mortgagees. First Mortgagees shall be entitled to Notice by the Association in the case of:

(i) Meetings of Members. Meetings of Members,

(ii) Destruction or Substantial Damage to Lot. Destruction of or substantial damage to a Lot, Living Unit, or Common Area or facilities, and

(iii) Condemnation or Eminent Domain. Any condemnation or eminent domain proceedings.

8.04 Right to Examine Books and Records. First Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

8.05 Payment of Defaults. First Mortgagees of Lots or Living Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Lake Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area or Lake Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all First Mortgagees duly executed by the Association and an original or certified copy of such agreement shall be possessed by the Seller, as defined by the "Seller's Guide" of the Federal Home Loan Mortgage Corp.

8.06 Insurance Proceeds and Condemnation Awards. No provision of the Governing Documents shall give a Lot or Living Unit Owner or any other party priority over any rights of First Mortgagees of Lots or Living Units within the Properties pursuant to their mortgages in the case of a distribution to Lot or Living Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or Lake Property.

Article IX

Developer's Reservations

9.01 Developer's Assent Required for Changes in Governing Documents. Until Developer's rights as Developer have expired as herein provided, its rights and interests shall not be prejudiced by any of the following actions unless it shall, in writing, join in such actions. There shall be no amendments to the Governing Documents which:

- (i) Discrimination against Rights as Developer. Discriminate or tend to discriminate against Developer's rights as Developer.
- (ii) Change of Definitions. Change Article I, "Definitions," in a manner which alters its rights or status.
- (iii) Annexation of Additional Properties. Alter its rights as regards annexation of additional Properties.
- (iv) Alteration of Character and Rights of Membership or Rights of the Developer. Alter the character and rights of membership or the rights of the Developer.
- (v) Alteration of Previously Recorded or Written Agreements with regard to Easements and Rights-of-way. Alter previously recorded or written agreements with public or quasi-public agencies as regards easements and rights-of-way.
- (vi) Denial of Right to Convey Common Areas to Association. Deny the right to convey Common Areas to the Association so long as such Common Areas lie within the land area represented in the Development Plan as it may be amended from time to time.
- (vii) Alteration of its Rights Relating to Design Controls. Alter its rights relating to design controls nor alter the design standards in effect for the Properties at the termination of the Class C membership.
- (viii) Alteration of the Basis for Assessments. Alter the basis for assessments.
- (ix) Alteration of the Provisions of Article VI. Alter the provisions of Article VI herein.
- (x) Alteration of the Number or Selection of Directors. Alter the number or selection of Directors as established in the Bylaws.
- (xi) Alteration of Developer's Rights as They Appear in Governing Documents. Alter the Developer's rights as they appear in any of the Governing Documents.

9.02 Limitations. As long as the Developer has rights as Developer as defined herein, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intent of the Development Plan. Nothing in this Section shall be construed to limit the rights of Members to act as individuals or in affiliation with other Members or groups.

9.03 Construction of Common Areas and Facilities Thereon. Nothing in this Declaration shall limit the right of Developer and its successors in interest to alter or have altered Common Areas and facilities thereon or the Lots, or to construct or have constructed such additional improvements as Developer and its successors in interest deem advisable prior to completion and sale of the entire parcel or Cluster in which such Lots or Common Areas and facilities thereon are located.



CHICAGO TITLE

Article X

Easements

10.01. Utility Easements. There is hereby created an easement upon, across, over, through and under the Properties for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, television, or communication lines and systems. By virtue of this easement it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on said Property, to excavate for such purposes and to affix and maintain wires, circuits and conduits on, in, and under the roofs and exterior walls of Living Units provided that Developer or such company restores disturbed areas to the condition in which they were found.

Notwithstanding anything to the contrary contained in this paragraph:

(i) Approval of Installation or Relocation. No sewers, electrical lines, water lines or other utility service lines or facilities for such utilities may be installed or relocated on a newly annexed parcel except as approved by the Developer, prior to the conveyance of the first Lot on said parcel to an Owner, or by the Association thereafter, and

(ii) Living Unit Utility Relocation. Section 10.01(i) shall not be construed to apply to the relocation, installation, or removal of utility lines within a Living Unit which serve only that unit.

This easement shall in no way affect any other recorded easements on the Properties.

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

10.03 Construction Easements and Rights.

(i) Easements. Notwithstanding any provision of this Declaration or of any Supplementary Declaration, so long as the Developer is engaged in developing or improving any portion of the Properties, Developer or such persons acting under authorization of Developer shall have an easement of ingress, egress and use over any lands including all Common Areas and all Lake Property not conveyed to an Owner for occupancy for:

- (a) Movement and storage of building materials and equipment,
- (b) Erection and maintenance of directional and promotional signs,

- (c) Conduct of sales and other promotional activities, including, but not limited to, maintenance of model Living Units,
- (d) Completion of improvements for which provision is made in this Declaration, and
- (e) Repairs required by this Declaration or contracts of sale made with Lot purchasers.

(ii) Rules. Such easements shall be subject to such rules as may be established by the Developer to maintain reasonable standards of safety, cleanliness and general appearance of the Properties.

