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**DECLARATION OF COVENANTS AND RESTRICTIONS**

**LOHAVEN**

**Noblesville, Indiana**

®

**CHICAGO TITLE**

Recorded 3-29, 2001

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Office of the Recorder of Hamilton County

# DECLARATION OF COVENANTS AND RESTRICTIONS

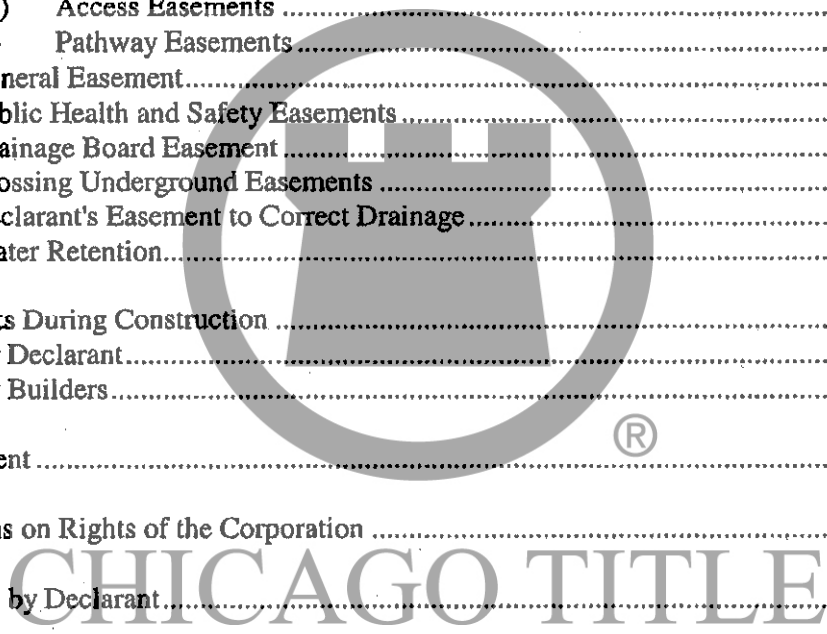
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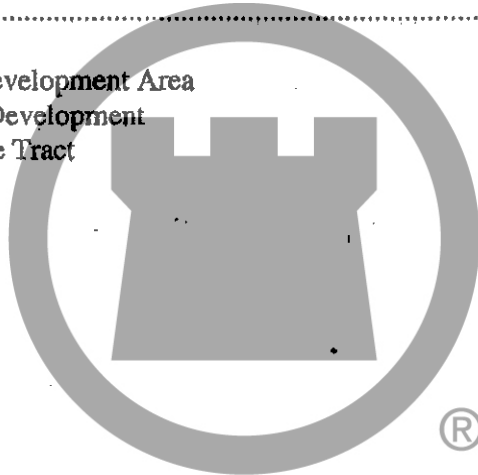
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CHICAGO TITLE

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:

**"Applicable Date"** means the earlier of (i) the date when all Lots in the Development Area have been improved by the construction thereon of Residences, (ii) December 31, 2010 or (iii) the date designated as the Applicable Date by Declarant in a written notice delivered to the Board of Directors.

**"Architectural Control Assessment"** means the assessment levied by the Corporation pursuant to Paragraph 16(e).

**"Architectural Review Board"** means that entity established pursuant to Paragraph 17 of this Declaration for the purposes therein stated.

**"Articles"** means the Articles of Incorporation of the Corporation, as amended from time to time.

**"Assessments"** means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, the Articles or the By-Laws.

**"Building Activity"** means the construction of a Residence on a Lot of a type described in Paragraph 17(c).

**"Building Guidelines"** means the Guidelines for Building Activity on the Tract adopted by the Architectural Review Board.

**"Board of Directors"** means the governing body of the Corporation elected in accordance with the By-Laws.

**"By-Laws"** means the Code of By-Laws of the Corporation, as amended from time to time.

**"Commons"** means the land denoted on a Plat as "Commons" or designated as "Commons" in any recorded instrument executed by Declarant.

**"Community Area"** means (i) the Lake, (ii) the Ponds, (iii) the Private Drives, (iv) the Entry Ways, (v) the Community Center, (vi) the Parks, (vii) the Commons, (viii) the Meadows, (ix) the Drainage System, (x) the Paths, (xi) the

Planting Areas, (xii) 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 (xii) 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 Corporation, 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.

"Community Area Access Easement" means the area designated on a Plat as a means of access to the Commons or other Community Area.

"Community Area Initial Assessment" means the initial assessment for the Reserve for Replacements required by Paragraph 16(c).

"Community Center" means the land depicted on the General Plan of Development as a site for possible development of recreational and other community facilities or, if such site is so developed, the land designated on a Plat as the Community Center together with all improvements thereto and structures and facilities thereon.

"Corporation" means Lochaven Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means BDC/Cardinal Associates, L.P., 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).

"Designated Builder" means during such period as such designation by Declarant may continue, any Person engaged in the construction of more than one (1) Residence on the Tract who is designated by Declarant as a "Designated Builder". Declarant may make and revoke any such designation at any time and from time to time. A builder approved pursuant to Paragraph 32 may, but will not necessarily be, a Designated Builder.

"Development Area" means the land described in Exhibit A together with any land contiguous thereto added to the Tract pursuant to Paragraph 3 of this Declaration.

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

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or



detention ponds, the Lake 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.

"Entry Ways" means the structures constructed as an entrance to Lochaven or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as a designated Block on a Plat and any other traffic islands dividing a roadway providing access to Lochaven or a part thereof, and the grassy area surrounding such structures.

"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.

