

*ACI Miller
457*

INSTR. # 9436477

9436477

Declaration of Covenants and Restrictions

Huntersfield

Carmel, IN

RECEIVED
FOR RECORD
94 AUG 22 PM 1:57
SHEENA G. CHERRY
RECORDER
HAMILTON CO, IN

The Instrument Recorded AUG 22 1994
Sharon K. Cherry, Recorder, Hamilton County, IN

Inst # 9436477

Recorded 8-22-94 1994

Book _____ Pages _____

Office of the Recorder of
Hamilton County

DECLARATION OF COVENANTS AND RESTRICTIONS

HUNTERSFIELD

INDEX

	<u>Page</u>
1. Definitions	2
2. Declaration	6
3. The Lake	6
4. Drainage System	7
5. Maintenance of Entry Ways and Planting Easements	7
6. Construction of Residences	8
(a) Land Use	8
(b) Size of Residence	8
(c) Nature of Construction	8
(d) Temporary Structures	9
(e) Building Location and Finished Floor Elevation ..	9
(f) Driveways	9
(g) Yard Lights	10
(h) Storage Tanks	10
(i) Tree Preservation	10
(j) Construction	10
(k) Mailboxes	11
(l) Septic Systems	11
(m) Water Systems	11
(n) Drainage	11
7. Maintenance of Lots	12
(a) Vehicle Parking.....	12
(b) Signs	12
(c) Fencing	12
(d) Vegetation	13
(e) Nuisances	13
(f) Garbage and Refuse Disposal	13
(g) Livestock and Poultry	13
(h) Outside Burning	14
(i) Antennas and Receivers	14
(j) Exterior Lights	14
(k) Electric Bug Killers	14
(l) Swimming Pools.....	14

i
9436477

8.	Huntersfield Owner's Association.....	14
	(a) Membership	14
	(b) Powers	15
	(c) Classes & Members.....	15
	(d) Voting and Other Rights of Members.....	15
	(e) Reserve for Replacements.....	15
	(f) Limitations on Action By The Owner's Association.....	15
	(g) Termination of Class Be Membership.....	16
	(h) Mergers.....	16
	(i) Annexation.....	17
9.	Assessments	17
	(a) Creation of the Lien and Personal Obligation of Assessments	17
	(b) General Assessment	17
	(i) Purpose of Assessment	17
	(ii) Basis for Assessment	17
	(iii) Method of Assessment	18
	(iv) Allocation of Assessment	18
	(c) Special Assessment	19
	(d) Date of Commencement of Assessments	19
	(e) Effect of Nonpayment of Assessments: Remedies of the Owner's Association	19
	(f) Subordination of the Lien to Mortgages	19
	(g) Certificates	20
	(h) Annual Budget	20
10.	Architectural Control	20
	(a) The Architectural Review Board	20
	(b) Purpose	20
	(c) Change in Conditions	20
	(d) Procedures	21
	(e) Guidelines and Standards.....	21
11.	Community Area	22
	(a) Ownership	22
	(b) Obligations of the Corporation	22
	(c) Easements of Enjoyment	22
	(d) Extent of Easements	22
	(e) Additional Rights of Use	23
	(f) Damage or Destruction by Owner	23
	(g) Conveyance of Title.....	24
12.	Easements	24
	(a) Plat Easements	24

	(i) Drainage Easements	24
	(ii) Sewer Easements	25
	(iii) Utility Easements	25
	(iv) Entry Way Easements	25
	(v) Landscaping Easements	25
	(vi) Lake Access Easements	25
	(vii) Non-Access Easements	25
	(b) General Easement	26
	(c) Public Health and Safety Easements	26
	(d) Drainage Board Easement	26
	(e) Crossing Underground Easements	27
	(f) Declarant's Easement to Correct Drainage	27
	(g) Water Retention	27
13.	Declarant's Use During Construction	27
14.	Enforcement	28
15.	Approvals by Declarant	28
16.	Mortgages	28
	(a) Notice to Owner's Association	28
	(b) Notices to Mortgagees	29
	(c) Notice of Unpaid Assessments	30
	(d) Financial Statements	30
	(e) Payments by Mortgagees	30
17.	Amendments	30
	(a) Generally	30
	(b) By Declarant	30
	(c) Effective Date	31
18.	Interpretation	31
19.	Duration	34
20.	Severability.....	31
21.	Non-Liability of Declarant	32
	Execution by Declarant	33

