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DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS

RECORDED
SHARON K. CHERRY
HAMILTON CO. IN
JUN 23 AM 9:31

OF

MERRIMAC

This Instrument Recorded JUN 23 1994
Sharon K. Cherry, Recorder, Hamilton County, IN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 20th day of June, 1994, by Merrimac Corporation, an Indiana Corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the sole owner of the fee simple title to certain real estate located in Hamilton County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, consisting of approximately 160 acres (the "Real Estate"); and,

WHEREAS, Declarant desires to preserve the character of Merrimac and to protect the property values within the Real Estate; and,

WHEREAS, Declarant intends to sell the Real Estate restricting it in accordance with a common plan designed to preserve the value and residential qualities of the Real Estate for the benefit of its future owners; and,

WHEREAS, Declarant intends to restrict the uses of the Real Estate in accordance with a common plan as stated in this Declaration;

NOW, THEREFORE, Declarant declares that the Real Estate shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions contained in this Declaration expressly and exclusively for the use and benefit of the Real Estate and of each and every person or entity who now or in the future owns any portion or portions of the Real Estate.

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SECTION 1 DEFINITIONS. The following terms used in this Declaration shall have the following meanings:

Section 1.1 Association. "Association" means Merrimac Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation, which is the incorporated association of all Owners in the Real Estate more particularly described in Section 5 of this Declaration.

Section 1.2 Board of Directors. "Board of Directors" means the governing body of the Association elected by the Owners in accordance with the By-Laws.

Section 1.3 Building. "Building" means all structures erected on the Real Estate, including Residences, garages, accessory buildings, outbuildings, or covered and enclosed permanent structures of any kind.

Section 1.4 Builder. "Builder" means the person, firm or entity (including the Developer) constructing the first Residence on each Lot.

Section 1.5 By-Laws. "By-Laws" means the By-Laws of the Association providing for the administration and management of the Association.

Section 1.6 Committee. "Committee" means the Architectural Control Committee which shall be constituted and governed as set out in Section 9 of this Declaration.

Section 1.7 Common Area. "Common Area" means those portions of the Real Estate designated "C.A." or "Common Area" on the Plat.

Section 1.8 Common Expenses. "Common Expenses" means the expenses of administration or the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and other costs and expenses incurred by the Association for the common benefit of the Owners.

Section 1.9 Delinquency Date. "Delinquency Date" means the date which is ten (10) days after the due date of any Regular or Special Assessment.

Section 1.10 Developer. "Developer" means Merrimac Corporation, an Indiana Corporation, and any successor or assignee of its interest in all or part of the Real Estate or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Developer for purposes of this Declaration.

Section 1.11 Drainage Easements. "Drainage Easements" means the easements labeled "D.E." on the Plat which have been created to provide paths and courses for area and local storm drainage either over land or in adequate

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underground conduits to serve the needs of the Real Estate, the lands adjoining the Real Estate, and the public drainage system.

Section 1.12 Ingress-Egress Easements. "Ingress-Egress Easements" mean the easements labeled "I.E." on the Plat which have been created to provide Ingress and egress to, over and from the Real Estate.

Section 1.13 Lot. "Lot" means one of the numbered lots as shown on the Plat of the Real Estate.

Section 1.14 Mortgagee. "Mortgagee" means the holder of any first mortgage on any Lot or Residence and other Improvement constructed on a Lot.

Section 1.15 Owner. "Owner" means a person, firm, corporation, partnership, trust or other legal entity or any combination thereof, including Declarant, which owns the record fee simple title to a Lot; provided that persons or entities owning a single Lot as tenants in common, joint tenants, tenants by the entirety or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration, and provided further that any person holding record fee simple title for purposes of security only shall be excluded.

Section 1.16 Phase. "Phase" means that portion of the Real Estate contained in individual plat(s) to be recorded as sections of the Real Estate ready to be conveyed to individual Lot purchasers.

Section 1.17 Plat. "Plat" means the Master Development Plan of the Real Estate prepared by Melton-Packard and Associates attached to this Declaration as Exhibit "B" and incorporated by this reference, the Plat of Phase 1 and the Plats of any subsequent Phases. "Plat of Phase 1" means the plat prepared by Melton-Packard and Associates attached to this Declaration as Exhibit "C" and recorded in the Office of the Recorder of Hamilton County, Indiana, as Document _____.

Section 1.18 Real Estate. "Real Estate" means the real estate described in Exhibit A together with any additions thereto as provided in this Declaration.

Section 1.19 Residence. "Residence" means a single-family dwelling constructed on a Lot.

Section 1.20 Sewer Easements. "Sewer Easements" mean the easements labeled "S.E." on the Plat which have been created for the use of the utility having jurisdiction over the storm and sanitary waste disposal systems for the purpose of installation and maintenance of sewers.

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Section 1.21 Vehicle. "Vehicle" means motor homes, motor-powered conveyances, boats, trailers, campers, motorcycles, scooters, trucks, vans, tractors, tractor trailers, buses and automobiles.

SECTION 2 IN GENERAL

Section 2.1 Name. The Real Estate shall be known and designated as "Merrimac" and shall consist of single family Lots numbered 1 through 295.

Section 2.2 Residential Development. The Merrimac Residential Development and each Residence constructed within the Real Estate shall be used by its Owners and occupants exclusively for residential purposes. No commercial building shall be erected, altered, placed or permitted to remain on any portion of the Real Estate. No business activity or business shall be carried on or conducted from a Residence except for home occupations permitted under applicable zoning laws as approved by the Committee. Leasing of a Residence for residential purposes shall not be considered a business or business activity as long as the lease meets the requirements of this Declaration applicable to the particular Residence.

Section 2.3 Governmental Restrictions. The Real Estate and all Lots and Residences constructed upon Lots shall be subject to the zoning ordinances and regulations of the applicable governmental authorities all of which are incorporated by reference.

Section 2.4 Effect on Owners. The Owners of any Lot subject to this Declaration by acceptance of a deed conveying title thereto or in the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of Developer and the Committee with respect to these restrictions and also for themselves, their heirs, personal representatives, successors, and assigns, such Owners covenant and agree and consent to and with Developer and to and with the Owners and subsequent Owners of each of the Lots affected by these restrictions, to keep, observe, comply with and perform such restrictions and agreements.