"Lake" means the lake located in Lochaven.

"Landscape Easement" means a portion of a Lot denoted on a Plat or described in a recorded instrument as an area to be landscaped.

"Lochaven" means the name by which the Tract shall be known.

"Lot" means a platted lot as shown on a Plat. 

"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, (vi) exterior lighting plan, (vii) tree preservation plan and (viii) 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 the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"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.

**"Meadow"** means such land as may be denoted on a Plat as "Meadow" or designated as "Meadow" in any recorded instrument executed by Declarant.

**"Member"** means a member of the Corporation and "Members" means all members of the Corporation.

**"Mortgagee"** means the holder of a first mortgage on a Residence.

**"Owner"** means a Person, including Declarant, 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.

**"Parcel"** means any part of the Development Area that is subject to the same Supplemental Declaration or is declared by Declarant to constitute a "Parcel".

**"Part of the Development Area"** means any part of the Development Area not included in the Tract.

**"Pond"** means any engineered body of water located in the Development Area and depicted on the General Plan of Development and **"Ponds"** means all such Ponds. A numerically designated Pond means the Pond so designated by such number on the General Plan of Development or a Plat.

**"Park"** means such land as may be denoted on a Plat as "Park" or designated as "Park" in any recorded instrument executed by Declarant.

**"Paths"** means those walkways and/or bikeways installed pursuant to Paragraph 11 and such other real estate or interest therein as is conveyed or granted to the Corporation for the purpose of being used for walkways and/or bikeways.

**"Path Lights"** means the light standards, conduits, wiring, bulbs and other appurtenances, if any, installed to illuminate the Paths.

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

**"Planting Area"** means a landscaped area located in the right-of-way of a public street, or as adjacent to a Private Drive or on a Commons, in a Park or in or on other Community Area.

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

**"Private Drive"** means a street, lane, road, driveway or other right-of-way designed to provide access to one or more Lots or to the Community Area that has not been accepted for maintenance by a public authority. Private Drive does not include a driveway located entirely on a single Lot.

**"Reserve for Replacements"** means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

**"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.

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

**"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.

**"Roadway Pavers"** means brick, stone or other decorative pavers installed within any right-of-way as part of the improved surface thereof.

**"Section"** means that portion of the Development Area that is depicted on a Plat.

**"Supplemental Declaration"** means a Supplemental Declaration of Covenants and Restrictions for any Parcel within the Development Area and any Plat or other supplementary declaration of covenants, conditions or restrictions which may be recorded and which extends the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section or Parcel and contains such complementary or supplementary provisions for such Section or Parcel as are required or permitted by this Declaration.

**"Tract"** means the land described in Exhibit C and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

**"Water Access Easement"** means the area designated on a Plat as a means of access to the Lake or a Pond.

"Zoning Authority" with respect to any action means the Administrator of the Noblesville Plan Commission 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 Administrator.

"Zoning Ordinance" means the ordinance adopted by the Noblesville Common Council with respect to the zoning of the Parcel.

2. Declaration. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these 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 Corporation 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 Corporation, 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. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. The Lake and the Ponds.

(a) Development. Declarant intends, but is not obligated, to develop the Ponds and the Lake. Declarant reserves the right, subsequent to commencement of the development of the Ponds and/or the Lake, to determine the number, size and configuration thereof (which may vary from that depicted on the General Plan of Development attached as Exhibit B hereto).

(b) Title and Maintenance. Declarant shall convey, prior to the Applicable Date, title to the Lake and the Ponds to the Corporation. The Corporation shall be responsible for maintaining the Lake and the Ponds. The Maintenance Costs of the Lake and the Ponds shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts a Pond or the Lake shall be responsible at all times for maintaining so much of the bank of the Pond or the Lake, as the case may be, above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of the Pond or the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use of the Lake . No boats shall be permitted upon any part of the Lake except if and to the extent authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors; provided, however, in the event boating is permitted on the Lake, no person who is not an Owner of a Lot abutting the Lake may use the Lake for boating unless a resolution authorizing such use adopted by the Board of Directors has been approved by a majority of the Owners of Lots abutting the Lake. No swimming will be permitted in the Lake except if and to the extent authorized by the Board of Directors. No dock, pier, wall or other structure may be extended into the Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. Each Owner of a Lot abutting the Lake shall indemnify and hold harmless Declarant, the Corporation 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, the Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to the Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Lake or the proximity of a Lot thereto, including loss or damage from erosion.

(d) Use of the Ponds. No boats shall be permitted upon any part of a Pond. No dock, pier, wall or other structure may be extended into a Pond 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 Pond. Each Owner of a Lot abutting a Pond shall indemnify and hold harmless Declarant, the Corporation 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 Pond by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to a Pond, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Pond or the proximity of a Lot thereto, including loss or damage from erosion.

(e) Lake and Pond Levels. The water level of the Lake and Ponds depends upon such natural factors as precipitation and levels of ground water, and will, therefore, fluctuate.

5. Parks. Declarant shall, prior to the Applicable Date, convey title to the Parks to the Corporation. The Corporation shall be responsible for maintaining the Parks and the Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. The use of the Parks shall be subject to rules and regulations adopted by the Corporation, which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

6. Community Center. Declarant intends, but is not obligated, to construct in the area designated on the General Plan of Development as the Community Center a bath house, swimming pool, tennis courts and other recreational and community facilities if development of the Development Area should, in the sole and unfettered judgment of Declarant, justify such construction. If Declarant undertakes the construction of the Community Center or any part thereof, Declarant intends upon completion of construction to convey the same to the Corporation free and clear of all financial encumbrances and other liens securing indebtedness of Declarant but subject to the right of Declarant to use the Community Center as provided in Paragraph 21(a). The Corporation shall be responsible for maintenance of the Community Center and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Community Center as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation or charge shall be inconsistent with the provisions of this Declaration or any Supplemental Declaration.