Exhibit A Description of Development Area
Exhibit B General Plan of Development

DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration, made as of _____ day of _____, 19____ by
Balamor Development Company, Inc., an Indiana corporation,
(Declarant).

W I T N E S S E T H:

WHEREAS, the following facts are true:

A. Declarant is the legal or equitable owner of the real estate located in Hamilton County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a residential subdivision to be known as Huntersfield.

B. Declarant has or will construct certain improvements and amenities which shall constitute Community Area.

C. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Huntersfield and for the maintenance of the Tract and the improvements thereon, and to this end desire to subject the Tract to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

D. Declarant deems it desirable, for the efficient preservation of the values and amenities in Huntersfield to create an agency to which may be delegated and assigned the powers of owning, maintaining and administrating the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Huntersfield.

E. Declarant has established an association of owners of lots known as Huntersfield Homeowners Association for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract as they are held and shall

be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

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

(a) "Architectural Review Board" means that entity established pursuant to Paragraph 10 of this Declaration for the purposes therein stated.

(b) "Assessments" means all sums lawfully assessed against the Members of the Owners Association or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

(c) "Board of Directors" means the governing body of the Owners' Association elected by the Members in accordance with the By-Laws.

(d) "By-Laws" means the Code of By-Laws of the Owners' Association as amended from time to time.

(e) "Community Area" means (i) the Drainage System, (ii) the Lake and Lake Access Easement, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, and (v) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Owners' Association, together with all improvements thereto, that are intended to be devoted to the use or

enjoyment of some, but not necessarily all, of the Owners of Lots.

(f) "Declarant" means Balamor Development Company, Inc., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

(g) "Development Area" means the land described in Exhibit A.

(h) "Drainage Board" means the Hamilton County, Indiana Drainage Board, its successors or assigns.

(i) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention pond, and the other structures, fixtures, properties, equipment and facilities located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

(j) "Entry Ways" means the structures constructed as an entrance to Huntersfield or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures.

(k) "General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

(l) "Landscaping Easement" means a portion of a Lot denoted on a Plat as an area to be landscaped and maintained by the Owners' Association.

(m) "Lake" means the lake located in the Development Area and depicted on Exhibit B.

(n) "Lake Access Easement" means the area designated on a Plat as a means of access to a Lake.

(o) "Lot" means a platted lot as shown on a Plat.

(p) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(q) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

(r) "Member" means a member of the Owners' Association.

(s) "Mortgagee" means the holder of a first mortgage or a Residence.

(t) "Owner" means a Person, including Declarant and Hawryluk, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

4
9436477

(u) "Part of the Development Area" means any part of the Development Area not included in the Tract.

(v) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(w) "Plat" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

(x) "Reserve for Replacements" means a fund established and maintained by the Owners' Association to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

(y) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

(z) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulation and all other provision set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

(aa) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

(bb) "Section" means that portion of the Development Area that is depicted on a Plat.

(cc) "Supplemental Declaration" means any Plat or supplementary declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of this Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

(dd) "Huntersfield" means the name by which the Tract shall be known.

(ee) "Tract" means the land described in Exhibit B.

