

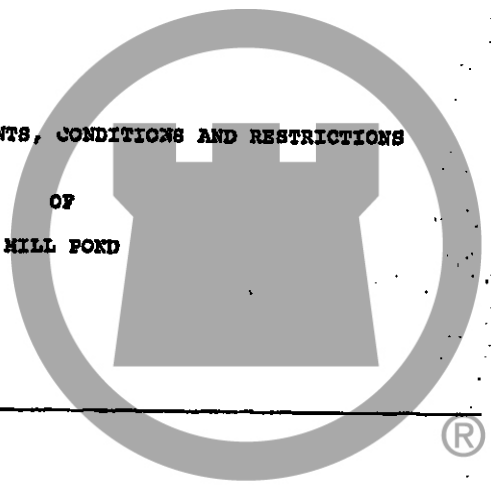
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HILL FOND



CHICAGO TITLE

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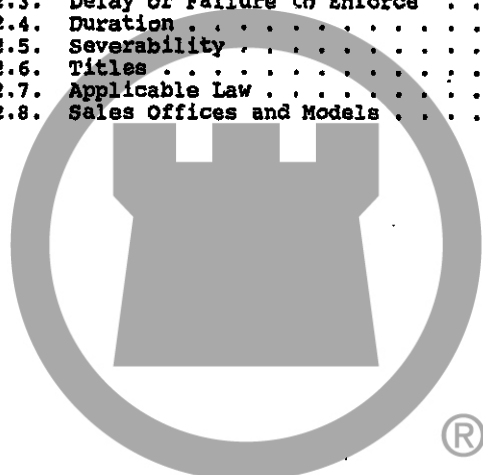
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# CHICAGO TITLE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

MILL POND

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF MILL POND (the "Declaration"), is made this 28<sup>th</sup> day of December, 1990, by WELLS & ZIEGLER DEVELOPMENT CORPORATION, an Indiana corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real estate in Marion County, Indiana which is more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Real Estate"); and

WHEREAS, Declarant desires and intends to subdivide the Real Estate into residential lots in order to create a residential community to be known as "Mill Pond" with streets, landscape easements, access easements, a lake or pond and other common areas and amenities for the benefit of such residential community; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an organization to which shall be delegated and assigned the powers of owning, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Mill Pond Property Owners Association, Inc.," or a similar name, as such organization for the purpose of exercising such functions; and

WHEREAS, Declarant may from time to time subject additional real estate to the provisions of this Declaration as provided herein;

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NOW, THEREFORE, Declarant hereby declares that the Real Estate, and any additional real estate as may by subsequent amendment be subjected to this Declaration as provided herein, shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions which shall run with the land and shall be binding on, and inure to the benefit of, all persons or entities now or hereafter having any right, title, or interest in the Real Estate or any part thereof, their heirs, successors, successors-in-title, and assigns. Declarant, for itself and its successors and assigns, reserves the right and privilege to subject Additional Land (as hereinafter defined) to the terms and provisions of this Declaration by recording with the Recorder of Marion County, Indiana, an amendment or supplement to this Declaration making reference to the terms and provisions hereof and purporting to accomplish such addition of real estate to the provisions hereof. Such amendment or supplement shall not require the vote or approval of any Owners (as hereinafter defined). Any such Additional Land, from and after being so subjected to the provisions of this Declaration, shall be deemed a part of the Real Estate for all purposes of this Declaration.

#### ARTICLE I

##### DEFINITIONS

Section 1.1. Access Easement. "Access Easement" means that area designated on any Plat as an Access Easement, either separately or in combination with any other easement designated on such Plat.

Section 1.2. Additional Land. "Additional Land" means any real estate now owned or hereafter acquired by Declarant and located adjacent to the Real Estate as described in Exhibit A or as augmented by any additional real estate subjected to the provisions of this Declaration as provided above, which real estate is subject to Declarant's unilateral right reserved above to subject the same to the provisions of this Declaration.

Section 1.3. Applicable Date. "Applicable Date" means the date determined pursuant to Section 4.3 of this Declaration.

Section 1.4. Articles of Incorporation. "Articles of Incorporation" means the Articles of Incorporation of the Association, as the same may be amended from time to time, as filed with the Secretary of State of the State of Indiana.

Section 1.5. Association. "Association" means Mill Pond Property Owners Association, Inc., or an organization of similar

name, formed, or to be formed, as an Indiana not-for-profit corporation, its successors and assigns.

Section 1.6. Board of Directors. "Board of Directors" means the board of directors of the Association.

Section 1.7. By-Laws. "By-Laws" means the By-Laws of the Association, as the same may be amended from time to time.

Section 1.8. Committee. "Committee" means the "Mill Pond Architectural Control Committee" established pursuant to Section 6.1 of this Declaration.

Section 1.9. Common Areas. "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any Plat which are not Lots and which are not dedicated to the public, (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time. Unless expressly stated to the contrary, the term Common Areas as used herein shall include the Lake Common Area.