7. Meadow. Declarant shall, prior to the Applicable Date, convey title to any Meadow to the Corporation. The Corporation shall be responsible for maintaining any Meadow and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Each Meadow shall, consistent with the public health and safety, be maintained in a natural condition conducive to the protection of fauna and beneficial flora which inhabit and exist in the air, land and waters of the Tract. No structure or improvement, other than underground utility facilities and such facilities as may be permitted under any recorded easement to which this Declaration is subordinate, may be installed or maintained in, on or over any Meadow. Nothing herein contained shall preclude the Corporation from planting wildflowers and other plants, shrubs and trees in a Meadow, but no Owner of a Lot adjacent to a Meadow shall make any plantings or otherwise disturb a Meadow without the prior written consent of the Architectural Review Board.

8. Commons. Declarant shall, prior to the Applicable Date, convey title to the Commons to the Corporation. The Corporation shall be responsible for maintaining the Commons and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Except for underground utility facilities, no permanent

improvements shall be made to or installed on the Commons other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features. The use of the Commons shall be subject to rules and regulations adopted by the Corporation that are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

9. 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 and the Ponds. To the extent not maintained by the Drainage Board, the Corporation shall maintain the Drainage System in good condition for the purpose for which it was constructed, 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.

10. Maintenance of Entry Ways, Landscape Easements, Planting Areas and Roadway Pavers.

(a) Entry Ways. The Corporation shall maintain the Entry Ways 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 shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Lochaven or a part thereof. 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.

(b) Landscape Easements. Unless the Board of Directors determines that all or some of the Landscape Easements should be maintained by the Corporation and the Maintenance Costs thereof assessed as a General Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot. The Corporation shall maintain (and replace as appropriate) all fences installed by Declarant or the Corporation in a Landscape Easement and the Maintenance Costs thereof shall be assessed as a general assessment against all Lots subject to assessment.

(c) Planting Areas and Roadway Pavers. To the extent not maintained by public authority, the Corporation shall maintain the Planting Areas and the Roadway Pavers, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

11. Paths and Path Lights. Declarant may, but is not obligated to, install the Paths and Path Lights at the approximate locations depicted on the General Plan of Development and may reserve easements for such purpose over and across Lots. If installed, the Corporation shall operate and maintain the Paths and Path Lights and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Paths as it may deem appropriate including but not limited to the prohibition of the use of all or some of the Paths by bicycles, skateboards and/or motorized or non-motorized vehicles.

12. Private Drives. Unless otherwise provided in a Supplemental Declaration, each Private Drive shall be owned by the Corporation and maintained by the Corporation in good condition satisfactory for the purpose for which it was constructed. The Maintenance Costs incurred by the Corporation in maintaining a Private Drive (other than a Frontage Place) shall be assessed against all Lots whose principal means of vehicular access to a public right-of-way is over and across such Private Drive. The Maintenance Costs for Frontage Places shall be assessed as a General Assessment against all Lots subject to assessment. As used herein, "Frontage Place" means a roadway situated parallel to a public street in order to provide access to one or more Lots and/or a roadway separated from a publicly maintained street by an "eyebrow" median. Estimated Maintenance Costs, including a contribution to a reserve fund for future maintenance, repair and replacement of Private Drives, shall be included in each annual budget of the Corporation adopted pursuant to Paragraph 16(k).

13. Construction of Residences.

(a) Size of Residence. Except as otherwise provided herein, or in a Supplemental Declaration, no Residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a gross floor area equal to or greater than the square footage specified in the Building Guidelines applicable to the Lot as of the date construction of the Residence on the Lot commences. Subsequent to completion of construction of a Residence on a Lot pursuant to an approved Lot Development Plan, the minimum gross floor area for a Residence on such Lot may not be increased by the Architectural Review Board without the written consent of the then Owner of such Lot.

(b) Building Guidelines. Each Owner shall at all times comply with the requirements of the Building Guidelines applicable to such Owner's Lot.

(c) 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.

(d) 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 (exclusive of open areas or terraces, unenclosed porches not more than one story high, fireplace chimney and architectural features that project no more than two (2) feet) may be built or erected nearer to any side or rear Lot line than permitted by the Building Guidelines. 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. In the event of consolidation of lots on a building site, as referenced in Paragraph 16(a), the yard dimensions required by the Zoning Ordinance and the Building Guidelines shall be applied to the consolidated building site and setbacks shall be measured from the exterior Lot lines of the consolidated building site.

(e) Driveways. All driveways shall be paved with either concrete or asphalt and maintained dust free.

(f) Yard Lights. If street lights are not installed in the Tract, then each Owner shall install and maintain in operable condition a pole light on the 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 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.

(g) 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.

(h) Construction and Landscaping. All Building Activity shall be undertaken and completed strictly in accordance with the Building Guidelines and the Lot Development Plan approved by the Architectural Review Board. 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 thirty (30) days following substantial completion of the Residence if such completion occurs between April 1 and October 15; otherwise prior to May 1. Unless a delay is caused by strikes, war, court injunction or acts of God, construction of a Residence on a Lot shall be completed within one (1) year after the date of commencement of the building process.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall

not relieve such Owner from his obligation to complete construction of a Residence upon the Lot within the time period specified herein. For the purposes of this subparagraph (h), 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, landscaping and yard light) has been completed in conformity with the Lot Development Plan.