(ff) "Zoning Authority" with respect to any action means the Director of the Department of Community Development of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

2. Declaration. Declarant and Hawryluk hereby expressly declare that the Tract and any additions thereto shall be held, transferred, and occupied subject to the Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Owners' Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Owners' Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. The Lake. Declarant shall convey title to the Lake to the Owners' Association. The Owners' Association shall be responsible for maintaining the Lake. The Maintenance Costs of The Lake shall be assessed as a General Assessment against all Lots subject to assessment which abut such Lake. Each Owner of a Lot that abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition. NO boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structure may be extended into a Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming will be permitted in

any Lake except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Owners' Association and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owners' Lot. Declarant shall have no liability to any Person with respect to a Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

4. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lake. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1996, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Owners' Association shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

5. Maintenance of Entry Ways and Landscaping Easements. The Owners' Association shall maintain the Entry Ways and the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or a Landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Huntersfield or a part thereof or a planting area within Huntersfield. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. The Association shall maintain a plantings within a Landscape Easement installed by Declarant (exclusive of grass) and all replacements thereof, and the Maintenance Costs thereof shall be

assessed as a General Assessment against all lots subject to assessment. The Owner of each Lot subject to a Landscape Easement shall cut the grass within such easement as required to maintain the same in good and sightly condition. Any planting and/or signage in mediam areas are to be approved by the County Engineer, and may be removed if the County Engineer deems their removal necessary.

6. Construction of Residences.

(a) Land Use. Lots may be used only for residential purposes and only one Residence not to exceed two and one-half stories or 25 feet in height from finished grade to underside of eve may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Huntersfield than the number of original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,000 square feet if a one-story structure, or 1,200 square feet if a higher structure, but in the case of a building higher than one story, there must also be at least 600 square feet in addition to the ground floor area and the total floor area shall not be less than 2,000 square feet.

(c) Nature of Construction. No single-family dwelling house, garage or accessory structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick, weathered barn

assessed as a General Assessment against all lots subject to assessment. The Owner of each Lot subject to a Landscape Easement shall cut the grass within such easement as required to maintain the same in good and sightly condition. Any planting and/or signage in mediam areas are to be approved by the County Engineer, and may be removed if the County Engineer deems their removal necessary.

6. Construction of Residences.

(a) Land Use. Lots may be used only for residential purposes and only one Residence not to exceed two and one-half stories or 25 feet in height from finished grade to underside of eve may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Huntersfield than the number of original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,500 square feet if a one-story structure, or 1,200 square feet if a higher structure, but in the case of a building higher than one story, there must also be at least 600 square feet in addition to the ground floor area and the total floor area shall not be less than 2,500 square feet.

(c) Nature of Construction. No single-family dwelling house, garage or accessory structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick, weathered barn

siding or the like, or interior design features utilizing other than new materials, may be approved by Developer.

The concrete or block foundation of any single-family dwelling house or accessory structure constructed on a Lot shall be covered on the exterior with wood, brick or stone veneer so that no portion of the exterior thereof is left exposed above ground.

Each attached garage shall be intricately designed as a part of the single-family dwelling house to which it is attached and shall be for a minimum of two vehicles.

(d) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(e) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on a Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than then (10) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line. A minimum finished floor elevation, shown on the development plan for each Section, has been established for each Lot and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prime requisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.

(f) Driveways. All driveways shall be paved and maintained dust free. The Driveway on each Lot shall be cut and stone or gravel placed thereon prior to development or improvement of the Lot to the extent necessary to avoid the transmittal of mud from construction traffic to the Roads, but such Driveway, if to remain stone and gravel, does not have to be asphalted or concreted until substantial completion of construction. Upon substantial completion or construction each driveway shall be constructed of concrete, asphalt, brick or other hard material acceptable to Developer.

(g) Yard Lights. If street lights are not installed in Huntersfield then each Owner shall install and maintain a light in operable condition on his Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day.

(h) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view.

(i) Tree Preservation. Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of an approved single-family dwelling house or accessory building, unless the removal thereof is otherwise specifically approved by Developer or any such tree is dead or decayed and dangerous.

(j) Construction. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Unless a delay is caused by strikes, war, court injunction or acts of God the exterior of any dwelling house built upon a Lot or combination of Lots shall be completed within twelve (12) months after the date of commencement of the foundation and the site graded and any areas to be covered with grass shall be seeded or sodded. Each Lot shall be kept and maintained in a sightly and orderly manner during the period of construction and no trash or other rubbish shall be permitted to unreasonably accumulate thereon.