SECTION 3 PHYSICAL CHARACTERISTICS OF THE DEVELOPMENT.

Section 3.1 Ownership of Common Area. The Common Area shall be conveyed to or owned by the Association as indicated in this Section, and shall be held for the use and enjoyment of the Owners, all of which shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot subject to the provisions of this Declaration including, but not limited to the following:

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Section 3.1.1 The Association shall have the right, upon approval of two-thirds (2/3) of all Class A and Class B Owners and by two-thirds (2/3) of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Association.

Section 3.1.2 The Association shall have the right to adopt such rules and regulations regarding the Common Areas as it deems necessary.

Section 3.1.3 The Common Area in each phase shall be conveyed to or owned by the Association at the time of conveyance of the last Lot in the particular Phase of the Project; provided, however, that expenses relating to the maintenance of the Common Area within each Phase are to be included within the Association's budget from the time of conveyance of the first Lot in the particular Phase of the project.

Section 3.1.4 The Declarant may develop and construct improvements on any portion of the Real Estate designated as Common Area without permission of the Owners as long as the Common Area has not yet been conveyed to the Association.

Section 3.1.5 Any Owner may delegate in accordance with the provisions of this Declaration and the rules or regulations of this Declaration and the rules or regulations promulgated by the Association his right to enjoyment and use of the Common Area and facilities to a member of his family, his tenants or contract purchaser who reside on any Lot.

Section 3.1.6 If by reason of inexactness of construction, settling after construction or for any other reasons, improvements on any Common Area encroach upon any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Area.

Section 3.2 Maintenance of Common Area. The Association shall maintain, repair and replace all of the Common Area including but not limited to the entry ways, the lakes, walking paths, Merrimac signs, community building, landscaping, and any other improvements on the Common Area in the manner deemed necessary and appropriate by the Board in its sole discretion and shall provide such other services as the Board shall determine appropriate.

Section 3.3 Easements. Perpetual and non-exclusive Drainage Easements, Sewer Easements, and Utility Easements for the purposes of the installation, maintenance, repair and replacement of all sewer, water, storm water, power and

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telephone lines, pipes, conduits, transformers, or cable television facilities are reserved as shown on the Plat. Ingress-Egress Easements are also reserved as shown on the Plat. Within these easements, no structure, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage or which may obstruct or retard the flow of drainage. Plants, trees and other vegetation are allowed in the easements subject to any other restrictions on landscaping contained in this Declaration or any other Declaration applicable to the Real Estate.

Section 3.4 Streets. Until acceptance by the appropriate governmental unit, all streets within the Real Estate shall be considered to be Common Area.

Section 3.5 Underground Utilities. All utilities including but not limited to water, gas, electric, sewer and cable television shall be installed underground.

Section 3.6 Sidewalks. Sidewalks no less than four (4) feet in width shall be constructed across that portion of each Lot which is considered to be the front, and the installation and maintenance of said sidewalk shall be the responsibility of each Individual Lot Owner. These sidewalks shall be fully completed and available for use not later than the date of initial occupancy of such Residence.

SECTION 4 CONSTRUCTION PROVISIONS

Section 4.1 One Residence. Only one Residence shall be constructed on any Lot.

Section 4.2 Minimum Residence Size. Each Residence in the Real Estate shall contain at least three (3) bedrooms and two (2) full bathrooms. The following minimum sizes shall apply to each Residence constructed on a Lot:

4.2.1 One story Residences shall have finished ground floor area of not less than 1700 square feet above finished grade.

4.2.2 Two-story Residences shall have a finished ground floor area of not less than 1000 square feet above finished grade and a total finished area of not less than 1900 square feet above finished grade.

For purposes of this Section 4.2, ground floor area shall be determined from the area of the Residence measured from the outside of the building foundations exclusive of open porches, breezeways, garages, chimneys and eaves.

The provisions of this Section 4.2 may be waived by the Committee upon application in writing by any Lot Owner. No waiver will be valid unless and until it

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is properly signed by a member of the Committee and placed of record in the Office of the Recorder of Hamilton County, Indiana.

Section 4.3 Maximum Height. No single family Residence exclusive of chimney shall exceed twenty-five (25) feet in height measured from the lowest finished grade level at the front of the Residence's foundation visible from any street to the underside of the eave line of the roof.

Section 4.4 Construction of Sewage Lines. All sanitary sewer lines within the Lots shall be designed and constructed in accordance with the provisions and requirements of the Town of Westfield, Indiana.

Section 4.5 Setback. No Residence, Building or other permanent structure shall be located on any Lot nearer to the boundaries of the Lot than the minimum setback lines as shown on the Plat or the setback restriction in effect at the time of construction as established by the Town of Westfield, Indiana, if any, whichever is more restrictive. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of a Residence; provided, however, that this provision shall not be construed to permit any portion of a Residence on a Lot to encroach upon any other Lot in the Real Estate.

Section 4.6 Prohibited Building Styles. Modular construction or modular homes will not be permitted upon any Lot in the Real Estate. No used Residences will be relocated or placed on any Lot with the exception of construction and sales offices to be maintained by Declarant. No Residence shall be constructed with used materials. The finished exterior of every Residence constructed or placed upon a Lot shall be of a masonry or wood product material.

Section 4.7 Minimum Exterior Brick Requirements. The finished front exterior of every Residence shall have a minimum of three hundred (300) square feet of brick or other masonry material approved by the Committee. All fireplace flues must have a brick exterior veneer unless another material is approved by the Committee.

Section 4.8 Solar Devices. No artificial or manmade device which is designed or used for collection of or heated by solar energy or other similar purpose shall be placed, allowed or maintained upon any portion of the Real Estate including any Residence without the consent of Declarant.

Section 4.9 Antennas and Towers. No television, radio, short-wave or other antenna, pole or tower shall be placed, constructed or maintained upon the roof or exterior walls of any Residence, or within the Real Estate, without the consent of Declarant.