(i) 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.

(j) 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 a regulated public utility or a municipality) shall be installed or maintained on any Lot.

(k) 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 a 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. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot as long as the well does not adversely affect the normal pool level of a Lake or Pond.

Domestic water service to the Tract will initially be provided by Hamilton Western Utilities, Inc. ("Hamilton Western"). Tap-on or connections charges for such service are established in Hamilton Western's tariff on file with the Indiana Utilities Regulatory Commission and must be paid prior to connection. Hamilton Western must be notified before backfilling or covering the service line to a Residence and Hamilton Western personnel must inspect and approve such service line and the connection to the Residence. Hamilton Western's rules and regulations require a refundable deposit to be made prior to connection by a Lot Owner to the water distribution system operated by Hamilton Western.

(l) 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 may be included in a legal drain established by the Drainage Board. In such event, each included 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. 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.

(m) Accessory Buildings. No mini-barns, storage shed or other accessory building or structure other than gazebos shall be permitted on any Lot.

(n) Pools. No above ground swimming pool, other than a children's wading pool, shall be permitted on any Lot.

(o) Basketball Goals. No basketball goal shall be placed or maintained in front of the front building elevation of a Residence or within the right-of-way of any street. Unless the Architectural Review Board establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material such as fiberglass or Lexan and attached to a black pole or similar type of post. The location of a basketball goal on the Lot is subject to approval of the Architectural Review Board if it would be visible from a public right-of-way adjoining the Lot.

(p) Geothermal Systems. No open loop geothermal heating and cooling system shall be installed on a Lot.

#### 14. Maintenance of Lots.

(a) Vehicle Parking. No recreational vehicle, motor home, truck which exceeds 4 ton in weight, trailer, boat or disabled 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 Lochaven and the sale of Lots therein, such signs as may be located on the Community Area and such signs as may, with the consent of Declarant, be displayed by a Designated Builder to advertise the property during construction and sale of Residences and the maintenance of model homes, 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.

(c) Fencing. Except to the extent otherwise provided in the Building Guidelines, 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 located on a Landscape Easement or 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. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of any Lake or Pond. All fences shall be kept in good repair. 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 Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(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) Animals. 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 designated by the Board of Directors 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. Except as otherwise required by law, no satellite receiver, down-link or antenna which is visible from a public way or from any other Lot, and no satellite dish greater than eighteen (18) inches in diameter shall be permitted on any Lot without the prior written consent of the Architectural Review Board. Unless consent thereto is granted by a majority of the Owners, the Architectural Review Board shall not give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot, nor shall it give its consent to the installation of any other exterior antenna unless all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected 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) Air Conditioners. No room air conditioning unit shall be installed so as to protrude from any structure located on a Lot (including but not limited to the window of any Residence or garage) if the same would be visible from a public way, a Community Area or any other Lot; provided, however, that this Restriction shall not apply to central air conditioning units.

15. Lochaven Homeowners Association, Inc.

(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 Corporation shall have such powers as are set forth in this Declaration, any Supplemental Declaration and the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Corporation shall have a single class of members.

(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. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the cost of periodic maintenance, repairs, renewal or replacement of the Community Area.

(f) Maintenance Standards. In each instance in which this Declaration or a Supplemental Declaration imposes on the Corporation a maintenance obligation with respect to the Community Area or a part thereof, the Corporation shall maintain the Community Area or designated part thereof in good condition, order and repair substantially comparable to its condition when originally constructed, installed or planted and compatible in appearance and utility with a first-class residential community. Grass, trees, shrubs and other plantings located on the Community Area for which the Corporation has maintenance responsibility shall be kept neatly cut, cultivated or trimmed as reasonably required and otherwise maintained at all times in good and slightly condition appropriate to a first-class residential community.

(g) Insurance, Taxes and Utilities. The Corporation shall maintain public liability and casualty insurance in prudent amounts insuring against risk of

loss to the Corporation on account of injury to person or property and damage to property owned by the Corporation and shall pay all taxes assessed against such property and all utility charges incurred with respect to Community Area for which the Corporation has maintenance responsibility.

(h) Limitations on Action by the Corporation. Unless at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 18(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 Residence; (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 Replacements in the amount required by this Declaration.

(i) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated 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 Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

16. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, 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 Corporation the following: (1) General

Assessments, (2) Community Area Initial Assessment, (3) annual and special Parcel Assessments, (4) Architectural Control Assessments (to the extent levied) and (5) Special Assessments, such Assessments to be established and collected as hereinafter provided.

If two (2) or more lots originally shown on a Plat are consolidated as a single Lot by virtue of partial vacation of a Plat, or the construction thereon of a Residence, some part of which extends over a Lot line, or if a Lot is divided by conveyance of portions thereof to owners of adjacent Lots, then, in any such events, so long as the consolidated or divided Lot is used in its entirety by one or more Owners of contiguous Lots, the vacated or divided Lot(s) shall cease to be Lot(s) for purposes of Assessments under this Paragraph 16, and the consolidated Lots shall constitute one (1) Lot for purposes of Assessments under this Paragraph 16.

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, repair, replacement and operation of the Community Area.

(ii) Basis for Assessment.

(1) Lots Generally. Subject to subparagraph (g) below, each Residential Lot shall be assessed at a uniform rate without regard to whether a Residence or other improvements have been constructed upon the Lot, except that if no Residence has been constructed on the Lot, the Corporation shall waive with respect to such undeveloped Lot that part of any Assessment that is attributable to services (such as trash removal) that are provided only with respect to improved Lots.