Section 1.10. Common Expenses. "Common Expenses" means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance, repair or replacement of any Easement areas, the drainage system located within and upon the Drainage Easements, the Common Areas or any streets within or upon the Real Estate (to the extent the same is the responsibility of the Association), (iii) all sums lawfully assessed against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses.

Section 1.11. Declarant. "Declarant" means Wells & Ziegler Development Corporation, an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including (but not limited to) any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

Section 1.12. Development Period. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (i) the date Declarant no longer owns any Lot within or upon the Real Estate or (ii) the date which is three (3) years after the date on which all improvements and installations required by Chapter 4 of the Subdivision Control Ordinance of Marion County.

Indiana, 58-AO-13, as amended, have been completed and, if applicable, accepted for public maintenance by any appropriate governmental unit or agency thereof.

Section 1.13. Drainage Easement. "Drainage Easement" means that area designated on any Plat as a Drainage Easement, either separately or in combination with any other easement designated on such Plat.

Section 1.14. Lake Common Area. "Lake Common Area" means that area (including improvements thereto) designated on any Plat as a Lake Common Area.

Section 1.15. Lake Maintenance Easement. "Lake Maintenance Easement" means that area designated on any Plat as a Lake Maintenance Easement, either separately or in combination with any other easement designated on such Plat.

Section 1.16. Landscape Easement. "Landscape Easement" means that area designated on any Plat as a Landscape Easement, either separately or in combination with any other easement designated on such Plat.

Section 1.17. Lot. "Lot" means any numbered parcel of land shown and identified as a Lot on any Plat.

Section 1.18. Mortgagee. "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

Section 1.19. Owner. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Declarant so long as Declarant shall own any Lot.

Section 1.20. Plat. "Plat" means the subdivision plat of the Real Estate (as described in Exhibit A) identified as the "Mill Pond - Final Plat," as hereafter recorded in the Office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time), and any subdivision plat(s) for any Additional Land hereafter subjected to the provisions of this Declaration, which subdivision plats are hereafter recorded in the Office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time).

Section 1.21. Regular Assessments. "Regular Assessments" has the meaning set forth in Section 7.1 of this Declaration.



Section 1.22. Special Assessments. "Special Assessments" has the meaning set forth in Section 7.1 of this Declaration.

Section 1.21. Utility Easement. "Utility Easement" means that area designated on any Plat as a Utility Easement, either separately or in combination with any other easement designated on such Plat.

## ARTICLE II

### APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate, shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by Board of Directors on behalf of the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Declarant and the Association provided for by this Declaration, and also for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

## ARTICLE III

### PROPERTY RIGHTS

Section 3.1. Owners' Easement of Enjoyment of Common Areas. Declarant hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas which shall run with and be appurtenant to each Lot, subject to the following:

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(i) The right of the Association (after conveyance of the Common Areas to the Association) to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of two-thirds (2/3) of the membership of each class of members of the Association;

(ii) the right of the Association to suspend an Owner's right to use the Common Areas for any period during which such Owner shall be in default in the payment of any assessment levied by the Association or the payment of any other amount or in the performance of any other term of this Declaration or for any violation by an Owner of the Association's rules and regulations (provided that for a violation of a rule or regulation such suspension shall not exceed sixty (60) days);

(iii) the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof, for acquiring additional Common Areas, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Areas; provided, two-thirds (2/3) of all Owners present at a meeting called for such purpose shall approve and provided further, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, easements and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed;

(iv) the Declarant's reserved easements and rights as described herein and the right of the Declarant to grant easements in and to the Common Areas to any public agency, authority, or utility for such purposes as benefit the Real Estate or portions thereof;

(v) all other easements declared, created or reserved elsewhere in this Declaration or in any Plat; and

(vi) the terms and provisions of this Declaration.

Section 3.2. Special Provisions Relating to Lake Common Area. Owners of Lots located adjacent to the Lake Common Area

shall have access to the Lake Common Area from that portion of their property abutting the Lake Common Area. All Owners, including Owners of Lots abutting the Lake Common Area, shall have access to the Lake Common Area by the Access Easement and adjacent Common Area as designated on the Plat.

Subject to the following provisions of this Section 3.2, the Lake Common Area shall be used by any Owner only for recreational purposes. Except as installed by Declarant, installed by the Association, or installed by an Owner of a Lot abutting the Lake Common Area with the prior written approval of the Committee, no permanent structure or improvement shall be erected or maintained in, on, over, under or through said Lake Common Area. Any such permanent structure or improvement erected or maintained as permitted by the foregoing sentence shall be erected and maintained in compliance with all applicable laws, ordinances, rules and regulations of any governmental authority or agency thereof relating to drainage. No swimming or ice skating shall be permitted in the pond or lake located in and upon the Lake Common Area. No motor assisted or wind driven boats or boards of any type shall be utilized on such pond or lake. No Owner shall take or remove any water from or cut of any such pond or lake. The Board of Directors may establish reasonable rules and regulations (not inconsistent with the provisions of this Declaration): (i) restricting or otherwise governing the use and enjoyment of the Lake Common Area and (ii) as the Association deems necessary and appropriate for the maintenance, management and control of the Lake Common Area and the pond or lake and any improvements therein or thereon in a good, clean, attractive, safe and sanitary condition.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws and any reasonable rules and regulations promulgated from time to time by the Board of Directors, his right of enjoyment of the Common Areas to his family members or tenants who reside on the Lot or to any guests when accompanied by such Owner, family member or tenant.