**10.04 Easement to Inspect and Correct Violations.** There is hereby created an easement in favor of the Association for ingress and egress on any Lot during reasonable hours (a) to inspect such property for alleged violations of the Governing Documents, and/or compliance with architectural standards and/or approved plans for alterations and improvements, provided the Owner of such Lot is given written Notice of the purpose and time of inspection at least three (3) days in advance thereof, and (b) to perform such correction of violations or such maintenance as is required by the Declaration or Supplementary Declaration on such Lot.

**10.05 Easement for Governmental Personnel.** A right of entry on any street, Lot, or Common Area is hereby granted to public and quasi-public vehicles and personnel as needed to carry out their duties including enforcement of cleared emergency access zones. This easement includes, but is not limited to, police, fire and other emergency services, trash and garbage collection, Post Office services, local animal control, and privately owned delivery or other services.

**10.06 Oil and Mineral Rights.** There is hereby reserved to Developer, together with the right to grant and transfer the same, all oil, oil rights, minerals, mineral rights, natural gas rights, and other hydrocarbons by whatsoever name known, geothermal steam, and all products derived from any of the foregoing, that may be within or under the Properties together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from said land or any other land, including the right to whipstock or directionally drill and mine from lands other than the Properties, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Properties and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines without, however, the right to drill, mine, store, explore and operate through the surface or the upper 400 feet of the subsurface of the Properties.

**10.07 Bicycle and Pedestrian Trails.** There is hereby reserved to Developer, together with the right to grant and transfer the same, an easement for public ingress and egress over the public or Association bicycle and pedestrian trails. This easement shall not imply any right of public use of the other Common Areas, Lake Property, or improvements thereon.

10.08 Bartholomew Consolidated School Corporation. There is hereby reserved to Developer, together with the right to grant and transfer the same to the Bartholomew Consolidated School Corporation or other similar entity, an easement for limited use for park and school purposes over portions of the Common Areas all as more particularly described in any existing or future grant of easement or Supplementary Declaration by Developer to the aforementioned entity or entities.



CHICAGO TITLE

Article XI

General Provisions

- 11.01 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling house, he shall apply in writing to the Design Review Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single dwelling house shall be treated as two Lots for the purpose of applying this Declaration to said Lots, subject to approval by all applicable governmental bodies.
- 11.02 Remedies/Enforcement. In General. Any party to whose benefit this Declaration inures, including Developer, Association, Owner of any Lot or Living Unit, or Member within the Properties (with respect to activities that affect Tipton Lakes Community), may proceed at law or in equity to prevent the occurrence or continuation of any violation of the Governing Documents, but Developer shall not be liable for damages of any kind to any person for its failure or the failure of third parties to either abide by, enforce or carry out any of the provisions of this Declaration or of the other Governing Documents unless otherwise specifically provided. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach of any of the provisions of the Governing Documents cannot be adequately remedied by action at law or by recovery of damages. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of the Governing Documents shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation.
- 11.03 Estoppel Certificates. In addition to the provisions under Section 6.03 (v) herein, the Association shall, upon demand by a party whom the Association has reason to believe to be an interested party, issue, or cause an appropriate officer to issue, for a reasonable charge, a certificate setting forth any assessments and charges due at that time upon a specified Lot or Living Unit and certifying as to whether or not there are violations of the Governing Documents remaining on the Lot or Living Unit at that time. If a certificate states an assessment or other charge has been paid, such certificate shall be conclusive evidence of such payment at that time.
- 11.04 User Fees. Whereas, it is contemplated that there may be rental property within Tipton Lakes, and further there may be boat slips, marina facilities, boat and recreational vehicle storage, restaurants, athletic clubs, day care and convalescent centers, churches and other facilities and users which may not become Members of the Association or Owners of Lots or Living Units, therefore Developer reserves the right to create such facilities and make reasonable user charges therefor. However, if any such amenities or facilities are or become the property of the Association, such user charges shall inure to the benefit of the Association and be applied in the reduction of Annual or Special Assessments; provided the Association shall engage in no conduct or activity which could adversely affect its status as a not-for-profit corporation under the provisions of the United States Internal Revenue Code or the laws of the State of Indiana.

11.05 Titles. The titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall affect the meaning, interpretation or the construction of any provision of this Declaration. 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.

11.06 Duration. The foregoing Declaration is to run with the land and shall be binding on all parties and all persons claiming under it until January 1, 2030, at which time said Declaration shall be automatically extended for successive periods of ten years unless changed in whole or in part by a writing signed by at least two-thirds of the Owners.

11.07 Amendment. This Declaration may be amended by an instrument signed by the Developer so long as the Developer continues to hold Developer's rights as herein provided and not less than two-thirds of the remaining Owners of Lots or Living Units. Any amendment must be recorded in the Office of the Recorder of Bartholomew County, Indiana. No such agreement to amend, in whole or in part, shall be effective unless written Notice of the proposed agreement is sent to every Owner of a Lot or Living Unit at least thirty days in advance of any action taken and no such agreement shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Area or Lake Property created herein.