(2) Lots Owned by Declarant. The Corporation shall assess no Lot owned by Declarant



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) Change in Basis. The basis for assessment may be changed upon recommendation of the unanimous vote of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of 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 Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. 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 provisions 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 respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Community Area Initial Assessment. On the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), there shall be due and payable to the Corporation by the Owner of such Lot the sum of Five Hundred Dollars (\$500.00) which shall be deposited in the Reserve for Replacements maintained by the Corporation.

(d) Parcel Assessments.

(i) Purpose of Assessments. Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.

(ii) Method of Assessment. An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board shall fix in accordance with the By-Laws and the provisions of any Supplemental Declaration the annual parcel assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.

(iii) Special Assessments. In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of a majority of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel.

(e) Architectural Control Assessment. If any Owner fails to comply with the Building Guidelines or other requirements for construction of

improvements, landscaping and other Building Activities or maintenance of a Lot (including but not limited to the filing of a Lot Development Plan) or any restrictive covenant or restriction specified in a Supplemental Declaration for the Parcel in which such Owner's Lot is located and/or the provisions of Paragraphs 17 or 19 of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) Two Hundred Fifty Dollars (\$250.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) One Hundred Thousand Dollars (\$100,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.

(f) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years 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, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Declarant and of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(g) Date of Commencement of General 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 General Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. Notwithstanding the foregoing, if an Owner owns more than two (2) unimproved Lots, the General Assessment shall not commence with respect to such unimproved Lot(s) until the earlier of (i) the date the Owner commences construction of a Residence, thereon or (ii) the first day of the sixth month following the date the Owner acquired title to the Lot(s).

(h) Effect of Nonpayment of Assessments; Remedies of the Corporation. 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 Corporation shall be entitled to institute in any court of competent jurisdiction any lawful

action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation 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.

(i) 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

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

(k) 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.

17. Architectural Control.

(a) The Architectural Review Board. The Board of Directors shall appoint an Architectural Review Board consisting of three (3) or more Persons as provided in the By-Laws.

(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, to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography and to assure compliance with the Building Guidelines.

(c) Conditions. Except as otherwise expressly provided in this Declaration or a Supplemental 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 Declarant to another Owner (including, but not limited to, (i) construction, erection or alteration of any Residence, other building, fixture, equipment, fence, wall, deck, swimming pool, ball court, patio, parking area, or other structure on a Lot, or (ii) any plantings, other landscaping or exterior lighting on a Lot or (iii) the installation or alteration of any signage on a Lot) 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 or a Designated Builder of any Building Activity, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no Building Activity shall be commenced or continued by any Person other than Declarant or a Designated Builder without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such Building Activity. 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 Lochaven, and no Owner shall undertake any construction activity within Lochaven 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 eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural, landscaping, lighting, fencing, recreation facility and signage 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 or, prior to the Applicable Date, the Building Guidelines established by Declarant. 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. The Building Guidelines may establish different standards and requirements for various Lots based on the size and location of such Lots and the improvements to be located thereon.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the Building Guidelines in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) Design Consultants. The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants are affiliated with Declarant or a Designated Builder or may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the Building Guidelines, a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of this Paragraph 17, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements, landscaping or lighting constructed and/or installed prior to the submission or approval of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement, landscaping or exterior lighting is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of the Building Guidelines, a Supplemental Declaration or Paragraphs 17 or 19 of this Declaration. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated the Building Guidelines, a Supplemental Declaration or Paragraphs 17 or 19 of this Declaration and such violation remains uncured.

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

(j) Liability of Board. Neither the Architectural Review Board, nor any member or agent thereof, nor the Declarant 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 Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

18. 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 Corporation 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) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

(c) Obligations of the Corporation. The Corporation, 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 (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) 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 provisions of, this Declaration or any Supplemental Declaration. 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. Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Paths, Parks, the Community Center and the Commons subject to the reserved rights of Declarant and the Corporation. The Owners of Lots adjoining a Meadow may use such Meadow for such purposes as the Board of Directors may authorize, subject to the reserved rights of Declarant and the Corporation and to the restrictions imposed by this Declaration. The Owners of Lots abutting the Lake or a Pond may use the Lake or such Pond, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors and permitted by this Declaration. No Owner whose Lot does not abut the Lake or a Pond shall have any right of access to the Lake or a Pond over any Lot, but only such right of access over the Community Area as may be designated by the Board of Directors for such purpose.

(e) Extent of Easements. The easements of enjoyment of Parks and Paths located within Parks created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Community Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration;

(ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Parks, the Ponds, the Community Center, the Commons and any Meadow 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 Corporation to suspend the right of an Owner or any Person, whether claiming through the Owner or otherwise, to use the Parks, the Ponds, the Community Center, the Commons and any Meadow for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;



(iv) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(v) the right of the Corporation 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 appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and

(vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area located in a Section to (a) Owners of Unit located in such Section or (b) to other Owners of less than all of the Lots in the Tract.

(f) 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 and facilities may use the Community Area and facilities subject to such general regulations 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. Except as otherwise provided herein or in a Supplemental Declaration, the Corporation may restrict use of the Community Area by guests of persons whose use thereof is authorized herein.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, or any other Person permitted by this Declaration to use such Community Area, such Owner or Person authorizes the Corporation to repair said damaged area; the Corporation 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 Corporation in the discretion of the Corporation. In the event of damage or destruction by said Owner or any of his guests, tenants, licensees, agents or member of his family an amount equal to the costs incurred to

effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner. In the event of damage or destruction by any other Person, said Person shall immediately reimburse the Corporation for the costs incurred to effect such repairs upon receipt of an invoice with respect thereto.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof during the course of development of the Tract, but notwithstanding any provision herein, Declarant hereby covenants that, subject to Declarant's reserved rights set forth in Paragraph 18(a), it shall convey the Community Area to the Corporation, free and clear of all liens and financial encumbrances except the lien of taxes not yet payable, not later than the Applicable Date. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance.