Section 3.4. Conveyance of Common Areas. Within a reasonable time after the conveyance of the last Lot by Declarant, Declarant shall convey all of its right, title and interest in and to the Common Areas to the Association by quitclaim deed, and such Common Areas shall then be the property of the Association.

Section 3.5. Easements.

A. Utility Easements. Declarant hereby declares, creates and reserves the Utility Easements (i) for the use of Declarant during the Development Period for access to and installation, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services

and (ii) for the use of all public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of such utility services. Except for (i) retaining walls installed by Declarant or the Association or by the Owner with the approval of the Committee or (ii) decks and/or patios approved by the Committee, no permanent structures shall be erected or maintained upon said Utility Easements; provided, however, that any installations permitted hereby shall in all events be installed in compliance with and subject to all applicable rules or regulations of the public utility companies and governmental agencies for which such Utility Easements are herein created and reserved.

**B. Drainage Easements.** Declarant hereby declares, creates and reserves the Drainage Easements (i) for the use of Declarant during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association and the Department of Public Works of the City of Indianapolis for access to and maintenance, repair or replacement of such drainage system; provided, however, that each Owner of a Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions (including providing for the installation of culverts as may be necessary to accomplish such purpose) so that the surface water drainage will be unimpeded. Except for (i) retaining walls installed by Declarant or the Association or by the Owner with the approval of the Committee or (ii) decks and/or patios approved by the Committee, no permanent structures shall be erected or maintained upon said Drainage Easements; provided, however, that any installations permitted hereby shall in all events be installed in compliance with and subject to all applicable rules or regulations of the Department of Public Works of the City of Indianapolis.

**C. Landscape Easements.** Declarant hereby declares, creates and reserves the Landscape Easements (i) for the use of Declarant during the Development Period for access to and the installation or removal of walls, permanent signs, earth mounds, trees, foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance, repair or replacement of walls, permanent signs, earth mounds, trees, foliage, landscaping, screening materials and other improvements. Except as approved in writing by the Committee, no improvements or permanent structures (including, without limitation, fences) shall be erected or maintained by any Owner in or upon said Landscape Easements; provided, however, that the Owner of any Lot shall be entitled to

install a driveway across the Landscape Easement on such Owner's Lot at a location approved by the Committee.

D. Lake Maintenance Easements. Declarant hereby declares, creates and reserves the Lake Maintenance Easements (i) for the use of Declarant during the Development Period for access to and management and control of the retention and detention pond or lake located in and upon the Lake Common Area and for access to and installation, repair or removal of improvements therein and thereon and (ii) for the use of the Association for access to and maintenance, management and control of such retention and detention pond or lake and for access to and installation, maintenance, repair or replacement of improvements therein and thereon. Except as approved in writing by the Committee, no permanent structures or improvements (including, without limitation, fences) shall be erected or maintained by any Owner upon said Lake Maintenance Easements.

E. Access Easements. Declarant hereby declares, creates and reserves the Access Easements (i) for the use of Declarant during the Development Period for access to the Common Area, including the Lake Common Area, and their respective guests, (ii) for the use of the Owners, their family members and tenants, for pedestrian access to the Common Areas, including the Lake Common Area, and (iii) for the use of the Association for access to the Common Areas, including the Lake Common Area. Except as approved in writing by the Committee, no improvements or permanent structures (including without limitation, fences) shall be erected or maintained by any Owner in or upon said Access Easements.

F. General Access Rights. Declarant hereby declares, creates and reserves an access easement over and across the entirety of the Real Estate (subject to the limitations hereinafter provided in this paragraph): (i) for the use of Declarant during the Development Period and for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to the Utility Easements created and reserved herein; (ii) for the use of Declarant during the Development Period and for the use of the Association and the Department of Public Works of the City of Indianapolis for access to the Drainage Easements created and reserved herein; (iii) for the use of Declarant during the Development Period and for the use of the Association for access to the Landscape Easements and Lake Maintenance Easements created and reserved herein; and (iv) for the use of Declarant during the Development Period and for the use of the Association for access to the Lake Common Area. Notwithstanding the foregoing, the area of the access easement created by this paragraph shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement located on the Real Estate. The parties for

whose benefit this access easement is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

G. Declarant's Reserved Rights. Notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby reserves unto itself and its successors and assigns the nonexclusive right, privilege, and easement in, on, over, under, and across the entirety of the Real Estate, without charge to Declarant, to tie into and/or otherwise connect to and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including (without limitation) cable television service, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Real Estate.

Section 3.6. Easement in Gross. No rights, privileges, and easements reserved to Declarant herein shall be merged into the title of the Real Estate or any part thereof, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Real Estate.