However, because development and recordation of this Declaration preceded final results of marketing and budget analysis and final approval of Federal Mortgage Agencies, for a period of two years from the date of recordation of this Declaration the Developer reserves the right to amend the provisions of this Declaration including but not limited to modifying the stated maximum Annual Assessments or the Developer assessment or other charges in response to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by (1) giving Notice to the Association and Owners other than Developer of proposed changes; (2) securing the Approval of appropriate local governmental bodies, and (3) securing Approval of the Federal Mortgage Agencies.

11.08 Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN TESTIMONY WHEREOF, witness the signature of Developer this 26<sup>th</sup> day of November, 1980.

MILLER & COMPANY, an Indiana General  
Partnership

By John F. Dorenbusch  
John F. Dorenbusch,  
Attorney-in-fact



STATE OF INDIANA )  
                          ) SS:  
COUNTY OF BARTHOLOMEW )

Before me, a Notary Public in and for said County and State, personally appeared John F. Dorenbusch, Attorney-in-fact for Miller & Company, who, for and in behalf of said partnership, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of the Tipton Lakes Community Association, Inc.

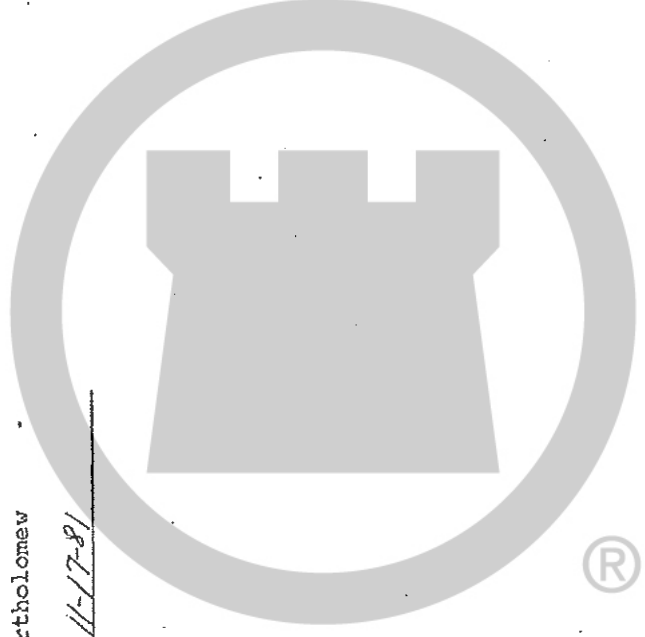
Subscribed and sworn to before me this 26<sup>th</sup> day of November, 1980.

County of Residence: Bartholomew

My Commission Expires: 11-17-81



*Roselyn A. Johnson*  
Notary Public  
ROSELYN A. JOHNSON, 317



CHICAGO TITLE

This instrument was prepared by Robert L. Elwood, 235 Washington Street, Columbus, Indiana 47201.

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EXHIBIT A

Property description to accompany the Declaration of Covenants, Conditions, and Restrictions of Tipton Lakes Community Association, Inc.

Part of Sections 28, 29, 32 and 33, Township 9 North, Range 5 East, Bartholomew County, State of Indiana, more particularly described as follows, to wit:

Commencing at a found railroad spike marking the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section 28; thence South 00 degrees 09 minutes 58 seconds East along the East line of said Section 28 a distance of 135.00 feet to the True Point of Beginning; thence continuing South 00 degrees 09 minutes 58 seconds East along said east line 60.00 feet to an iron pin; thence South 88 degrees 41 minutes 02 seconds West 200.00 feet to a steel fence post; thence South 0 degrees 09 minutes 58 seconds East 205.00 feet to a steel fence post; thence North 88 degrees 41 minutes 02 seconds East 200.00 feet to an iron pin in the east line of Section 28; thence South 0 degrees 09 minutes 58 seconds East along said east line 299.5 feet to an iron pin; thence South 88 degrees 41 minutes 02 seconds West 190.00 feet to a steel fence post; thence South 0 degrees 09 minutes 58 seconds East 300.00 feet to a steel fence post; thence South 88 degrees 41 minutes 02 seconds West 63.5 feet to a steel fence post; thence South 0 degrees 09 minutes 58 seconds East 280.00 feet to a steel fence post; thence North 88 degrees 41 minutes 02 seconds East 253.5 feet to an iron pin in the east line of said Section 28; thence South 0 degrees 09 minutes 58 seconds East along said east line 50.00 feet to the southeast corner of Section 28; thence South 88 degrees 41 minutes 02 seconds West along the north line of Section 33, 253.5 feet to a steel fence post; thence South 0 degrees 41 minutes 58 seconds East 280.00 feet to a steel fence post; thence North 88 degrees 41 minutes 02 seconds East 32.00 feet to a steel fence post; thence South 0 degrees 29 minutes 58 seconds East 69.03 feet to an iron pin; thence South 81 degrees 40 minutes 02 seconds West 386.68 feet to an iron pin; thence South 85 degrees 23 minutes 32 seconds West 541.93 feet to a steel fence post; thence South 88 degrees 45 minutes 02 seconds West 1,552.32 feet to a steel fence post in the west line of the Northeast Quarter of Section 33; thence South 0 degrees 47 minutes 58 seconds East along said west line 561.00 feet to a steel fence post; thence North 83 degrees 45 minutes 02 seconds East 1,540.98 feet to an iron pin; thence South 40 degrees 35 minutes 32 seconds West 74.09 feet to an iron pin; thence South 40 degrees 35 minutes 32 seconds West 679.75 feet to an iron pin; thence South 55 degrees 36 minutes 54 seconds East 141.43 feet to a steel fence post; thence South 87 degrees 26 minutes 29 seconds East 330.80 feet to a steel fence post; thence South 0 degrees 29 minutes 28 seconds East 829.00 feet to a steel fence post in the south line of the Northeast Quarter of Section 33; thence South 89 degrees 27 minutes 02 seconds West along said south line 149.53 feet to the northeast corner of the Northwest Quarter of the Southeast Quarter of Section 33; thence South 0 degrees 45 minutes