19. Use of Tract.

(a) Protective Covenants.

(i) Land Use. A Lot may be used only for residential purposes, and only one Residence 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 Lochaven 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.

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be detrimental to any other Lot in the vicinity thereof or to its occupants.

(iii) Other Restrictions. The Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 17(b) and to supplement any covenants or restrictions set forth herein or in a Supplemental Declaration, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage

tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel, which rules and regulations may vary among Parcels. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which dues notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

(iv) Exceptions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Tract. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as reasonably determined by the Architectural Review Board. In the event an Owner of any Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

20. 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 various easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, 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 Lochaven 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 water flow. 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, but neither Declarant nor 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 regulated utility or governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Lochaven 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 Corporation 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 Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation, at their election, for the planting and maintenance of trees, shrubs and other plantings and the installation and maintenance of fencing.

(vi) Water Access Easements (WAE) are created for the use of Declarant, the Corporation and the Drainage Board for the purpose of gaining access to the Lake, the Ponds and the Drainage Facilities in the course of maintenance, repair or replacement of any thereof.

(vii) Community Area Access Easements (CAE) are created for the use of Declarant and the Corporation for the purpose of gaining access to the Parks, a Meadow and the Commons in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to such Community Area to enjoy the use thereof to the extent authorized herein or in a Supplemental Declaration.

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

(ix) Access Easements (AE) are created to provide access over and across Private Drives by Declarant, the Corporation, public utility companies and the Owners of Lots abutting the Private Drive to which the Access Easement pertains, and for purposes of installation and maintenance of the Private Drives by Declarant and the Corporation.

(x) Pathway Easements (PE) are created for the installation by Declarant, the maintenance by the Corporation and the use by the Owners of the Path.

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 a 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 or Private Drive 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.

(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 practicable 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 Corporation 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 and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, Water Access Easements, and Community Area Access Easements 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, Water Access Easements or Community Area Access Easements, 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 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 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) on such Owner's Lot.

21. Use of Lots During Construction.

(a) By Declarant. 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. Declarant specifically reserves the right to maintain a sales office in the Community Center during the period that it is engaged in the sale of Lots in Lochaven.

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Lochaven may, with the prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, visitors to such model home may use Lots adjacent to or in proximity to such model home for parking.

22. Enforcement. The Corporation, 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 now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation 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 to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

23. Limitations on Rights of the Corporation. Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other

Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

24. Approvals by Declarant. Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment.

25. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Unit, 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 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 of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by 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 Corporation shall promptly provide to any Mortgagee of whom the Corporation 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 Unit 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 Corporation;



(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 Corporation 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 Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(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 Corporation.

26. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation 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 20, (ii) 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 the Applicable Date. 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 materially the rights or increase or expand materially 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 mortgages on

Residences 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 20(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.

27. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none 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.

28. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2025, 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.

29. 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.

30. 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.

31. Compliance with the Soil Erosion Control Plan.

(a) The Plan. Declarant has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15, Storm Water Run-Off Associated with Construction Activity. In connection with any construction

activity on a Lot by an Owner, its contractor or the subcontractors of either, Owner shall take or cause to be taken all erosion control measures contained in such plan as the plan applies to "land disturbing activity" undertaken on a Lot and shall comply with the terms of Declarant's general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) Indemnity. The Owner of each Lot shall indemnify and hold Declarant harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or be connected with, any work done by such Owner, its contractor and their respective employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Declarant.

32. Exclusive Builders. Declarant reserves the absolute right prior to the Applicable Date to restrict construction of Residences in Lochaven to builders who have been approved by Declarant, such approval to be granted or withheld in the absolute discretion of Declarant. Notwithstanding the purchase of a Lot by an Owner, such Owner may not cause or authorize any Person to construct a Residence on a Lot other than a builder who has been approved in writing by Declarant.

33. Mineral Extractions. Prior to the Applicable Date, a lessee of Declarant may engage in the extraction of sand, gravel and other materials from the portion of the Development Area intended to become the Lake, which extraction activities may include dredging, but shall not include blasting. Each purchaser of a Lot shall be deemed to have consented to such extraction operations and shall not object to or remonstrate against any such operations which are conducted in conformity with applicable law. No mineral extraction operation shall be conducted on any Lot.

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

BDC/CARDINAL ASSOCIATES, L.P.

By *George P. Sweet*  
George P. Sweet, General Manager

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared George P. Sweet, the General Manager of BDC/Cardinal Associates, L.P., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said partnership.

WITNESS my hand and Notarial Seal this 22 day of March 2001.