Section 3.7. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations (not inconsistent with the provisions of this Declaration) concerning the use of the Common Areas, facilities located thereon, and individual Lots and for the enforcement of the provision of this Declaration. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such rules and regulations shall be binding upon the Owners, their family members, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, cancelled, or modified by the Board of Directors or by the Association in a regular or special meeting by the vote of members holding a majority of the total votes of the Association. The Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for any violation of such rules and regulations, and monetary fines shall be and constitute a special assessment against the Owner against whom it is imposed and his Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Section 3.8. Character of the Community.

A. Lot Use. All Lots shall be used exclusively for residential purposes and for occupancy by a single family (and such living quarters for guests and invitees as shall have been approved

in writing by the Committee). No business building shall be erected on any Lot, and no trade or business of any kind may be conducted on any Lot.

B. Building Size. The ground floor area of the main structure exclusive of open porches, basements, and garages and other attached accessory buildings, shall not be less than 2,800 square feet in the case of a one-story structure, nor less than 1,800 square feet in the case of a multiple story structure; provided, no structure of more than one story shall have less than an aggregate of 3,200 square feet of finished and livable floor area.

C. Building Placement. Building setback lines are established on the Plat(s) of the Real Estate. No building shall be erected or maintained between the established setback lines and the Lot lines of said Lot.

No building shall be erected closer than twenty-five (25) feet to the rear Lot line (unless a greater setback line is established on any Plat). No building shall be erected closer to the side of any Lot than eight (8) feet (unless a greater setback line is established on any Plat), with each Lot having an aggregate side yard requirement of twenty-two (22) feet. In the event a building is erected on more than one single Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

D. Mailboxes. In order to enhance the aesthetic appearance of the Real Estate, a standard mailbox and post design will be prepared by the Committee, and such design shall be the standard for all mailboxes installed on the Real Estate. Any mailbox and post installed on the Real Estate must be approved by the Committee in writing for conformance with such standard design before it is installed. Mailboxes shall be installed by the builder simultaneously with the construction of the residence. All repairs and replacements to the original mailbox shall be consistent in color, quality and appearance with the original mailbox and post designed by the Committee, unless the prior written approval of the Committee is obtained. No exterior newspaper receptacles shall be permitted.

E. Exterior Improvements. In order to preserve the natural quality and enhance the aesthetic appearance of the Real Estate, any garden, landscaping, fences, exterior lighting, basketball goal, swimming pool, hot tub or other exterior improvement or structure of any kind must be approved in writing by the Committee as to size, location, height and composition before it is installed. All modifications thereof must be approved in writing by the Committee.

F. Exterior Materials. The finished exterior of every building constructed or placed on a Lot shall be of material other than aluminum siding, vinyl siding, rollbrick siding or any other similar artificial material. All materials used on the exterior of any building on a Lot shall be subject to the approval of the Committee. All driveways must be paved from their point of connection with the abutting street or road to their point of connection with the garage apron and must be totally completed prior to occupancy of the residence.

G. Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

H. Garages and Accessory Structures. The main structure constructed on each Lot shall have an attached garage which will accommodate at least two (2) automobiles. No structure shall be erected, placed or permitted to remain upon any Lot, except a single family residence and such structures and facilities as are usual and customary accessory uses to a single family residence. Accessory structures shall not be used under any circumstances for rental purposes. No metal accessory structure shall be permitted on any Lot. All accessory structures shall be of the same design and materials as the main structure.

I. Diligence in Construction. Every building whose construction or placement on any Lot is begun shall be completed within eighteen (18) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

J. Prohibition of Used Structures. Except for the existing residential structure located on the Real Estate on the date of execution of this Declaration, all structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any Lot except by Declarant within easements, public right-of-way, or the Common Areas for aesthetic purposes.

K. Modular Homes. Modular constructed structures shall not be permitted on any Lot.

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

(i) Mow and water the grass on the Lot and provide fertilizer and weed control at such times as may be



reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds; provided, that the foregoing provision shall not prevent the Owner, with the prior written approval of the Committee, from maintaining portions of his Lot in its natural unimproved state as long as such natural areas are part of an integrated landscape plan.

(ii) Remove all debris or rubbish from the Lot.

(iii) Cut down and remove dead trees from the Lot.

(iv) Keep the exterior of all improvements on the Lot in good repair and condition as required to avoid their becoming unsightly.

(v) Prevent the existence of any other condition on the Lot that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate.

In the event the Owner of any Lot fails to so maintain his Lot or the exterior of any improvements thereon in a manner satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements thereon. The cost thereof shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any work performed hereunder.

M. Nuisances. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee); and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No noxious or offensive activities shall be carried on any Lot; nor shall anything be done on any Lot that shall become or be an unreasonable annoyance or nuisance to the Owner of any other Lot. Any violation of this paragraph constitutes a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall constitute a special assessment against the offending Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any work performed hereunder.

N. Sanitary Sewage Disposal. The residential sewage disposal system and facilities for each Lot shall be designed, constructed, installed and maintained in accordance with the provision and requirements of any governmental or quasi-governmental authority having jurisdiction over the utilization of a private sanitary sewer septic and finger system and related facilities, including (as applicable) the Indiana State Board of Health or the Marion County Health and Hospital Corporation; and the location of such system and facilities shall be approved in writing by the Committee before it is installed.