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28 seconds East along the east line of said quarter-quarter section 1,317.22 feet to a steel post at the southeast corner of said quarter-quarter section; thence South 89 degrees 14 minutes 32 seconds West along the south line of said quarter-quarter section 1,340.22 feet to a steel fence post at the southwest corner of said quarter-quarter section; thence North 0 degrees 28 minutes 58 seconds West along the west line of said quarter-quarter section 67.80 feet to a steel fence post; thence North 18 degrees 33 minutes 02 seconds East 437.10 feet to a steel fence post; thence North 1 degree 43 minutes 28 seconds West 91.90 feet to a steel fence post; thence North 44 degrees 49 minutes 28 seconds West 201.02 feet to a steel fence post in the west line of aforesaid quarter-quarter section; thence North 44 degrees 49 minutes 28 seconds West 444.93 feet to a steel fence post; thence North 21 degrees 54 minutes 28 seconds West 50.00 feet to a steel fence post; thence North 0 degrees 27 minutes 58 seconds West 235.98 feet to a stone in the north line of the Southwest Quarter of Section 33; thence South 88 degrees 43 minutes 32 seconds West along said north line 1,020.74 feet to an iron pin at the northeast corner of the Northwest Quarter of the Southwest Quarter of Section 33; thence South 88 degrees 43 minutes 32 seconds West along the North line of the Southwest Quarter of Section 33 a distance of 1,350.75 feet to an iron pin at the northwest corner of the Southwest Quarter of Section 33; thence South 00 degrees 37 minutes 51 seconds West along the east line of the Southeast Quarter of Section 32, 2,634.63 feet to a steel fence post at the southeast corner of said quarter-section; thence South 88 degrees 29 minutes 56 seconds West along the south line of said quarter section 2,678.60 feet to a steel fence post at the southwest corner of said quarter section; thence North 0 degrees 16 minutes 17 seconds West along the west line of said quarter section 439.9 feet to an iron pin set in the center of an existing stream; thence South 74 degree 56 minutes 34 seconds East a distance of 333.34 feet to an iron pin set in the center of the aforesaid stream; thence North 88 degrees 55 minutes 43 seconds East a distance of 347.23 feet to an iron pin set in an existing fence; thence North 00 degrees 15 minutes 12 seconds East along said existing fence 1,436.17 feet to a steel fence post; thence North 89 degrees 7 minutes 32 seconds East a distance of 203.00 feet to a steel fence post; thence North 00 degrees 15 minutes 12 seconds East a distance of 858.00 feet to an iron pin on the North line of the Southeast Quarter of said Section 32; thence South 89 degrees 07 minutes 32 seconds West along said North line 739.94 feet to an iron pin at the Southeast corner of Lexington Green Plat Book I pages 30-31; thence along the east line of Lexington Green as follows:

North 15 degrees 09 minutes 05 seconds West a distance of 356.80 feet; thence North 37 degrees 57 minutes 15 seconds West a distance of 126.82 feet; thence North 01 degrees 03 minutes 47 seconds East a distance of 2,048.35 feet; thence North 32 degrees 58 minutes 52 seconds East a distance of 319.19 feet; thence North 01 degrees 25 minutes 13 seconds East a distance of 542.00 feet; to a railroad spike at the Northeast Corner of said Lexington Green; thence along the North Line of Lexington Green and the Center of Youth Camp Road as follows: South 68 degrees 39 minutes 10 seconds