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Section 4.10 Garbage Disposals and Sanitary Sewer, Water. All Residences shall be equipped with a mechanical device for the grinding and disposal of garbage and food waste in the kitchen(s) which shall discharge to the sewer drain. All sewage disposal shall be connected with the sanitary sewer system of the utility providing such service to the Real Estate. No septic tanks, holding tanks or cesspools shall be constructed or permitted to remain anywhere within the Real Estate. No private or semi-private water supply system may be located anywhere within the Real Estate. Each Owner shall connect to domestic water service provided by a public or private utility company and shall pay all connection, availability or other charges lawfully established with respect to such connection.

Section 4.11 Fences, Mailboxes and other Structures. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Real Estate, any fence, flag pole, basketball goal or similar structure must be approved by the Committee as to size, location, height and composition before it may be installed. Each Residence shall be provided with a mailbox to be furnished and installed by the Developer. All mailboxes shall be of the same design and approved by the Committee. No names, designs or other ornamentation shall be placed on any mailboxes or their supporting posts or structures other than street address numbers. No wall, fence, hedge or shrub planting which obstructs sight lines at elevations above two (2) feet shall be placed or permitted to remain between the front property line and the front building setback line except where such shrub planting is approved by the Committee. No Fences shall be allowed except where required by law and/or approved by the Committee. The intent is not to allow fences except for small privacy fences. No outdoor pet enclosures of any kind except for "invisible fences" (underground, electronic or otherwise) shall be permitted without prior approval of the Committee.

Section 4.12 Light Fixtures. Each Residence shall have at least one wall bracket light fixture adjacent to the main entry door. Each Residence shall have at least one post light adjacent to the driveway-sidewalk intersection.

Section 4.13 Exterior Construction. The following requirements shall be applicable unless the Committee shall approve otherwise:

- (a) all utility facilities in the Development will be underground except where required to be placed above-ground by the individual utility supplier;
- (b) whenever possible, all utility meters and HVAC units in the Real Estate will be located in places unseen or screened from the front of the Residences;
- (c) no outside fuel storage tanks will be permitted above or below ground in the Real Estate;

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- (d) all windows in the Real Estate will be factory or on-the-job painted; no raw aluminum windows will be permitted;
- (e) all gutters and down spouts in the Real Estate will be factory or on-the-job painted;
- (f) all roof pitches of Residences shall be six to twelve (6:12) or greater, and there shall be at least one (1) gable end on the front building elevation unless otherwise permitted by the Committee.
- (g) no metal, fiberglass or similar type material awnings or patio covers will be permitted within the Real Estate;
- (h) no above-ground swimming pools will be permitted anywhere within the Real Estate;
- (i) each Residence shall have at least a two-car garage attached to the Residence of the same architectural design and materials; each Residence must install automatic garage door openers to keep the garage generally closed and the contents not in view.
- (j) driveways must be paved from their point of connection with the abutting street or road to a point of connection with the garage entry.

Section 4.14 Submission of Documents. No Residence, Building or other permanent structure shall be erected, placed or altered on any Lot until the construction plans and specifications, landscaping plan, and a plan showing the location of the structure upon the Lot have been approved by the Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Approval or disapproval as required in these covenants by the Committee shall be in writing. In the event the Committee fails to approve or disapprove any plans and specifications within fifteen (15) days after such plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenants shall be deemed to have been complied with fully.

Section 4.15 Responsibilities During Construction.

4.15.1 When the basement and/or foundation of a Residence is constructed, stone shall be installed over the path of the driveway and shall be level with the curb at the Lot line to avoid curb breakup.

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4.15.2 No track vehicles or heavy equipment vehicles shall be operated or unloaded on any street.

4.15.3 No construction vehicles, shacks or outhouses shall be erected or situated on any Lot herein, except for use by a Builder during construction of a proper structure, which Builder's temporary construction structure shall be promptly removed upon completion of the proper structure.

4.15.4 During the construction period, the Lot shall be maintained in a clean and orderly manner at all times. All loose shingles, lumber, bricks, block, drywall, insulation, or other building material which can blow onto adjacent Lots shall not be left lying around. Construction trash shall be contained in a trash fence and shall be removed from the Lot once per week or contained in a dump site on site provided by a trash disposal service which will empty the container as needed.

4.15.5 The Lot Owner shall be responsible for removal of dirt, mud, or debris or other foreign material of any kind which may be deposited upon the road or easements from construction on the Lot. If such deposits occur, the Lot Owner shall make provisions to remove such deposits within one (1) day or the Committee may remove such deposits and charge the Lot Owner.

4.15.6 All Utility services to the Lot, including but not limited to water, power, sanitary sewers, telephone and cable, shall be shown on the plat and said service shall not undermine the curbs or alter the subsurface or surface drainage system.

Section 4.16 Drainage. The drainage plan required to be submitted to the Committee shall show the topography of the Lot and the proposed method of drainage. In the event that 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. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains and down spouts shall not be discharged into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

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Section 4.17 Landscaping. All landscaping within the Real Estate shall comply with the municipal code of the Town of Westfield. No landscaping shall be permitted on Common Area except with the approval of the Committee. The front yards of all Residences must be landscaped, and plans for all landscaping visible from the street must be submitted to and approved by the Committee. All front yard landscaping shall be installed by the Builder concurrently with the construction of the Residence and shall be installed not later than the date of initial occupancy of the Residence; provided, however, that if construction of the Residence is completed or initial occupancy occurs between November 1 of any year and March 31 of the next following, the installation of such landscaping may be delayed, but shall in any event be completed not later than the following May 31.

SECTION 5 MEMBERSHIP IN THE ASSOCIATION

Section 5.1 The Organization. The Association is a non-profit corporation organized under the laws of the State of Indiana. Its affairs shall be governed by and it shall have such powers as are set forth in the documents. It is the Association of Owners within Merrimac.

Section 5.2 Membership. Each Owner (including Declarant for so long as Declarant is an Owner) by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

5.2.1 Appurtenant to Ownership. Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Members shall be provided in the documents.