All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within 30 days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date.

For the purposes of this sub-paragraph (j), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(k) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(l) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by Clay Township Waste Water District shall be installed or maintained on any Lot.

(m) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the lot line maintained by the public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

(n) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Huntersfield may be included in a legal drain established by the Drainage Board. In such event, each Lot will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System included in

such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains, downspouts and water softener drains shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

7. Maintenance of Lots

(a) Vehicle Parking. No camper, motor home, truck, trailer, boat or disable vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the development of Huntersfield and the sale of Lots therein and such signs as may be located on the Community Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot if it would be visible from a street.

No fence shall be erected or maintained on or within any Landscaping Easement nor shall any fence be erected on any lot line. No fence may be erected on a Lot without the prior approval of the Architectural Review Board, which may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences.

All fences shall be kept in good repair and erected reasonably so as to enclose the property and decorate the same without hindrance or obstruction to any other property. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Architectural Review Board shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof. Mow such portion of Lot or Lots upon which grass has been planted at such times as may be reasonably required.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No satellite receiver or down-link shall be permitted on any Lot, nor shall any exterior antenna be permitted thereon without the prior written consent of the Architectural Review Board. The Architectural Review Board shall not be obligated to give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot or to the installation of any other exterior antenna if all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected do not consent in writing to the installation thereof.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

(l) Swimming Pools. No above ground swimming pools shall be permitted in the property.

8. Huntersfield Owners' Association

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Owners' Association shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Owners' Association shall have two (2) classes of members as follows:

Class A. Every Person who is Owner shall be a Class A member.

Class B. Declarant shall be a Class B member. No other Person, except a successor to substantially all of the interest of Declarant in the Development Area, shall hold a Class B membership in the Owners' Association. The Class B membership shall terminate upon the resignation of the Class B member, when all of the Lots in the Development Area (as depicted on the General Plan of Development) have been sold, or on December 31, 2003, whichever first occurs.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(f) Limitations on Action by the Owners' Association. Unless the Class B Member and at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Class A members (other than Declarant) have given their prior written approval, the Owners' Association, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 11(a), by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the

Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause; (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations; assessments, dues or other charges that may be levied against the Owner of a Residences; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacement in the amount required by this Declaration.

(g) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B member is required, such requirement shall cease at such time as the Class B membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 12(b), 12(f), 13 or 19(b).

(h) Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Law, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or corporation, or, alternatively, the properties, rights and obligations of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as hereinabove provided.

1400
③ 100
7042

200100022283
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
04-25-2001 10:37 am.
AMEND DECL 14.00

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS FIRST AMENDMENT to that certain Declaration of Covenants and Restrictions for HuntersField (the "Declaration"), is executed as the day of April, 2001, by Balamor Development Company, Inc., an Indiana corporation ("Declarant"), who by the execution hereof, hereby declares that:

1 Recitals The following facts are true:

(a) The declaration was recorded in the office of the Recorder of Hamilton County, Indiana, on August 22, 1994 as Instrument No. 9436477 in PC 1 slide 457.

(b) Declarant has the right unilaterally to amend and revise The Declaration pursuant to the provisions of Paragraph 17(b) of the Declaration.

2 Amendments The Declaration is amended as follows

(a) Paragraph 6(b) is amended to read as follows:

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 2,500 square feet if a one-story structure, or 1,500 square feet if a higher structure, but in the case of a building higher than one story, there must also be at least 600 square feet in addition to the ground floor area and the total floor area shall not be less than 3,000 square feet.

(b) The last sentence of Paragraph 6(c) is amended to read as follows:

Each attached garage shall be intricately designed as a part of the single-family dwelling house to which it is attached and shall be for a minimum of three vehicles

(c) The last line of Paragraph 8(c) is amended to read as follows:

December 31, 2008.