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West a distance of 90.64 feet to the PC of a curve to the right, said curve having a radius of 764.20 feet and a central angle of 17 degrees 43 minutes 51 seconds; thence Southwesterly along said curve 236.49 feet to the PT of said curve; thence South 86 degrees 22 minutes 58 seconds West a distance of 186.66 feet; thence South 85 degrees 37 minutes 45 seconds West a distance of 1,031.88 feet to a boat spike at the Northwest Corner of said Lexington Green Plat and on the West line of the east half of the Southwest Quarter of Section 29; thence North 00 degrees 11 minutes 47 seconds West along said West line 2,136.60 feet to an existing stone at the northwest corner of said half-quarter section; thence South 89 degrees 34 minutes 32 seconds West along the south line of the Northwest Quarter of Section 29 455.20 feet to a steel fence post; thence North 0 degrees 20 minutes 54 seconds West 1,967.83 feet to a steel fence post in the south right-of-way line of Indiana State Road 46; thence Easterly along said south right-of-way line for the next seven calls; thence South 82 degrees 30 minutes 13 seconds East 266.64 feet to a point; thence Easterly 453.56 feet along an arc to the left and having a radius of 38,197.19 feet and subtended by a long chord having a bearing of South 82 degrees 50 minutes 26 seconds East and a length of 453.56 feet to a point; thence South 81 degrees 16 minutes 14 seconds East 501.09 feet to a point; thence Easterly 553.70 feet along an arc to the left and having a radius of 38,197.19 feet and subtended by a long chord having a bearing of South 84 degrees 51 seconds East and a length of 553.70 feet to a point; thence South 84 degrees 45 minutes 43 seconds East 2.3 feet to a point; thence North 5 degrees 14 minutes 17 seconds East 20.00 feet to a point; thence South 84 degrees 45 minutes 43 seconds East 8.35 feet to a steel fence post in the east line of the Northwest Quarter of Section 29; thence South 0 degrees 20 minutes 13 seconds East along said east line 1,749.52 feet to a steel fence post and the center of Section 29; thence North 89 degrees 29 minutes 17 seconds East along the south line of the Southwest Quarter of the Northeast Quarter of said Section 29, 1,331.56 feet to an existing stone at the southeast corner of said quarter-quarter section; thence North 0 degrees 54 minutes 43 seconds West 332.31 feet to a steel fence post; thence North 88 degrees 34 minutes 04 seconds East 384.11 feet to a steel fence post; thence North 0 degrees 54 minutes 43 seconds West 465.16 feet to a steel fence post; thence North 89 degrees 29 minutes 17 seconds East 950.50 feet to a steel fence post in the east line of the Northeast Quarter of Section 29; thence South 0 degrees 54 minutes 43 seconds East along said east line 803.64 feet to a steel fence post at the southeast corner of said Northeast Quarter; thence South 0 degrees 57 minutes 13 seconds East along the east line of the Southeast Quarter of said Section 29, 963.92 feet to an iron pin in the centerline of Bray Road; thence Northeasterly along the centerline of Bray Road for the next eleven calls; thence North 65 degrees 07 minutes 47 seconds East 841.98 feet to an iron pin; thence North 66 degrees 15 minutes 46 seconds East 621.81 feet to an iron pin; thence North 65 degrees 00 minutes 33 seconds East 552.86 feet to an iron pin; thence North 67 degrees 39 minutes

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03 seconds East 361.03 feet to an iron pin; thence North 80 degrees 01 minutes 13 seconds East 200.00 feet to an iron pin; thence North 81 degrees 51 minutes 53 seconds East 331.00 feet to an iron pin; thence North 87 degrees 00 minutes 54 seconds East 160.50 feet to an iron pin; thence North 89 degrees 46 minutes 34 seconds East 890.05 feet to an iron pin; thence North 79 degrees 33 minutes 24 seconds East 127.01 feet to an iron pin; thence North 75 degrees 40 minutes 54 seconds East 220.25 feet to an iron pin; thence North 56 degrees 04 minutes 57 seconds East 243.75 feet to an iron pin; at the Northwest corner of Harrison Ridge Plat Book "J" Page 79; thence South 01 degrees 45 minutes 02 seconds West a distance of 1,401.95 feet to an iron pin at the Southwest corner of said Harrison Ridge; thence North 88 degrees 45 minutes 22 seconds East along the South line of said Harrison Ridge 596.45 feet to a found square head bolt; thence South 00 degrees 09 minutes 58 seconds East a distance of 270.00 feet to steel fence post; thence North 88 degrees 41 minutes 02 seconds East a distance of 585.00 feet to the Point of Beginning except the following:

(1) Part of the Northeast Quarter of Section 32 more particularly described as follows: Beginning at a point in the south line of said quarter section 565.49 feet East of the southwest corner of said quarter section; thence North parallel to the west line of said quarter section 208.7 feet to a steel fence post; thence East parallel to the south line of said quarter section 208.7 feet to a steel fence post; thence South parallel to said west line 208.7 feet to an iron pin in the south line of said quarter section; thence West on said south line 208.7 feet to the point of beginning and containing 1.000 acres.

(2) Part of the Northeast Quarter of Section 32, Township 9 North, Range 5 East, lying in Harrison Township, and described as follows: Beginning at a point in the south line of said quarter section 1267.18 feet West of the southeast corner of said quarter section; thence North along an existing fence line 483.61 feet to an iron pin set; thence West parallel to the south line of said quarter section 211.08 feet to an iron pin set in an existing fence; thence South along said fence 483.62 feet to a point on the south line of the aforesaid quarter; thence East along said south line 212.28 feet to the point of beginning, containing 2.35 acres more or less.

(3) Part of the Southeast Quarter of the Northeast Quarter of Section 32, Township 9 North, Range 5 East, lying in Harrison Township, Bartholomew County, Indiana and more particularly described as follows:

Commencing at a found steel fence post marking the Southeast corner of said Quarter Quarter; thence North 00 degrees 47 minutes 51 seconds East (an assumed bearing) along the East line of said Quarter Quarter 418.5 feet to a set iron pin and the True Point of Beginning, thence continuing North 00 degrees 47 minutes 51 seconds East along said East line 607.5 feet to a set iron pin; thence South 90 degrees 00 minutes 00 seconds West and parallel to the South line of said Quarter Quarter a distance of 424.00 feet to a set iron pin;

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thence South 00 degrees 47 minutes 51 seconds West a distance of 607.5 feet to a set iron pin; thence North 90 degrees East a distance of 424.00 feet to the True Point of Beginning containing 5.91 acres more or less.