Section 5.3 Classes of Membership. The Association shall initially have two (2) classes of Members:

5.3.1 Class "A" Members. Each Owner except Declarant shall be a Class "A" Member. Only one (1) vote for each Lot owned by a Class A Member(s) may be cast. The vote for each Lot shall be cast as a majority of co-owners of the Lot shall determine. Any vote cast by a single Member shall be deemed the authorized vote for the Lot. If the majority of co-owners present in person or by proxy at a meeting cannot agree as to how to cast the vote for their Lot, no vote shall be cast for that Lot. The power to cast a particular Member's vote may be exercised by (i) the Member's conservator; (ii) the guardian of his estate; (iii) the parent(s) entitled to custody of a Member if the Member is a minor; or (iv) the executor or

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administrator of a deceased member's estate if the Member's Interest in the Lot is subject to administration in his estate.

5.3.2 Class "B" Members. Declarant shall be the sole Class "B" Member. Three (3) votes for each Lot contemplated in the Merimac Master Plan on real estate owned by the Class B Member may be cast. Class B membership shall expire and shall be converted to Class A Membership on the first to occur of the following events:

- (a) When the total votes outstanding in Class A membership is 75% of the total votes in Class A and Class B; or,
- (b) When in its sole discretion the Declarant shall determine.

5.3.3 Conversion of Class B Membership. Upon the conversion of Class B Membership to Class A Membership, but while Declarant still owns one or more Lots, each provision of the documents which requires approval by each class of Members shall instead require: (i) the approval of a majority of all Members; and (ii) the approval of a majority of all Members other than Declarant. After Declarant no longer owns a Lot, each provision of the documents which requires the approval of a majority of each class of Members shall instead require the approval of a majority of all Members.

SECTION 6 RESTRICTIONS ON THE USE OF THE REAL ESTATE.

In order to preserve the character of the Real Estate and to protect the property values therein and without intending to limit the generality of the foregoing provisions, the following protective covenants and restrictions are imposed as a common scheme upon the Real Estate and shall be applicable to each Lot and to each Residence constructed upon a Lot within the Real Estate.

Section 6.1 Parking. No vehicle nor any inoperable vehicles shall be parked for storage overnight or longer in such a manner as to be visible to occupants of the Real Estate or the users of any public street within the Real Estate. All commercial vehicles must be parked overnight within an enclosed garage.

Section 6.2 Temporary Structures. No Residence shall be occupied prior to completion, and there shall be no temporary living quarters constructed within the Real Estate. No trailer, basement, tent, shack, detached garage, barn, shed or other outbuilding shall be erected on any Lot without prior approval of the Committee, and no such structure, if approved, shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a Residence. The restrictions of this Section 6.2 shall not be

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construed so as to prohibit the Declarant from maintaining a temporary construction and sales office as referenced in Section 4.6 of this Declaration.

Section 6.3 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot with the exception of dogs, cats or other usual and common household pets in reasonable number. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall be confined on a leash at all times whenever they are outside a Residence. Each Owner shall be responsible for removal of his or her pet's waste from Common Areas. Fencing is governed by Section 4.11 above.

Section 6.4 Nuisance. It shall be the responsibility of each Owner of a Residence to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of the Owner's Residence. No Residence shall be used, in whole or in part, for the storage of any property or thing that will cause such Residence to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Residence that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or safety of the occupants of any Residence or Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Residence. There shall not be maintained any plants, animals, device, or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Real Estate. Yard Incinerators for the disposal or burning of trash shall not be permitted anywhere within the Real Estate. No firearms or hunting weapons of any kind shall be used anywhere within the Real Estate.

Section 6.5 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the neighboring Residences, streets, and other living quarters located adjacent to the Residence. Firewood piles shall be kept neat and unobtrusive. The Committee has the authority to determine the location of any firewood piles. All rubbish, trash, and garbage shall be regularly removed from the Residence and shall not be allowed to accumulate thereon.

Section 6.6 Signs. No sign of any kind, including any "For Sale" signs, shall be nailed to any tree or attached to any street sign within the Real Estate. No sign of any kind shall be displayed to the public view upon any Lot or otherwise within the Real Estate except (I) one family name sign of not more than 144 square inches in area, (II) any signs utilized by the Developer or approved by the Committee for use by the Builders, or (III) a sign limited in size to 24 inches by 36 inches containing the words "For Sale" or "For Rent" indicating the name of the seller, seller's agent or lessor and phone number.

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Section 6.7 Subdivision of a Lot. There shall be no subdivision of any Lot within the Real Estate nor any sale thereof in parcels except that a portion of a Lot may be sold to an adjoining Lot if no new Lot is created and if the transferor obtains the prior written approval of the Committee. The setback requirements set out in Section 4.5 cannot be waived.

Section 6.8 Trash Receptacles. Every receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Real Estate at any time, except at the times when refuse collections are made.

Section 6.9 Drilling and Exploration. No oil drilling, oil development operations, or refining, quarrying, or mining operations of any kind shall be permitted upon or within the Real Estate, nor shall oil wells, tanks, tunnels, mineral excavations, nor shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 6.10 Ditches and Swales. It shall be the duty of every Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection. All Lot Owners, if necessary, shall install dry culverts between the road rights-of-way and their Lots in conformity with specifications and recommendations of the Committee.

Section 6.11 Line of Sight. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above any street, public or private, shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street boundaries and a line connecting them at points twenty (20) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 6.12 Damaged Structures. No Residence which has been partially or totally destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 6.13 Clotheslines. Outdoor clotheslines are prohibited.

Section 6.14 Playground Equipment. All playground equipment must be approved for safety, placement and aesthetics by the committee prior to

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Installation. The color, size and location of playground equipment will be factors in determining if the playground equipment is approved.

Section 6.15 Outside Burning. No trash, leaves, or other material shall be burned upon a Lot.

Section 6.16 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 nuisance or annoyance to other owners and shall only be operated when outside activities require the use thereof and not continuously.

Section 6.17 Maintenance of Lots and Improvements. The Owner of any Lot shall at all times maintain the Lot and any Residence, Building or other structures situated thereon in such manner as to prevent the Lot, Residence, building or other structure from becoming unsightly. The Lot Owner shall keep the exterior of the Residence, Buildings, and other structures in such a state of repair or maintenance as to avoid their becoming unsightly.