O. Water Supply. The water well system for each Lot shall be designed, constructed, installed and maintained and its quality determined in accordance with the provisions and requirements of any governmental or quasi-governmental authority having jurisdiction over the utilization of a private domestic water supply system and related facilities, including (as applicable) the Indiana State Board of Health or the Marion County Health and Hospital Corporation, and the location of such well shall be approved in writing by the Committee before it is installed.

P. Occupancy of Partially Completed Residence Prohibited. No residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the residence shall have been substantially completed shall be made by the Committee, and such decision shall be binding on all parties.

Q. General Prohibitions. In addition to any restrictions or limitations contained elsewhere in this Declaration or in any Plat, the following limitations, restrictions and prohibitions shall apply to the use and occupancy of the Real Estate:

(i) Signs. No signs or advertisements shall be displayed or placed on any Lot without the prior written approval of the Committee, other than signs provided by Declarant or the Association.

(ii) Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that normal household pets may be kept in reasonable numbers subject to rules and regulations established by the Board of Directors (provided that such pets are not kept, bred, or maintained for any commercial purpose).

(iii) Vehicle Parking. No trucks, motor homes, campers, trailers, recreational vehicles, boats, boat

trailers or similar vehicles shall be parked or stored on any Lot, unless the same are parked in a garage. No vehicle shall be repaired or restored on any Lot, except in a garage with the door closed. Disabled vehicles shall not be allowed to remain on any Lot or street, except only to the extent necessary to enable movement to a proper repair facility. To the extent permitted by applicable laws and ordinances, parking is prohibited at all times within the cul-de-sac loops of any street within and upon the Real Estate, and overnight parking is prohibited on all streets.

(iv) Garbage, Trash and Other Refuse. No Owner shall burn or permit the burning out-of-doors of garbage or other refuse on his Lot, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot.

(v) Fuel Storage Tanks. Every tank for the storage of fuel that is installed outside any building shall be buried below the surface of the ground and shall not be visible from any Lot, the Common Areas or the street.

(vi) Model Homes. No Owner of any Lot other than Declarant or persons having the written permission of Declarant shall build or use, or permit the building or use upon any such Lot of, any model home or exhibit house.

(vii) Temporary Structures. No trailers or temporary storage sheds shall be erected or situated on any Lot, except that used by the builder during the construction of a residence on the Lot. Nor may any such structure or any structure of a temporary character be used as a residence. Overnight camping shall not be permitted on any vacant or unoccupied Lot, nor shall any regular overnight camping be permitted on any Lot.

(viii) Utility Facilities. All utility facilities shall be underground, except where required to be placed above ground by the individual utility supplier.

(ix) Planting in Common Areas. No planting, landscaping or gardening shall be done in any of the Common Areas, except as approved by the Association.

(x) Satellite Dishes. No satellite dishes shall be installed or permitted on any Lot.

(xi) Antennas and Solar Heat Panels. Except as approved by the Committee in writing, no exposed antennas

or solar heat panels shall be installed or permitted on any Lot.

(xii) Awnings. No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot.

(xiii) Tree Preservation. No trees shall be removed from any Lot without the written approval of the Committee, and all such requests for approval shall be made to the Committee in writing. In the event the Committee does not indicate in writing its approval or disapproval of a request for tree removal within thirty (30) days after submission, the Committee shall be deemed to have disapproved such request.

(xiv) Lot Access. All Lots shall be accessed from the interior streets of the subdivision. No Lot access is permitted from Lafayette Road.

(xv) Site Obstructions. 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 and property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(xvi) Address Identification. Individual address identification for each Lot shall be installed by each Owner in accordance with standards established by the Committee. All repairs and replacements to such standard address identification shall be consistent in color, quality and appearance with the originals thereof unless the prior written approval of the Committee is obtained.

(xvii) Driveway Lighting. The Committee will designate a standard driveway light fixture for all Lots and may designate a standard location for such driveway light fixtures. Each Owner of a Lot shall cause such standard driveway light fixture to be installed and maintained at such Owner's expense. Driveway light

fixtures shall be on and illuminated from dusk to dawn, unless the Association shall provide otherwise by rule or regulation.

#### ARTICLE IV

##### ASSOCIATION

Section 4.1. Membership. Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

Section 4.2. Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Declarant (unless the Class B membership has been converted to Class A membership as provided in the following paragraph (ii), in which event Declarant shall then be a Class A member).

(ii) Class B Members. The Class B member shall be the Declarant. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in Section 4.3).

Section 4.3. Voting Rights. Each class of membership of the Association shall have the respective voting rights set forth in this Section 4.3.

(i) As used herein, the term "Applicable Date" shall mean the date which is the earlier of (a) the date on which the written resignation of Declarant as a Class B member is delivered to the Secretary of the Association or (b) the date Declarant no longer owns any Lot.

(ii) Until the Applicable Date, the Class B membership shall exercise all voting rights with respect to any matter submitted to a vote of the members of the Association and shall have one (1) vote for each Lot of which Declarant is the Owner.