(4) Part of the Southeast Quarter of the Northwest Quarter of Section 33 more particularly described as follows: Beginning at the center of said Section; thence West along the south line of said Northwest Quarter; 330 feet to the center of the Driftwood Valley Turnpike known as the Abbott Road; thence in a Northeasterly direction along the center of said road 325 feet for a place of beginning of the real estate herein described; thence in a Northerly direction along the center line of said road 80 feet; thence in a Easterly direction at an angle of 90 degrees, a distance of 160 feet, thence Southwesterly parallel with the first described course 80 feet; thence in a Westerly direction 160 feet to the place of beginning and containing 0.294 of an acre.

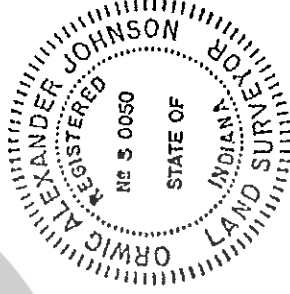
(5) Part of the Northeast Quarter of Section 33 more particularly described as follows: Beginning at a point on the west line of the northeast quarter of said Section, 518.8 feet North of the center of said Section; running thence East 200.0 feet to an iron pin; thence North 227.04 feet to a point in the center of a County Road; thence South 68 degrees 56 minutes West along the center of said County Road 214.33 feet to the west line of said quarter; thence South along said quarter section line 150.0 feet to the place of beginning and containing 0.865 of an acre, and containing after said exceptions 1147.9 acres more or less.

Also including Lots 1 through 4 inclusive of Woodcrest as recorded in Plat Book "K," Page 9 and including Lots 5 through 8 inclusive of the Replat of Woodcrest, Lots 5, 6, and 7 as recorded in Book K, Page 64, in the Office of the Recorder of Bartholomew County.

Also including Lots 3, 5, 6, 10 through 18 inclusive, 21, 22, 25 through 40 inclusive, 42, 43, 45, 46, 47, 50, 52 through 60 inclusive, and 62 through 64 inclusive of Harrison Ridge as recorded in Plat Book "J," page 79 in the Office of the Recorder of Bartholomew County.

I, Orwic Alexander Johnson, hereby certify that I am a Land Surveyor licensed in accordance with the Laws of the State of Indiana, and that the foregoing description was prepared by me from available plats and a survey by Charles H. Hillery.