*Marie M. Urick*  
Notary Public Residing in Hendricks County

Marie M. Urick  
(printed signature)

CHICAGO TITLE

My Commission Expires:

May 24, 2007

/j.kreutz  
3/21/01 8:07 PM  
\\BRENWICK\_1\VOL1\SHARED\JoseLochaven\DECLARATION COVENANTS & RESTRICTIONS.doc

This instrument prepared by (and return to) Tom Charles Huston, Attorney at Law, 12821 East New Market Street, Suite 200, Carmel, Indiana 46032

**EXHIBIT A**

**Description of Development Area**

**Land Description: LOHAVEN OF NOBLESVILLE**

Part of the Southwest Quarter of Section 14 and the Southeast Quarter of Section 15, Township 18 North, Range 4 East, Noblesville Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the southwest corner of said Southeast Quarter; thence North 89 degrees 33 minutes 59 seconds East (basis of bearing is Grid North per Indiana State Plane Coordinate System- East Zone) along the south line of said Quarter a distance of 343.29 feet to the centerline of Vestal Ditch and the Point of Beginning; (the following seven courses are along said centerline) (1) thence North 24 degrees 28 minutes 22 seconds East a distance of 709.36 feet; (2) thence North 29 degrees 09 minutes 47 seconds East a distance of 124.55 feet; (3) thence North 21 degrees 04 minutes 38 seconds East a distance of 179.48 feet; (4) thence North 09 degrees 53 minutes 38 seconds East a distance of 274.73 feet; (5) thence North 08 degrees 11 minutes 50 seconds East a distance of 418.92 feet; (6) thence North 04 degrees 43 minutes 01 seconds East a distance of 773.19 feet; (7) thence North 02 degrees 43 minutes 17 seconds East a distance of 290.27 feet to the north line of said Quarter; thence North 89 degrees 45 minutes 33 seconds East along said north line a distance of 1701.61 feet to the northeast corner of the said Quarter and the northwest corner of said Southwest Quarter; thence South 88 degrees 57 minutes 50 seconds East along the north line of said Southwest quarter a distance of 2673.12 feet to the northeast corner of said Quarter; thence South 00 degrees 04 minutes 58 seconds West along the east line of said Quarter a distance of 1326.65 feet to the northeast corner of the Southeast Quarter of said Quarter; thence North 89 degrees 00 minutes 38 seconds West along the north line of said Quarter a distance of 1338.98 feet to the northwest corner of said Quarter; thence South 00 degrees 11 minutes 16 seconds West along the west line of said Quarter a distance of 1327.70 feet to the southwest corner of said Quarter; thence North 89 degrees 03 minutes 25 seconds West along the south line of said Quarter a distance of 1341.39 feet to the southwest corner of said Quarter and the southeast corner of said Southeast Quarter; thence South 89 degrees 33 minutes 59 seconds West along the south line of said Southeast Quarter a distance of 2291.50 feet to the Point of Beginning, Containing 237.042 acres, more or less.