(iii) From and after the Applicable Date, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner. Where more than one person or entity constitutes the Owner of a

particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot. Until the Applicable Date, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Association.

Section 4.4. Board of Directors. The Board of Directors shall manage the affairs of the Association.

Section 4.5. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee, on written notice of ninety (90) days or less.

Section 4.6. Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) Installation and replacement of such fences, walls, earth mounds, trees, foliage, landscaping, screening materials, signs and other improvements in and upon the Common Areas as the Association deems necessary or appropriate, and maintenance of the Common Areas and any installation thereon in a clean and attractive condition and in good repair.

(ii) Replacement of such fences, walls, permanent signs, earth mounds, trees, foliage, landscaping, screening materials and other improvements in and upon the Landscape Easements as the Association deems necessary or appropriate and maintenance of said Landscape Easements and any installation thereon installed by Declarant or the Association in a clean and attractive condition and in good repair.

(iii) Management and control of detention and retention pond or lake in and upon the Lake Common Area and maintenance of the same in a clean, attractive and sanitary condition. Installation and replacement of such improvements in and upon said Lake Common Area as the Association deems necessary or appropriate and maintenance of any such improvements installed by Declarant or the Association in good condition and repair. Without limiting the generality of the

foregoing, such maintenance obligations shall include overflow maintenance to protect the pond or lake from erosion, algae control and maintenance of minimum water levels. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law and prudent pond and lake operation.

(iv) Maintenance of the Access Easements in a clean and attractive condition.

(v) Replacement of the drainage system in and upon the Drainage Easements as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon said Drainage Easements by Declarant or the Association in good condition and repair, subject, however, to the obligation of the Owner of a Lot subject to a Drainage Easement to keep the portion of the Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.

(vi) Installation or removal of any equipment or facilities providing utility services to the Real Estate in or upon the Utility Easements as the Association deems necessary or appropriate, and the maintenance of any such equipment or facilities installed in or upon the Utility Easements by Declarant or the Association in good condition and repair.

(vii) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required under this Declaration and such other insurance as the Association deems necessary or advisable.

(viii) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(ix) Assessment and collection from the Owners of the Common Expenses.

(x) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable. Nothing contained herein shall be construed to require the Association to provide snow removal or other services. In the event snow removal service is provided, an amount therefor shall be included in the annual budget of the Association and collected as a Common Expense,

with the understanding that a special assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual snow removal costs due to inordinate snow fall or number of snow falls during any season.

(xi) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and individual Lots and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

Section 4.7. Compensation. No director of the Association shall receive compensation for his services as such director, except to the extent expressly authorized by a majority vote of the Owners.

Section 4.8. Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct, or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

Section 4.9. Indemnity of Directors, Officers and Committee Members. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Association or member of the Committee, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise



specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Indemnitee was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director, officer or Committee member shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such person relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director, officer or Committee member had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this Section 4.9.

Section 4.10. Bond. The Board of Directors may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

ARTICLE V

BOARD OF DIRECTORS

Section 5.1. Qualifications. Except as otherwise provided in the following Sections 5.2 and 5.3, no person shall be eligible to serve as a member of the Board of Directors unless he is a member of the Association.

Section 5.2. Additional Qualifications. Where an Owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner, officer or trustee, as the case may be, of a partnership, corporation, trust or other entity Owner shall be eligible to serve on the Board of Directors, except that no Lot may be represented on the Board of Directors by more than one person at a time.

Section 5.3. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated in the Articles of Incorporation (the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration or in the Articles of Incorporation or By-Laws, the Initial Board shall hold office until the Applicable Date and until their successors have been duly elected and qualified. In the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each person serving on the Initial Board, whether as an original member thereof or as a member appointed by Declarant to fill a vacancy, shall be deemed a member of the Association solely for purposes of qualifying to act as a member of the Board of Directors, and for no other purpose (unless he is actually an Owner and therefore a member of the Association).

ARTICLE VI

MILL POND ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Creation. There shall be, and hereby is, created and established the Mill Pond Architectural Control Committee to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members appointed, from time to time, by Declarant and who shall be subject to removal by Declarant at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association.

**Section 6.2. Purpose and Powers of Committee.** The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, the removal of any existing trees from any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner, to maintain a harmonious relationship among structures and the natural vegetation and topography and to provide for the proper functioning of the storm drainage system for the Real Estate. The Committee shall have the right to promulgate, modify and amend at any time and from time to time architectural guidelines and standards (the "Guidelines") and reasonable rules and regulations for the submission of matters to the Committee for approval. The Guidelines and rules and regulations in effect from time to time shall be available upon request to all Owners and builders who seek to engage in construction upon all or any portion of the Real Estate. Such Guidelines, rules and regulations may set forth additional requirements to those set forth in this Declaration or any Plat, as long as the same are not inconsistent with this Declaration or such Plat(s), and shall be binding on all Owners of any Lot.