  
ORWIC ALEXANDER JOHNSON RLS S0050



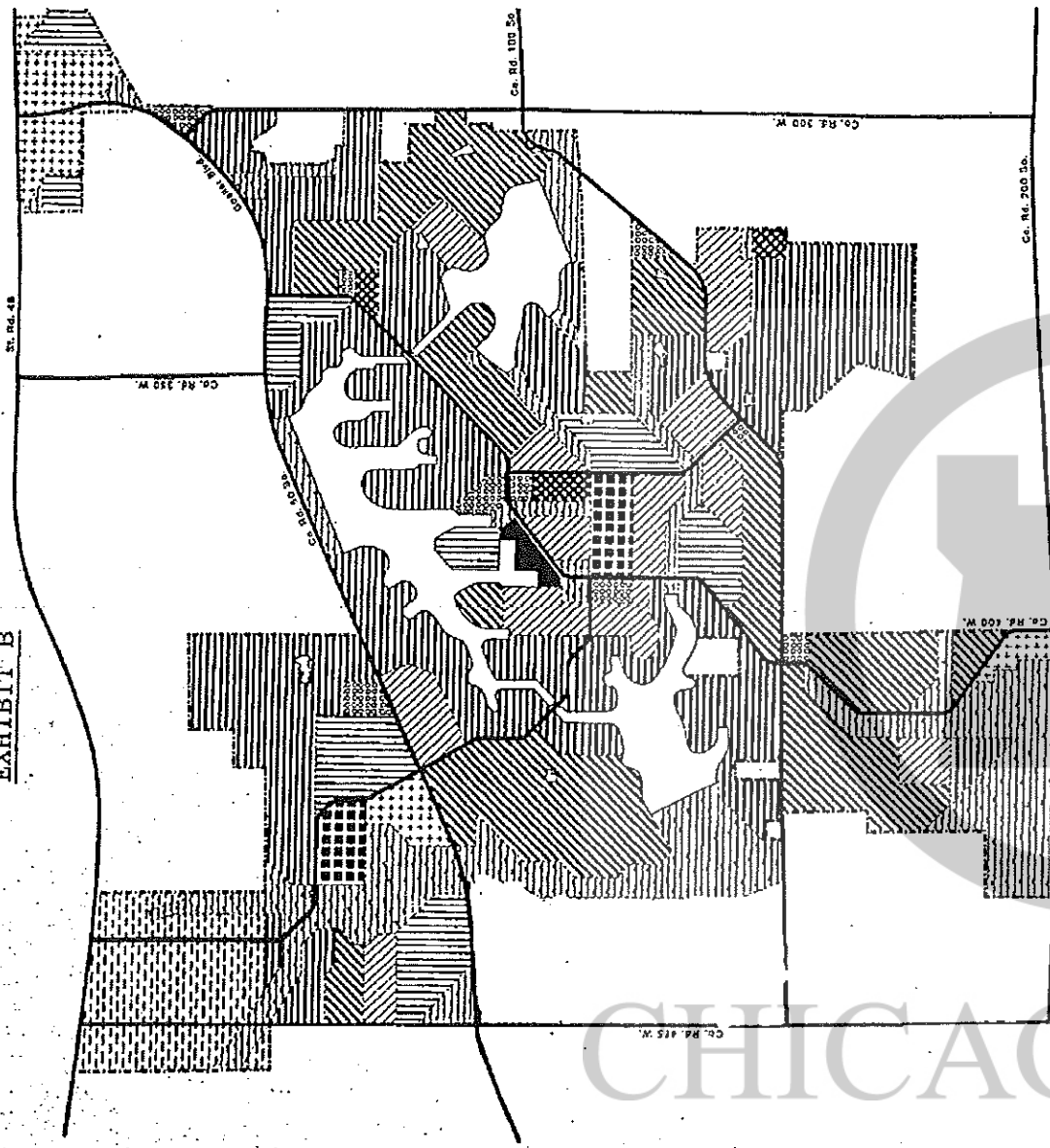
columbus surveying & engineering

ORWIC A. JOHNSON PE-LS  
200 West 17th, Columbus, Indiana 47501  
Ph (812) 372-0398





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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
TIPTON LAKES COMMUNITY ASSOCIATION, INC.





EXHIBIT B



LEGEND

-  Residential Low Density
-  Residential Mid Density
-  Residential Upper Mid Density
-  Residential High Density

-  School
-  Community Facility
-  Commercial
-  Office/Research (I-1 Zone)

-  Recreation Area
-  Parkland Buffer
-  Marina
-  Water

2.03 The Development Plan <sup>®</sup>

- (i) Purpose. The Development Plan, generally illustrated in this Exhibit B, is the dynamic design for the staged development of the Properties which will be regularly modified and amended, as provided in the Declaration during the several years required to build Tipton Lakes Community. Because the Development Plan is an illustrative design, it shall not bind the Developer to make any of the additions to the Properties which are shown on the Development Plan or to improve any portion of such lands in accordance with the Development Plan unless and until a Supplementary Declaration is filed by the Developer subjecting such Property to this Declaration. Thereupon, the Developer shall be obligated to complete the development of the annexed Property in accordance with the Development Plan currently in effect, unless seventy-five percent of the votes of a Quorum of Owners, Bartholomew County, and the Federal Mortgage Agencies consent to a change.
- (ii) Amendments. The Developer hereby reserves the right to add land to or amend the Development Plan for lands which have not yet been made subject to the Declaration, in response to changes in technological, economic, environmental, or social conditions related to the development or marketing of the Properties or in response to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by (1) giving notice of the proposed changes to the association, (2) securing the approval of the appropriate local governmental bodies, and (3) securing approval of the Federal Mortgage Agencies.
- (iii) Pursuant to Article II, Section 2.02 of the Declaration additional land area may be annexed and added to the Development Plan.
- (iiii) Areas not yet developed or submitted to the Declaration may be withdrawn from the Development Plan.

EXHIBIT C

TIPTON LAKES COMMUNITY ASSOCIATION, INC.

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the undersigned \_\_\_\_\_ (hereinafter collectively and individually "Member") in favor of Tipton Lakes Community Association, Inc., an Indiana nonprofit corporation (hereinafter the "Association") as follows:

1. Recitals. Member is purchasing or leasing, or has purchased or leased a Lot or Living Unit in the planned development known as Tipton Lakes, located in the City of Columbus, Indiana, described as Lot \_\_\_\_\_ of \_\_\_\_\_ Subdivision and commonly known by its street address of \_\_\_\_\_ . The Lot or Living Unit is subject to, among other things, that certain Declaration of Covenants, Conditions and Restrictions for Tipton Lakes Community Association, Inc. recorded on \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Recorder of Bartholomew County, Indiana, (hereinafter the "Declaration"), which Declaration is incorporated herein by reference with the same force and effect as if fully set forth herein. The Declaration requires, among other things, that Member shall execute this Membership Agreement, in consideration of which Member shall be granted voting privileges in the Association and the right to use certain facilities of the Association all as provided in the Declaration. Member acknowledges that in order to best ensure that none of Member's rights and privileges as a Member are suspended, Member shall deliver, or cause an escrow company or other agent to deliver, an executed copy of this Membership Agreement to the Association immediately upon the lease or transfer of the Lot or Living Unit to Member.

2. Membership. By virtue of Member's ownership or leasehold interest in the Lot or Living Unit, Member is a Member of the Association as that term is defined in the Declaration. As such, Member is subject to the Articles of Incorporation (the "Articles") and the Bylaws (the "Bylaws") of the Association, any applicable Supplementary Declarations, and any "association rules" adopted pursuant to the Declaration and Bylaws. (The Declaration, Articles, Bylaws, Supplementary Declarations, and duly adopted rules of the Association are hereinafter collectively referred to as the "Governing Documents.")