Section 6.18 Maintenance of Common Area. The Owner of any Lot shall at all times refrain from creating any condition that reasonably tends to detract from or diminish the aesthetic appearance of the Common Areas.

Section 6.19 The Owner of any Lot shall do the following:

6.19.1 Mow the Lot at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds and exercise good husbandry with respect to all landscaping located thereon.

6.19.2 Remove all debris or rubbish from the Lots.

6.19.3 Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real estate.

6.19.4 Maintain the tree plot and landscaping between the sidewalk and any public street adjacent to the Owner's Lot.

6.19.5 Maintain the tree plot and landscaping, if any, between the Owner's Lot and the curb of any public street adjacent to the Owner's Lot.

SECTION 7 ENFORCEMENT.

The provisions of this Declaration shall be liberally construed to effect the purpose of creating a uniform plan for the development and operation of the Real Estate. In the event that any Owner fails fully to observe and perform the

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obligations set forth in this Declaration, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Committee or the Board of Directors, the Committee or the Board of Directors shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. If the Committee or the Board does not take action after receiving notice, then any Owner is entitled at the Owner's expense to pursue any available legal remedy to enforce this Declaration. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person, the Committee or the Board of Directors shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby without any liability whatsoever on the part of the Committee or the Board of Directors. The failure or forbearance by the Committee, the Board of Directors, or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the covenants or restrictions contained in this Declaration cannot be adequately remedied by an action at law and that injunctive relief is appropriate. All costs incurred by the Committee or the Board of Directors in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure, including attorney's fees, shall be payable by the defaulting Owner upon demand by the Committee or the Board of Directors, and shall immediately become a lien against his Lot. However, no lien under this section shall be superior to (a) a lien, encumbrance, or secured interest recorded before the recordation of a lien under this section or (b) a lien for real estate taxes and other governmental assessments or charges against the Lot. The rights in the Owners, the Committee or the Board of Directors under this section shall be in addition to all other enforcement rights thereunder or at law or in equity.

SECTION 8 ASSESSMENT AND COLLECTION OF COMMON EXPENSES.

Section 8.1 Payment of Regular Assessments. Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis. There shall be Regular Assessments based on the services provided by the Association and the reserves needed for Common Area expenses:

Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments by each Lot Owner on the first day of each month during the term of this Declaration. Regular Assessments shall commence as to each Lot subject to Section 8.4 below, no later than the first day of the first month following the month in which the Lot is conveyed to an Owner other than

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Declarant, or Builder, and may commence prior to that date at the option of the Declarant.

Section 8.2 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing: (i) estimated revenue and expense on an accrual basis; (ii) the amount of the total cash reserves of the Association currently available for replacement or major repair on Common Area and for contingencies; (iii) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Common Area; (iv) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area. The total amount of expenses common and chargeable to all Owners shall be charged equally against all Lots in the Real Estate as Regular Assessments, with each Lot being responsible for 1/295th of the total amount of Regular Assessments or the ratio created by multiplying the total amount of Regular Assessments by a fraction, the numerator of which is 1 and the denominator of which is the total number of Lots actually platted, whichever is less, subject to the limitations set forth in the By-Laws. Each year the Board shall prepare and approve the budget and distribute a copy thereof to each Member with written notice of the amount of the Regular Assessment to be levied against the Owner's Lot not less than thirty (30) days prior to the beginning of the fiscal year. The Regular Assessment shall not increase in any fiscal year by more than the greater of (i) 8%, or (ii) the percentage increase in the Consumer Price Index (all items) from the end preceding fiscal year to end of the month prior to the establishment of the annual budget without the approval of two-thirds (2/3) of all Lot Owners.

Section 8.3 Non-Walver of Assessments. If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

Section 8.4 Exemption From Regular Assessment. Declarant is exempt from payment of all Regular and Special Assessments so long as Declarant remains fully responsible for all common expenses not covered by the Regular and Special Assessments collected from Lot Owners other than Declarant.

Section 8.5 Special Assessments. Subject to the limitations in the By-Laws, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital improvements; (ii) correcting an inadequacy in the Current Operation Account; (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Lot(s) or Common Area; or (iv) paying for such other matters as the Board

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may deem appropriate for the Real Estate. Special Assessments shall be levied in the same manner as Regular Assessments.

Section 8.6 Common Expenses Attributable to Fewer Than All Lots.

- (a) Any Common Expense for services provided by the Association to any Individual Lot at the request of the Lot Owner shall be assessed against the Lot which benefits from such service.
- (b) Any insurance premium increase to the Association attributable to a particular Lot by virtue of activities in or construction on the Lot shall be assessed against that Lot.
- (c) An assessment to pay a judgment against the Association may be made only against the Lots at the time the judgment was entered in proportion to their Common Expense liabilities.
- (d) If a Common Expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against the Owner's Lot.
- (e) Fees, charges, late charges, fines, collection costs, and interest charged against a Lot Owner pursuant to the documents are enforceable as Common Expense Assessments.

Section 8.7 Lien.

- (a) The Association shall have a lien on a Lot for a delinquent Assessment levied against the Lot or fines imposed against its Lot Owner from the time the Association records a Notice that the Assessment is delinquent. If an assessment is payable in installments, the full amount of the assessment is delinquent if not paid to the Association by the due date of the installment.
- (b) A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) a lien, encumbrance, or secured interest recorded before the recording of the Notice referenced in subsection 8.7(a) above; and (2) liens for real estate taxes and other governmental assessments or charges against the Lot.
- (c) Recording of a Notice of Delinquency constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this Section is not required.
- (d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the Notice is

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recorded, provided, that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 352 of the Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien.

(f) Any steps taken by the Association to collect sums due or to enforce a lien under this Section shall entitle the Association to add to the amount due its costs and reasonable attorney's fees plus interest on all delinquent sums at the rate of 10% per year.

(g) A judgment or decree in an action brought under this Section is enforceable by execution under the laws of the State Indiana.

(h) The Association's lien may be foreclosed at such time as a mortgage on real estate is foreclosed in the manner in which mechanic's liens are foreclosed under Indiana law.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expenses assessment based on a periodic budget adopted by the Association pursuant to Section 8.2 of this Declaration.