(d) The last line of Paragraph 8(g) is amended to read as follows:

12(b), 17(b)

(e) Paragraph 12 (a) (VII) is amended to read as follows:

(vii) Non-Access Easements (NEA) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to any Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

Fencing on or crossing a drainage easement must be approved the Hamilton County Surveyor's office.

(f) The first sentence of Paragraph 17.(b) is amended to read as follows

17 (b) By Declarant Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2006.

3. Effective Date. The foregoing amendments shall be effective as of the date this First Amendment is recorded in the Office of the Recorder of Hamilton County, Indiana.

IN WITNESS WHEREOF, This First Amendment has been executed as of the date first above written.

By *Peter P. Hawryluk*
Peter P. Hawryluk, President

STATE OF INDIANA)
) SS.
COUNTY OF BOONE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Peter P. Hawryluk, known to me and known by me to be the President of Balamor Development Company, Inc., an Indiana corporation, who acknowledged the execution of the foregoing "First Amendment to Declaration of Covenants and Restrictions" for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 12th day of April, 2001.

Carol S. Alexander
Notary Public Residing in

Dendricks County

CAROL S. ALEXANDER
(printed signature)



My Commission Expires:
5-27-08

This instrument prepared by and is to be returned to Peter P. Hawryluk, President, Balamor Development Company, Inc., 8155 Hunt Club Road, Zionsville, IN, 46077.

(i) Annexation. Each Owner, by the acceptance of a deed to a lot in (Subdivision), shall be deemed to have waived such Owner's right to remonstrate against annexation of all or any portion of (Subdivision) by the City of Carmel.

9. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant and Hawryluk hereby covenant, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Owners' Association the following: (1) General Assessments (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the Community Area.

(ii) Basis for Assessment

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Changes in Basis. The basis for assessment may be changed with the assent of the Declarant and of (i) two-thirds (2/3 of the members (excluding Declarant) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Owners' Association imposed by this Declaration upon the Owners' Association. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing the Community Area has been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provision of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with the respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Special Assessment. The Owners' Association may levy in any fiscal year a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, provided that any such Assessment shall have the assent of the Developer and of a majority of the votes of the Members whose Lots are subject to assessment with the respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots within a Section on the first day of the month following conveyance of the first Lot in the Section to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(e) Effect of Nonpayment of assessments; Remedies of the Owners' Association. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Owners' Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Owners' Association in collecting such Assessment. If the Owners' Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Owners' Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(f) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not

affect the Assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(g) Certificates. The Owners' Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Owners' Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(h) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

10. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as provided in the By-Laws shall be appointed by the Declarant. At such time as there is no Declarant, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval by the

Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Huntersfield and no Owner shall undertake any construction activity within Huntersfield unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than 18 inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a member, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including failure to act) may be appealed to the Board of Directors. They may modify or revise such decision by a 2/3 of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which

may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

11. Community Area

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Owners' Association may, however, dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Obligations of the Owners' Association. The Owners' Association, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon, and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(c) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provision of, this Declaration or any Supplemental Declaration executed by Declarant. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of Lots abutting the Lake may use such Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors.

(d) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Owners Association to establish reasonable rules for the use of the Community Area.

(ii) the right of the Owners' Association to suspend the right of an Owner and all Persons whose right to use the Lake derives from such

Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Owners' Association to suspend the right of an Owner or any Person claiming through the Owner to use the Lake for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulation;

(iv) the right of the Owner's Association to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Declarant and the appropriate officer of the Owners' Association acting pursuant to authority granted by two-thirds (2/3) of the votes of the members (excluding Declarant) agreeing to such dedication or transfer, has been recorded.

(e) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area may use the Community Area subject to such general regulation consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(f) Damage or Destruction by Owner. In the event the Community Area is damage or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Owners' Association to repair said damaged area; the Owners' Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Owners' Association in the discretion of the Owners' Association. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

(g) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it convey the Lake to the Owners; Association, free and clear of all liens and financial encumbrances except as otherwise provided herein, not later than two (2) years from the date such Community Area or portion thereof is subjected to this Declaration. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Owners' Association shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

12. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscaping easements, lake access easements and non-access easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Owners, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Huntersfield and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by

the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Huntersfield for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Owners' Association and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board and the Owners' Association for the installation, operation and maintenance of the Entry Ways.