3. Rights and Duties. Member's membership in the Association renders Member subject to all of the duties, obligations, restrictions and liabilities of a Member under any of the foregoing, whether or not specifically enumerated in this Membership Agreement and regardless of whether Member executes this Membership Agreement. Member hereby agrees to perform such duties and obligations, to discharge such liabilities and to be subject to such restrictions as one provided for in the Governing Documents. Unless the Association has provided otherwise, Member's rights and privileges as a Member shall be suspended unless Member executes this Agreement.

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4. Assessments. If also an Owner, Member hereby agrees to pay the Association each and every Assessment levied by the Association on Member pursuant to the Declaration or the other Governing Documents. In the event of any delinquency in the payment of any Assessment levied on Member, in addition to any remedy authorized by law or the Governing Documents the Association may at its option enforce any such delinquent Assessment by bringing an action at law, by foreclosing the Assessment lien provided in the Declaration by judicial action, or by proceeding under the power of sale provided for in the Declaration. Any judgment rendered in any such action or the amount paid to the Association from the proceeds of such sale shall include the amount of the delinquency, interest on the unpaid Assessment, a late charge, attorney's fees, court costs, expenses of collection and any other amounts or charges specified in the Declaration.

5. Designation for Vote. As provided in the Governing Documents, Member may be entitled to one Class A membership vote for each Lot or Living Unit on the basis of ownership thereof and/or one Class B membership vote per Lot or Living Unit on the basis of occupancy thereof as the case may be. However, only a total of one Class A and one Class B vote shall be cast with respect to each Lot or Living Unit. The person signing this Membership Agreement on the appropriately indicated membership line below is hereby designated as the person who shall deliver the vote or written assent on any matter on which Member is entitled to vote under the Governing Documents. The Association shall not be required to recognize or accept the vote or written assent of any other person herein termed a Member unless all of the undersigned execute and deliver to the Association a writing designating another Member to deliver the vote or written assent attributable to the Lot or Living Unit.

6. Responsibilities Upon Lease or Transfer. Upon the lease or transfer of Member's interest in a Lot or Living Unit, Member shall notify the Association in writing or shall cause the sales escrow or other agent to notify the Association in writing of the name of the person or persons to whom Member is leasing or transferring the Lot or Living Unit. Member shall also notify or cause the sales escrow or other agent to notify such transferee of such transferee's obligation to execute and deliver a Membership Agreement to the Association. On or before the effective date of such lease or transfer, Member shall return to the Association any key, membership card, or other token evidencing or facilitating the right to use any recreational or other facility or service owned or operated by the Association and Member shall not deliver any such token or replica thereof to Member's Lessee or transferee. If Member's transferor has not returned any such key, membership card, or other token to the Association, Member agrees that the Association may charge Member a fee for any key, membership card, or other token issued to Member by the Association.

7. Design Review. Member hereby acknowledges that the Declaration provides for design review by the Association over the Lot or Living Unit. As provided in the Declaration, the Board of Directors and the Design Review Committee of the Association may adopt architectural standards which may require Member, among other things to submit plans and specifications for Approval by said Design Review Committee prior to commencing any work or improvement on the Lot or Living Unit. Member hereby agrees to be bound by all of the provisions of the Declaration relating to design review.

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8. Estoppel Certificate. Member acknowledges that the Declaration provides in the case of an Owner, that Member or Member's transferor, may obtain from the Association, upon payment of a reasonable charge, a written statement setting forth whether Assessments on the Lot or Living Unit have been paid, and the amount of delinquency, if any.

9. Amendment of Governing Documents; Conflicts. As used herein, "Governing Documents" shall include any duly adopted amendments thereto, and the designation individually used for any of the documents collectively referred to herein as Governing Documents shall likewise include any duly adopted amendment. Any inconsistency between any of the Governing Documents and this Membership Agreement shall be resolved in favor of the Governing Documents.

IN WITNESS WHEREOF, the undersigned have executed this Membership Agreement on the day and year first above written.

TIPTON LAKES COMMUNITY ASSOCIATION, INC.

By \_\_\_\_\_  
President

By \_\_\_\_\_  
Secretary

Not Valid Unless One Signature Appears:  
The person signing on this line shall be designated to give the vote(s) or written assent as provided in Section 5 above.  
\_\_\_\_\_  
Official Signature for Voting

MUST BE SIGNED TO BE VALID

\_\_\_\_\_  
Signature of Members

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EXHIBIT D

Property Description

A part of Lot 7 in Woodcrest, a Replat of Lots 5, 6, & 7 and more particularly described as follows:

beginning at the northeast corner of said Lot 7; thence north 90°-00'-00" west a distance of 140.00 feet; thence south 00°-00'-00" west a distance of 129.33 feet to the centerline of Mimosa Drive; thence south 88°-59'-47" east a distance of 140.02 feet to the east line of said Lot 7; thence north 00°-00'-00" east a distance of 131.78 feet to the point of beginning, containing 0.42 acres, more or less.

CHICAGO TITLE



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