(i) **In General.** No residence, building, structure, antenna, fence, wall, patio, swimming pool, or improvement of any type or kind ("improvements") shall be erected, constructed, placed, modified or altered on any Lot and no clearing, excavation, grading or other site work ("site work") and no removal of existing trees or planting or removal of other landscaping ("landscaping") shall take place on any Lot without the prior written approval of the Committee. Such approval shall include approval of exterior colors and materials and no change shall be made in the exterior color or materials of any improvement located on a Lot without the prior written approval of the Committee. 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, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing 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 submitted to the Committee shall be drawn to a scale of not less than 1" equals 20', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant approvals required under this Article or elsewhere in this Declaration when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any Plot;

(b) The design or color scheme of a proposed repainting, modification or improvement is not, in the opinion of the Committee, in harmony with the general surroundings of the Lot, with adjacent buildings or structures or the Guidelines then in effect; or

(c) The proposed improvement, construction, modification or alteration, the proposed site work or the proposed landscaping, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

Section 6.3. Duties of Committee. The Committee shall approve or disapprove any matters submitted to it for approval 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 6.4. Liability of Committee. Neither the Committee, Declarant, the Association nor any agent of any of the foregoing shall be responsible in any way for (i) any defects in

any plans, specifications or other materials submitted to it, (ii) any defects in any work done according thereto, or (iii) any damages arising out of or in connection with the approval or disapproval of any matter by the Committee.

Section 6.5. Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI.

Section 6.6. Nonapplication to Declarant. Notwithstanding the provisions of this Article VI or any other provisions of this Declaration requiring the approval of the Committee, the Declarant, or any entity related to Declarant, shall not be required to apply for or secure the approval of the Committee in connection with any construction, modification, alteration, site work or landscaping on the Real Estate by Declarant, or any entity related to Declarant.

## ARTICLE VII

### ASSESSMENTS

Section 7.1. Creation of Lien and Personal Obligation. Declarant, for each Lot now or hereafter owned by it, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). All such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessment (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid assessments or other charges

against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

**Section 7.2. Purpose of Regular or Special Assessments.** The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the Landscape Easements, and the Lake Maintenance Easements and all improvements thereon, and the drainage system located within and upon the Drainage Easements, (iii) for the performance of the responsibilities and duties of the Association and (iv) for such other purposes as are specifically provided herein. The Regular Assessment may include an amount to be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

**Section 7.3. Regular Assessments.** The Board of Directors shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessment against each Lot at any amount not in excess of the maximum Regular Assessment hereinafter provided:

(i) Until January 1, 1992, the maximum Regular Assessment for a calendar year on any Lot shall not exceed One Thousand Eighty Dollars (\$1,080.00).

(ii) From and after January 1, 1992, the maximum Regular Assessment on a Lot for any calendar year may be increased by not more than fifteen percent (15%) above the Regular Assessment for the previous calendar year, except as provided in the following subparagraph (iii). ®

(iii) From and after the Applicable Date, the Board of Directors may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above with the approval of a majority of the members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

**Section 7.4. Special Assessments.** The Board of Directors may make Special Assessments against each Lot for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any operating deficits which the Association may from time to time incur only with the assent of a majority of the members of the Association who

are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

Section 7.5. Uniform Rate of Assessment. The Regular Assessments and Special Assessments levied by the Association shall be uniform for all Lots.

Section 7.6. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments shall commence for each Lot on the first day of the first calendar month following the conveyance of such Lot by Declarant; provided, however, that Declarant may in its sole and absolute discretion delay the starting date for Regular Assessments for any Lot for as long as Declarant deems appropriate, but Regular Assessments shall in all events be payable commencing on the first day of the first calendar month following the date the Lot is occupied for residential purposes. Such first annual Regular Assessment for such Lot shall be prorated based on the number of calendar months then remaining in the annual assessment period. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments or Special Assessments shall be owed or payable by Declarant with respect to any Lot or shall become a lien on any Lot while such Lot is owned by Declarant. The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of the annual assessment period. Written notice of the Regular Assessment, any Special Assessments, and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. All assessments shall be due and payable in such manner and on such schedule as the Board of Directors may provide. The Board of Directors may provide for reasonable interest and late charges on past due assessments.

Section 7.7. Failure of Owner to Pay Assessments. <sup>®</sup>

(i) No Owner may exempt himself from paying Regular Assessments or Special Assessments or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon by nonuse of the Common Areas or abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board of Directors may in its discretion accelerate the entire balance of any unpaid assessments and declare the same

immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid.

(ii) Notwithstanding anything contained in this Section 7.7 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor. Such unpaid share of any assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

#### ARTICLE VIII

##### INSURANCE

Section 8.1. Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if



any, owned by the Association or which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage." Such insurance policy shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for repair or replacement of the property for which the insurance was carried.

Section 8.2. Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and Easement areas and shall insure the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

Section 8.3. Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

Section 8.4. Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expenses.