03/05/01 kdk

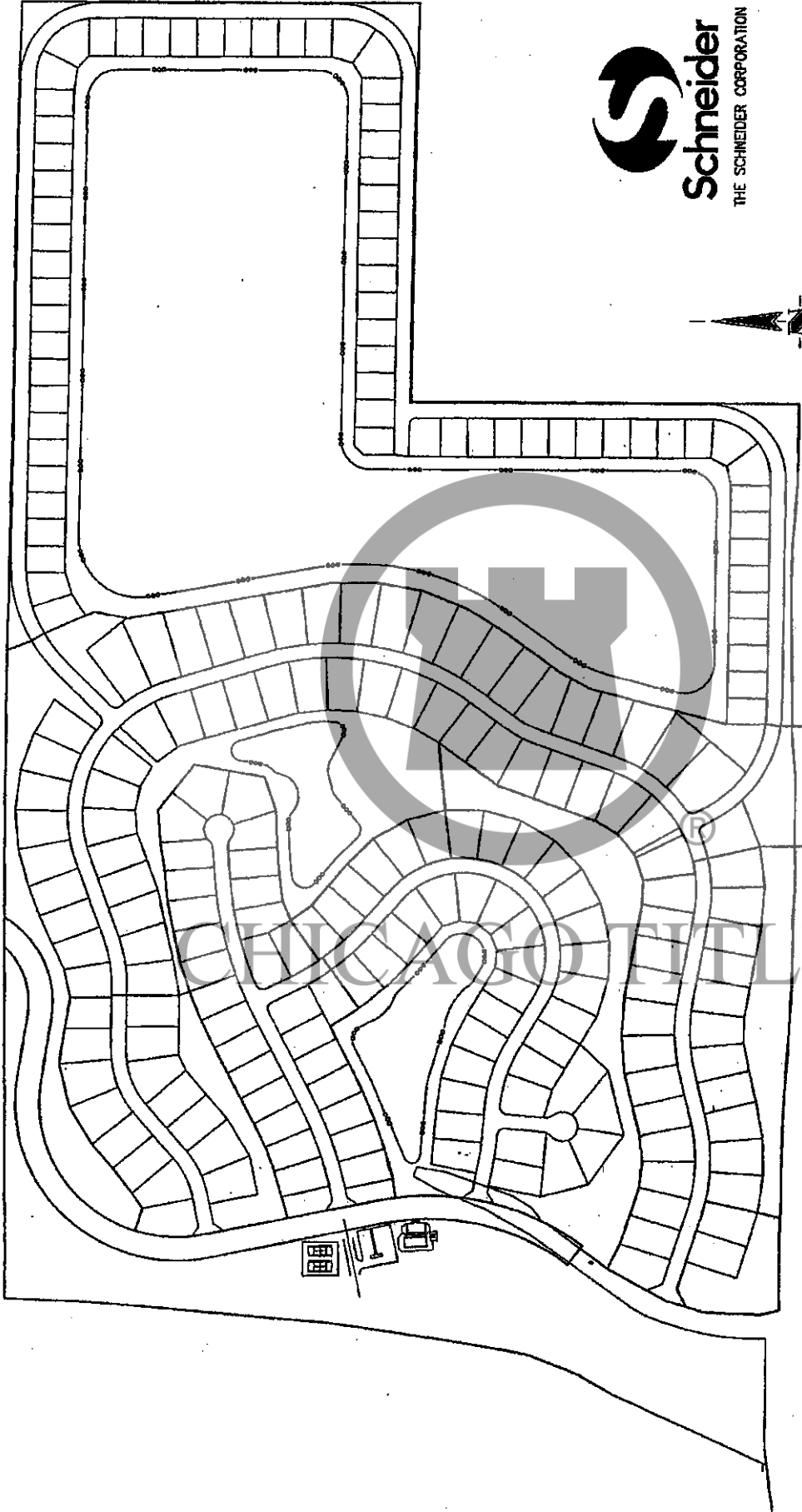
**EXHIBIT B**

**General Plan of Development**



CHICAGO TITLE

LOCHAVEN OF NOBLESVILLE



**Schneider**  
THE SCHNEIDER CORPORATION



NOT TO SCALE

N: \3K\3061\001\DWGS\EXHIBIT021.DWG  
03/21/01 DCC

## EXHIBIT C

### Description of the Tract

#### **Land Description: LOHAVEN OF NOBLESVILLE, SECTION 1 A**

A part of the Southeast Quarter of Section 15, Township 18 North, Range 4 East, in Hamilton County, Indiana, more particularly described as follows:

**Commencing** at the Southwest corner of said Quarter; thence North 89 degrees 33 minutes 59 seconds East (basis of bearings is Grid North per Indiana State Plane Coordinate System - East Zone) along the south line of said Quarter a distance of 912.60 feet; thence North 00 degrees 26 minutes 01 seconds West a distance of 90.53 feet to the intersection of the east right-of-way line of Cherry Tree Road and the north right-of-way line of 146th Street as described in a Warranty Deed to Hamilton County per Instrument Number 9973292 in the Office of the Recorder in Hamilton County, Indiana, (the following five courses are along said east right-of-way line of Cherry Tree Road), (1) thence North 13 degrees 03 minutes 38 seconds West a distance of 63.62 feet; (2) thence North 02 degrees 19 minutes 32 seconds East a distance of 189.50 feet; (3) thence North 16 degrees 40 minutes 44 seconds East a distance of 55.69 feet to the **Point of Beginning**; (4) thence continuing North 16 degrees 40 minutes 44 seconds East a distance of 70.68 feet; (5) thence North 29 degrees 18 minutes 32 seconds East a distance of 221.36 feet; thence South 62 degrees 43 minutes 02 seconds East a distance of 93.54 feet; thence South 72 degrees 14 minutes 19 seconds East a distance of 204.22 feet; thence South 83 degrees 48 minutes 08 seconds East a distance of 88.63 feet; thence North 84 degrees 43 minutes 58 seconds East a distance of 87.16 feet; thence North 76 degrees 17 minutes 38 seconds East a distance of 214.95 feet; thence North 85 degrees 05 minutes 26 seconds East a distance of 128.27 feet; thence South 86 degrees 42 minutes 30 seconds East a distance of 128.13 feet; thence South 79 degrees 42 minutes 41 seconds East a distance of 321.00 feet; thence South 88 degrees 46 minutes 45 seconds East a distance of 78.37 feet; thence South 07 degrees 44 minutes 53 seconds East a distance of 175.00 feet to a point on a non-tangent curve to the left having a radius of 425.00 feet, the radius point of which bears North 07 degrees 44 minutes 53 seconds West; thence easterly along said curve an arc distance of 39.53 feet to a point which bears South 13 degrees 04 minutes 39 seconds East from said radius point; thence South 13 degrees 04 minutes 39 seconds East a distance of 225.00 feet; thence South 00 degrees 26 minutes 01 seconds East a distance of 114.28 feet to a point on the said north right-of-way line of 146th Street; (the following seven courses are along said north right-of-way line); (1) thence North 89 degrees 56 minutes 21 seconds West a distance of 151.64 feet; (2) thence North 86 degrees 04 minutes 44 seconds West a distance of 80.51 feet to a point on a non-tangent curve to the right having a radius of 6496.05 feet, the radius point of which bears North 00 degrees 03 minutes 04 seconds West; (3) thence westerly along said curve an arc distance of 266.46 feet to a point which bears South 02 degrees 17 minutes 57 seconds West from said radius point, and a non-tangent curve to the right having a radius of 6496.05 feet, the radius point of which bears North 02 degrees 17 minutes 57 seconds East; (4) thence westerly along said curve an arc distance of 158.70 feet to a point of which bears South 03 degrees 41 minutes 56 seconds West from said radius point; (5) thence North 86 degrees 18 minutes 05 seconds West a distance of 97.13 feet to a curve to the



left having a radius of 6627.28 feet, the radius point of which bears South 03 degrees 41 minutes 56 seconds West; (6) thence westerly along said curve an arc distance of 433.74 feet to a point which bears North 00 degrees 03 minutes 03 seconds West from said radius point; (7) thence North 87 degrees 29 minutes 17 seconds West a distance of 63.32 feet; thence North 13 degrees 00 minutes 11 seconds East a distance of 251.53 feet to a point on a non-tangent curve to the right having a radius of 625.00 feet, the radius point of which bears North 13 degrees 00 minutes 11 seconds East; thence northwesterly along said curve an arc distance of 51.94 feet to a point which bears South 17 degrees 45 minutes 51 seconds West from said radius point; thence North 72 degrees 14 minutes 09 seconds West a distance of 262.38 feet; thence South 62 degrees 58 minutes 02 seconds West a distance of 67.75 feet to the **Point of Beginning**. Containing 15.205 acres, more or less.

3/01/01 kdk.



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