(j) Any payments received by the Association in the discharge of an Owner's obligation may be applied to the oldest balance due.

Section 8.8 Ratification of Non-budgeted Common Expense Assessments. If the Board votes to levy a Common Expense Assessment not included in the current budget in an amount greater than fifteen percent (15%) of the current annual operating budget, the Board shall submit such Common Expense to the Owners for ratification in the same manner as a budget.

Section 8.9 Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to an Owner a statement in recordable form setting out the amount of unpaid assessments against the Owner's Lot. The statement must be furnished within ten (10) days after receipt of the request and is binding on the Association, the Board and each Owner.

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Section 8.10 No Waiver of Liability for Common Expenses. No Owner may exempt himself or herself from liability for payment of Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the assessments are made.

Section 8.11 Personal Liability of Owners. The Owner of a Lot at the time a Common Expense Assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Lot unless he or she agrees to assume the obligation.

Section 8.12 Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate checking accounts with a bank and/or savings and loan association, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operations into the Current Operation Account and shall deposit those portions of the assessments collected on reserves or contingencies and for replacement and deferred maintenance of capital improvements into the Reserve Account.

Section 8.13 Current Operation Account. All of the following may be paid from the Current Operation Account:

- (a) All costs of enforcing the provisions of any Declaration applicable to any portion of the Real Estate;
- (b) Taxes and assessments, if any, levied or assessed separately against the Common Area;
- (c) Sums necessary to discharge any lien or encumbrance, including taxes, levied against any Lot which constitutes a lien against a portion of the Common Area;
- (d) Insurance premiums and costs for policies purchased for the benefit of the Association;
- (e) Water, sewer, garbage, trash, electrical, gas, telephone and other necessary utility services for the Common Area;
- (f) Costs of routine maintenance, repair and upkeep of improvements in the Common Area; and,
- (g) All other goods, materials, supplies, furniture, labor, services, maintenance, repairs or alterations which the Association is authorized to secure and pay for pursuant to the terms of this Declaration or by law other than those to be expended from the Reserve Account.

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Section 8.14 Reserve Account. The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair, or replacement of capital improvements for which reserves have been collected and held. No portion of a reserve designated for a particular capital improvement may be expended for any purpose other than the maintenance or replacement of that capital improvement; provided, however, that if due to dedication of a public street or annexation of the Real Estate such that the municipality accepts responsibility for items covered by a portion of the reserve, the Board shall determine whether to use such funds for another purpose or to refund the excess to the Owners having title to a Lot at the time of the proposed refund; however, there is no implied guarantee or promise that such refund will be made. Except for funds collected for contingencies, no funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

SECTION 9 ARCHITECTURAL CONTROL COMMITTEE.

Section 9.1 Power of Committee.

9.1.1 In General. In order to preserve the natural quality and aesthetic appearance of the existing geographic area, no Residence, building structure, or improvement of any type or kind shall be repainted, constructed or placed on any Lot in the Real Estate, no existing trees shall be removed and no landscaping placed on Common Area without the prior written approval of the Architectural Control Committee (the "Committee"). Unless the Committee waives these requirements, such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and shall be accompanied by two (2) complete sets of plans and specifications of any such proposed construction or improvement. Such plans shall include the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of one quarter inch (1/4") equals one foot (1'), or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, an engineer or an architect.

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9.1.2 Power of Disapproval The Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement when:

- (a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete or show the proposed improvement to be in violation of this Declaration; or,
- (b) the design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent Residences or structures; or,
- (c) the proposed improvement, or any part thereof, or proposed tree removal would in the opinion of the Committee be contrary to the interest, welfare or rights of all or any part of the other Owners.

9.1.3 Developer Improvements. The committee shall have no powers with respect to any improvements or structures erected or constructed by the Developer (or any Builder if Developer has approved the plans therefor).

Section 9.2 Duties of Committee. The Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

Section 9.3 Liability of Committee. Neither the Committee nor any agent thereof, nor Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 9.4 Inspection. The Committee may inspect work being performed with its permission to assure compliance with this Declaration and applicable regulations.

Section 9.5 Membership. The committee shall consist of members designated by the Developer until the sooner of: (1) completion of a Residence on each Lot in the Real Estate's Master Plan; or (2) passage of control by Developer to Owners by virtue of a written document in recordable form. After a completed Residence is constructed on every Lot in the Real Estate, the Committee shall consist of three (3) Owners selected from time to time through the written approval of two-thirds (2/3) of all Owners. Membership on the Committee may be changed and vacancies shall be filled from time to time upon the written approval of a least two-thirds (2/3) of all the Owners; provided, however, that in the event

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of a vacancy on the Committee, the remaining two (2) Committee members may appoint an Owner to the Committee to serve until the requisite percentage of Owners, as aforesaid, shall otherwise appoint an Owner to fill such vacancy.

Section 9.6 Approvals. Approvals, determinations, permissions or consent required herein shall be deemed given if they are given in writing signed with respect to the Committee by two members thereof (except during such time that the Developer controls this Committee, in which event the written approval of an authorized officer or agent of Developer shall suffice).

SECTION 10 RIGHTS OF MORTGAGEES.

Except to the extent otherwise provided herein, no breach of these Restrictions shall defeat or render invalid the lien of any mortgage now existing or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any portion of the Real Estate so purchased subject to this Declaration. Notwithstanding any other provision of this Declaration, neither the Developer, the Owners nor the Committee shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any Mortgage on all or any portion of the Real Estate at the time of such amendment.

SECTION 11 INSURANCE.

Section 11.1 Coverage. To the extent reasonably available, the Board shall obtain and maintain insurance coverage as set forth in this Section. If such insurance is not reasonably available, and the Board determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners and eligible Mortgagees at their respective last known addresses.

Section 11.2 Property Insurance.

(a) Property insurance covering one hundred percent (100%) of the actual replacement cost value of the following shall be obtained by the Association:

- (i) The Common Area; and,
- (ii) Any personal property owned by the Association.