#### ARTICLE IX

##### DAMAGE TO COMMON AREAS

In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same

from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas or any Easement area or improvements, equipment or facilities located therein or thereon, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or such Easement areas) or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

#### ARTICLE X

##### MORTGAGES

Section 10.1. Notice to Association. Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise 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, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 10.2. Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations

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under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

#### ARTICLE XI

##### AMENDMENT

Section 11.1. By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the votes of all Owners; provided, however, that any such amendment shall require the prior written approval of Declarant so long as Declarant owns any Lots within and upon the Real Estate. In the event any Lot is subject to a first mortgage, the Mortgagees shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing Section 10.1.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their

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mortgage interest to the Board of Directors in accordance with the provisions of the foregoing Section 10.1.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is deemed by the Board of Directors to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

Section 11.2. By Declarant. Declarant hereby reserves the right so long as Declarant, or any entity related to Declarant, owns any Lot to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, without the approval of any other person or entity, in order to bring Declarant into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency to induce any of such agencies to make, purchase, sell, ensure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided, that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 11.3. Recording. Each amendment to this Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

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ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in any Plat shall be grounds for an action by Declarant, the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Declarant nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

Section 12.2. Government Enforcement. The Metropolitan Development Commission of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority to enforce any covenants, commitments, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance of Marion County, Indiana, 58-AO-13, as amended, or any conditions attached to approval of any Plat by the Plat Committee.

Section 12.3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in any Plat shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

Section 12.4. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until January 1, 2010, and thereafter shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote

of a majority of the then Owners, it is agreed that this Declaration shall terminate in its entirety; provided, however, that no termination of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

Section 12.5. Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 12.6. Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions 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.

Section 12.7. Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

Section 12.8. Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any Plat, Declarant, any entity related to Declarant and any other person or entity with the prior written consent of Declarant shall, during the Development Period, be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Declarant or such person or entity as, in the sole opinion of Declarant, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the construction or residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

IN WITNESS WHEREOF, this Declaration has been executed by Declarant as of the date first above written.

APPROVED  
CMD-DDS BY DSG

1-2-91

WELLS & ZIEGLER DEVELOPMENT  
CORPORATION, an Indiana  
Corporation

By: [Signature]  
Dean S. Ziegler, President

STATE OF Indiana )  
COUNTY OF Marion ) SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared Dean S. Ziegler, the President of Wells & Ziegler Development Corporation, an Indiana Corporation, who, having been first duly sworn, acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Mill Pond on behalf of said corporation, and stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 28<sup>th</sup> day of December, 1990.

(SEAL)

Paul W. Dannel  
Notary Public

Paul W. DANIEL  
Printed Name

I am a resident of Marion County, Indiana

My commission expires: Dec. 29, 1991

This instrument prepared by Mary K. Lisher, Attorney At Law, Baker & Daniels, 300 North Meridian Street, Suite 2700, Indianapolis, Indiana 46204.

CHICAGO TITLE

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EXHIBIT "A"  
MILL POND  
LEGAL DESCRIPTION

A Part of the Southeast Quarter of Section 21, Township 17 North, Range 2 East located in Marion County, Indiana, being more specifically described as follow:

BEGINNING at a stone found marking the Southwest corner of the Southeast Quarter of Section 21, Township 17 North, Range 2 East; thence North 00 degrees 28 minutes 00 seconds West on and along the West line of the Southeast Quarter 1029.33 feet to an existing fence; thence North 88 degrees 56 minutes 32 seconds East (this and the next (3) courses are on said existing fence) 742.98 feet; thence North 88 degrees 23 minutes 53 seconds East 161.15 feet; thence North 59 degrees 04 minutes 22 seconds East 316.23 feet; thence North 60 degrees 30 minutes 50 seconds East 92.87 feet to a point on the West line for the Right-of-Way for U.S. Highway 52 as per Plans for F.A. Project No. 40 dated 1934, said point being the point of curvature of a non-tangent curve which is concave to the West, whose radius is 1839.36, and which has a chord that bears North 19 degrees 24 minutes 59 seconds West and is 10.79 feet in length; thence on said West Right-of-Way line an arc distance of 10.79 feet to the North line of the Real Estate described in Instrument # 90-24759 in the Office of the Recorder of Marion County, Indiana; thence North 59 degrees 03 minutes 00 seconds East on the North line of the Real Estate described in Instrument # 90-24759 a distance of 76.65 feet to the centerline of said U.S. Highway #52 (as Instrument #67-19490); thence South 12 degrees 11 minutes 00 seconds East 430.00 feet on and along said centerline of U.S. Highway #52; thence South 45 degrees 00 minutes 00 seconds West 126.55 feet; thence South 44 degrees 44 minutes 00 seconds West 615.95 feet; thence South 01 degrees 22 minutes 07 seconds East 337.58 feet measured (South 01 degrees 22 minutes 00 seconds East 330 feet prior deed, Instrument #67-19490) to an iron rod on the South line of said Southeast Quarter of said iron rod being North 88 degrees 40 minutes 26 seconds East 885.95 feet from the Southwest corner of said Southeast Quarter; thence South 88 degrees 40 minutes 26 seconds West 885.95 feet measured (South 88 degrees 11 minutes West 885.95 feet, prior deed, Instrument #67-19490) to the POINT OF BEGINNING. Containing 27.23 acres, more or less, being subject to the right-of-way of U.S. Highway #52 and all other applicable easements and rights-of-way of record.

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