(v) Landscaping Easements (LE) are created for the use by Declarant, the Architectural Review Board and the Owners' Association for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Access Easements (LAE) are created for the use of Declarant, the Owners' Association, the Drainage Board; and the Town of Carmel for the purpose of gaining access to the Lake, the Drainage Facilities in the course of maintenance, repair or replacement of any thereof.

(vii) Non-Access Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement, but a paved driveway necessary to provide access to a Lot from a public street shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practical to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Declarant prior to the conveyance of the first Lot in a section to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Owners Association shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of , and granted to, the Drainage Board to enter the Tract an all Lots therein to the extent

necessary to exercise its rights with respect to any legal drain constitutes a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Access Areas provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways, Lake Access Areas and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Section, Declarant reserves a blanket easement and right on, over and under the ground within that Section to maintain and 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 grading of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) of such Owners' Lot.

13. Declarant's Use During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be

reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices. In addition, Declarant reserves the right to maintain a sales office during the period that it is engaged in the sale of Lots in Huntersfield.

14. Enforcement. The Owner's Association, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges on or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Owner's Association shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Owners Association or an Owner to enforce this Declaration, such Person shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

15. Approvals by Declarant. As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: dedication or transfer of the Community Area. Mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment.

16. Mortgages

(a) Notice to Owners' Association. Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration and any Supplemental Declaration, the

Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address if Mortgagee are furnished to the Secretary, either by the Owner or the Mortgages, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notices to Mortgagees. The Owners' Association shall promptly provide to any Mortgagee of whom the Owners' Association has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Owners' Association.

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any

Residence or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Owners' Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagee, the Owners Association shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Owner's Association.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Owners' Association.

17. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Owners' Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 15, Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2001. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase

or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgage on Residence at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 12(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

18. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and one of them shall be used as an aid to 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.

19. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Owners' Association, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2023, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

20. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

21. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

IN TESTIMONY WHEREOF, witness the signature of Declarant has executed this declaration as of the date set forth above.

BALAMOR DEVELOPMENT COMPANY, INC.

By Peter P. Hawryluk
Peter P. Hawryluk, President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Peter P. Hawryluk, the President of Balamor Development Company, Inc., an Indiana corporation, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for an on behalf of said Owners Association pursuant to authority granted by its Board of Directors.

WITNESS my hand and Notarial Seal this 22 day of August, 1997.



[Handwritten Signature]
Notary Public Residing in
Madison County

[Handwritten Signature]
(printed signature)

My Commission Expires:

12/13/97

THIS INSTRUMENT PREPARED BY PETER P. HAWRYLUK

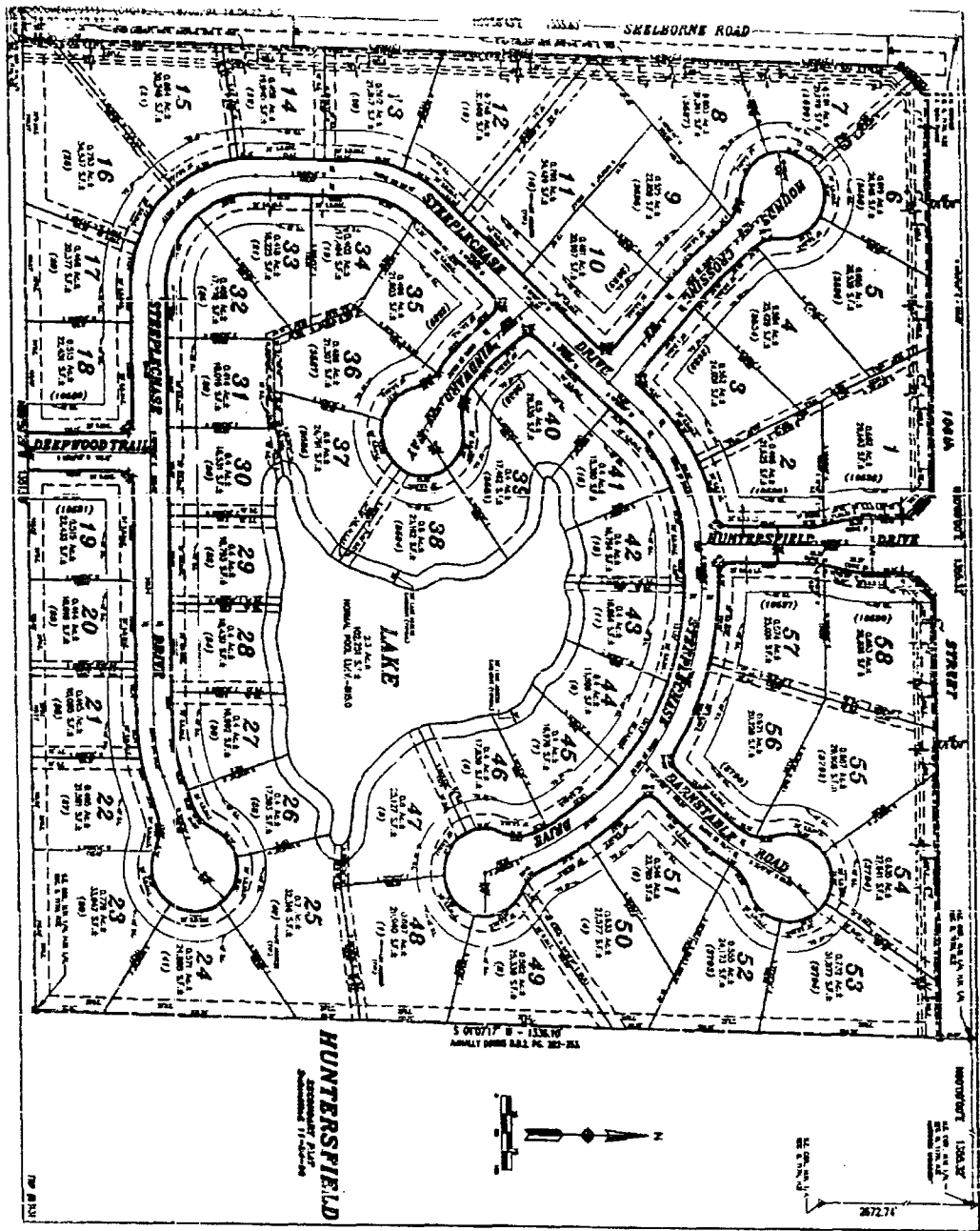


EXHIBIT "A"

9436477

EXHIBIT "B"

The Northwest Quarter of the Northwest Quarter of Section 8, Township 17 North, Range 3 East in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of said Section 8, thence along the North line thereof, North 90 degrees 00 minutes 00 seconds East (assumed bearing) 1355.32 feet to the Northeast corner of said Quarter Quarter Section; thence along the East line of said Quarter Quarter Section, which is also the West line of Annally Downs, Second Section recorded in Deed Book 2, pages 252 and 253 in the Office of the Recorder of Hamilton County, Indiana, South 01 degree 07 minutes 17 seconds West 1336.10 feet to the Southeast corner of said Quarter Quarter Section; thence along the South line of said Quarter Quarter Section, North 89 degrees 59 minutes 29 seconds West 1351.99 feet to the Southwest corner of said Quarter Quarter Section; thence along the West line of said Quarter Quarter Section, North 00 degrees 58 minutes 43 seconds East 1335.83 feet to the Point of Beginning, containing 41.509 acres, more or less.

This Instrument Recorded AUG 22 1994
Sharon K. Cherry, Recorder, Hamilton County, IN

9436477