(b) **Risks Insured Against.** The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

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(c) Other Provisions. Insurance policies required by this Section shall provide that:

(i) The Insurer waives the right to subrogation under the policy against the Lot or member of the household of an Owner;

(ii) An act or omission by an Owner, unless acting within the scope of the Lot Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iii) If at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;

(iv) Loss must be adjusted with the Association;

(v) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation, to the Association, in either case to be held in trust for Owner and such Owner's mortgagee;

(vi) The Insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses;

(vii) The name of the Insured shall be "Merrimac Homeowners' Association".

Section 11.3 Liability Insurance. Liability insurance including medical payments insurance in an amount determined by the Board but in no event less than One Million Dollars (\$1,000,000) covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and the activities of the Association.

(a) Other Provisions. Insurance policies carried pursuant to this Section shall provide that:

(i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Area or membership in the Association;

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(ii) The insurer waives the right to subrogation under the policy against a Lot Owner or member of the household of an Owner;

(iii) An act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;

(iv) If at the time of a loss under the policy there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance; and,

(v) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 11.4 Fidelity Bonds. A blanket fidelity bond is required for anyone who either handles or is responsible for funds held or administered by the Association whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force and in no event less than the sum of three months' assessments plus reserve funds. The bond shall include a provision that calls for ten (10) days written notice to the Association, to each holder of a Security Interest in a Lot, to each servicer that services a FNMA owned or FHLMC owned mortgage on a Lot and to the insurance trustee, if any, before the bond can be canceled or substantially modified for any reason.

Section 11.5 Owner Policies. Each Owner shall carry fire and extended coverage insurance on his Lot including the exterior. The Association, or Declarant pursuant to its rights reserved hereunder, may adopt rules and regulations governing the minimum amounts of insurance required to be carried by all Owners, certain provisions of which may be required to be included in all such insurance policies, and such other terms and provisions pertaining to insurance which may reasonably be deemed necessary or appropriate (1) to assure that all Lots and sites are insured and that there will be proceeds of insurance to repair or restore the same in the event of a casualty loss thereto, or (2) otherwise to assist or to simplify problems of coordinating insurance coverage between the Owners and the Association.

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Section 11.6 Workers' Compensation Insurance. The Board shall obtain and maintain Workers' compensation Insurance to meet the requirements of the laws of the State of Indiana.

Section 11.7 Directors' and Officers' Liability Insurance. The Board may obtain and maintain directors' and officers' liability insurance covering all of the directors and officers of the Association in such limits as the Board in its sole discretion may from time to time determine.

Section 11.8 Other Insurance. The Association may carry other Insurance which the Board of Directors considers appropriate to protect the Association of the Owners.

Section 11.9 Premiums. Insurance premiums for Insurance maintained by the Association pursuant to this Section 11 shall be a Common Expense.

SECTION 12 DAMAGE TO OR DESTRUCTION OF PROPERTY.

Section 12.1 Duty to Restore. A portion of the Common Area for which Insurance carried by the Association is in effect that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) Repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or,
- (b) Eighty percent (80%) of the Owners including each Owner of a Lot that will not be rebuilt vote not to rebuild.

Section 12.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 12.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board, a majority of Owners and fifty-one percent (51%) of eligible Mortgagees.

Section 12.4 Replacement of Less than Entire Property.

- (a) The Insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Real Estate.
- (b) Except to the extent that other persons will be distributees,

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(I) The Insurance proceeds attributable to a Lot that is not rebuilt must be distributed to the Owner of the Lot or to lien holders as their interests may appear.

(II) The remainder of the proceeds must be distributed to each Lot Owner or lien holder as their interests may appear in proportion to the Common Area interests of all the Lots.

Section 12.5 Insurance Proceeds. The Trustee, or if there is no trustee, then the Board of the Association acting by its President, shall hold any insurance proceeds in trust for the Association, Lot Owners and lien holders as their interests may appear.

Section 12.6 Certificates by the Board. The Trustee, if any, may rely on the following certifications in writing made by the Board:

(a) Whether or not damaged or destroyed Property is to be repaired or restored.

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 12.7 Certificates by Attorneys or Title Companies. If payments are to be made to Owners or mortgagees, the Board and the Trustee, if any, shall obtain and may rely on a title insurance company or attorney's title certificate of title or a title insurance policy based on a search of the records of Hamilton County, Indiana, from the date of the recording of the original Declaration stating the names of the Owners and the mortgagees.

SECTION 13 RIGHTS TO NOTICE AND COMMENT, NOTICE AND HEARING.

Section 13.1 Right to Notice and Comment. Before the Board amends the By-Laws or whenever the Documents require that an action be taken after "Notice and Comment," and at any other time the Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Owner in writing and shall be delivered personally or by mail to all Owners at such address as appears in the records of the Association or published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given no less than five (5) days before the proposed action is to be taken. It shall invite comment to the Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Lot Owner to be heard at a formally constituted meeting.

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Section 13.2 Right to Notice and Hearing. Whenever the Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Lot Owners or occupants of Lots whose interest would be significantly affected by the proposed action. The Notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing the affected person shall have the right, personal or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision maker. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 13.3 Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Board from a decision of persons other than the Board by filing a written notice of appeal with the Board within ten (10) days after being notified of the decision. The Board shall conduct a hearing within thirty (30) days giving the same notice and observing the same procedures as were required for the original meeting.

SECTION 14 BOARD OF DIRECTORS.

Section 14.1 Powers and Duties. The Board of Directors may act in all instances on behalf of the Association except as provided in this Declaration or the By-Laws. The Board shall have, subject to the limitations contained in this Declaration, the powers and duties necessary for the administration of the affairs of the Association and of the community which shall include, but not be limited to, the following:

- (a) Adopt and amend By-Laws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees and agents other than managing agents and independent contractors;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, By-Laws or rules and regulations in the Association's name on

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behalf of the Association or two or more Owners on matters affecting the community;

(g) Make contracts and incur liabilities;

(h) Regulate the use, maintenance, repair, replacement and modification of the Common Area;

(i) Cause additional Improvements to be made as a part of the Common Area;

(j) Provide or hire others to provide landscape maintenance services for Owners;

(k) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property;

(l) Grant easements for any period of time including permanent easements; and leases, licenses and concessions for no more than one year through or over the Common Area;

(m) Impose and receive a payment, fee or charge for the use, rental or operation of the Common Area and for services provided to Owners;

(n) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, By-Laws, rules and regulations of the Association;

(o) Provide for the indemnification of the Association's officers and Board and maintain directors' and officers' liability insurance;

(p) Assign the Association's right to future income, including the right to receive Common Expense Assessments;

(q) Exercise any other powers conferred by this Declaration or the By-Laws;

(r) Exercise any other powers that may be exercised in this state by legal entities of the same type as the Association;

(s) Exercise any other powers necessary and proper for the governance and operation of the Association; and,

(t) By resolution, establish committees of directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the

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committee. All committees must maintain and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within forty-five (45) days of publication of such notice and such committee action must be ratified, modified or rejected by the Board at its next regular meeting.

SECTION 15 OPEN MEETINGS.

Section 15.1 Access. All meetings of the Board at which action is to be taken by vote will be open to the Owners except as hereafter provided.

Section 15.2 Notice. Notice of every such meeting will be given not less than 24 hours prior to the time set for such meeting by posting such notice in a conspicuous location in the community, except that such notice will not be required if an emergency situation requires that the meeting be held without delay.

Section 15.3 Executive Sessions. Meetings of the Board may be held in executive session without giving notice and without the requirement that they be open to Owners in either of the following situations:

- (a) No action is taken at the executive session requiring the affirmative vote of Directors; or,
- (b) The action taken at the executive session involves personnel, pending litigation, contract negotiations, enforcement actions, or matters involving the invasion of privacy of individual Owners, or matters which are to remain confidential by request of the affected parties and agreement of the Board.

SECTION 16 CONDEMNATION OF COMMON AREA.

If all or any portion of the Common Area is taken for any public or quasi-public use under any statute by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the Association's operating account until distributed. The Association shall distribute such funds proportionately to all Owners as their interests appear according to the respective fair market values of their Lots immediately prior to the time of condemnation as determined by an independent appraisal made by a qualified Real Estate Appraiser with Member or the Appraisal Institute certificate or the equivalent as selected by the Board. The Association shall represent the interests of all Owners.

SECTION 17 GENERAL PROVISIONS.

Section 17.1 Duration. This Declaration shall be perpetual, run with and bind all the Real Estate subject to this Declaration and shall inure to the benefit of and be enforceable by the Developer, its respective successors, assigns, heirs,

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executors, administrators, and personal representatives with the following exception:

The covenants and restrictions set forth in this Declaration shall have an initial term of forty (40) years from the date this Declaration is recorded in the Office of the Recorder of Hamilton County, Indiana. At the end of this period, the covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless at least two-thirds (2/3) of all Owners within the Real Estate at the time of the expiration of the initial period or any extension period shall sign an instrument or instruments (which may be in counterparts) in which they shall agree to terminate any or all of said covenants and restrictions in any manner as may be provided by law; however, no such Agreement shall become binding unless written notice containing the terms of the proposed Agreement is sent to every Owner in the Real Estate at least ninety (90) days in advance of the action taken in authorizing said Agreement, and, in any event, any such Agreement shall not become effective and binding until three (3) years after the recording of the aforesaid fully executed instrument or instruments containing such agreement.

Section 17.2 Amendment of Declaration. Except as otherwise provided herein, amendments to this Declaration shall be proposed and adopted in the following manner:

17.2.1 Notice of the subject matter of the proposed amendment shall be given to each Owner. Any proposed amendment to this Declaration must be approved by not less than seventy-five (75%) of the Owners in the Real Estate. Each amendment to the Declaration shall be executed by the Owners casting votes in favor of the amendment and shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

17.2.2 Notwithstanding the foregoing or anything elsewhere contained in this Declaration, Developer shall have the right acting alone and without the consent or approval of the Owners, Builders or any other person, to amend or supplement this Declaration from time to time if such amendment or supplement is required to:

- (a) provide utility service to any Lot;
- (b) bring this Declaration into compliance with any statutory requirements;
- (c) correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto; or,

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(d) make any other amendment which in its sole discretion it deems necessary as long as it is a Class B Member of the Association pursuant to Section 5.3.2 of this Declaration.

Section 17.3 Notice. Any notice required to be sent to an Owner under the provisions of this Declaration shall be deemed to have been properly sent and notice thereby given when mailed by regular post with postage prepaid addressed to Owner at the last known post office address of the person who appears as Residence Owner in the records of the Hamilton County Auditor's Office. Valid notice may also be given to an Owner by (i) personal delivery to any occupant of his Residence over fourteen (14) years of age; or, (ii) by affixing said notice to or sliding same under the front door of his Residence.

Section 17.4 Severability. Should any covenant or restriction contained in this Declaration or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall not in any manner affect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.

Section 17.5 Rule Against Perpetuities. If any provision of this Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of the persons signing the Declaration on behalf of Developer plus twenty-one (21) years thereafter.

Section 17.6 Gender and Number. Whenever the context of this Declaration so requires, the use of the masculine gender shall be deemed to refer to the feminine or neuter gender and the use of the singular shall be deemed to refer to the plural and vice versa. No pronoun usage shall be deemed to exclude a reference to an institution, corporation, partnership, or any other type of business entity. Titles are for convenience of reference only and shall not be used as an aid in construing the provisions thereof.

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IN WITNESS THEREOF, Declarant has executed this Declaration on the date and year first above written.

MERRIMAC CORPORATION

By [Signature]
Walter Stasey, President

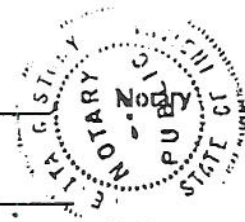
By [Signature]
M. Kathleen McKinney-Stasey, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ~~HAMILTON~~)
 Marion

This Instrument Recorded JUN 23 1994
Sharon K. Cherry, Recorder, Hamilton County, IN

Before me, a Notary Public in and for said County and State, personally appeared Walter Stasey and M. Kathleen McKinney-Stasey, personally known to me to be the President and Secretary of Merrimac Corporation, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Merrimac this 20th day of June, 1994.

Public [Signature]



Printed: Benita G. Story

My Commission Expires: August 7, 1996
County of Residents Madison

Prepared By: Mark Grant

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