

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SANDPIPER LAKES, A SINGLE FAMILY RESIDENTIAL DEVELOPMENT IN  
HAMILTON COUNTY, INDIANA

Cross reference:  
PC 1 Slide 556  
PC 1 Slide 557

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The undersigned, Wolfson-Young Corporation, (sometimes referred to herein as "Owner" or "Developer"), for and as Owner and Developer of the real property described in Exhibit "A" attached, to be known as Sandpiper Lakes, and for the benefit of all present and future owners of any lot or lots in, or occupants of Sandpiper Lakes, does hereby impose the within described Covenants, Conditions and Restriction on the land described in said Exhibit "A".

Article 1. Use Restrictions

All lots in this subdivision and all present and future owners or occupants thereof shall be subject to the following development standards, conditions and restrictions, which shall run with the land:

1.01 The lots located within Sandpiper Lakes shall be used for detached single-family dwellings in accordance with the present zoning of Sandpiper Lakes by Hamilton County. No lot shall be used for any purpose not presently permitted by the Zoning Classification without the approval of the Sandpiper Lakes Homeowners Association, a not-for-profit corporation, hereinafter more specifically defined and established this provision is intended to, and shall prohibit, a change of presently permitted use by change of zoning without approval of said corporation.

Mary H. Davis  
HAMILTON COUNTY RECORDS

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1.02 All single-family dwellings shall have a minimum of 1200 square feet of living area, exclusive of open porches, garages and other unheated areas. Any structure or dwelling must have architectural review or approval. All driveways and vehicle parking areas shall be hard-surfaced. No gravel or stone driveways shall be permitted on any lot. Front elevations exclusive of openings must be 60% masonry.

1.03 No building, basement, swimming pool, tennis court, fence, wall, hedge, or other enclosure, or any utility meter, mailbox, or other structure of any sort shall be erected, placed or maintained on any lot in said subdivision, nor shall any change, addition to or alteration thereof affecting the outward appearance thereof be made unless the same shall be in accordance with detailed plans and specifications therefore showing the size, location, type architectural design, quality, use and material of construction thereof, the color scheme, therefore, the grading plan of the lot, and the finished grade elevation thereof, which detailed plans and specifications have first been approved in writing by the corporation.

1.04 No structure or any part thereof, other than a fence, hedge, wall, or other enclosure which shall first

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have been approved as provided in paragraph 1.03 above, shall be erected, placed or maintained on any lot nearer to the front or street line or lines than the building setback line or lines shown on the recorded plat. No structure of any sort shall be erected, placed or maintained on any lot nearer to any side lot line or rear lot line than is permitted by the appropriate zoning and building requirements of the Town of Westfield and Hamilton County.

1.05 No portion of any residential lot or structure thereon shall be used or permitted to be used for any business purpose whatsoever; provided, however, the foregoing shall not apply to the various activities, or the construction and maintenance of buildings, if any, of Owner, its agents or assigns, during the construction and sale period. In addition, no noxious, offensive, or unreasonably disturbing activity shall be carried on upon any part of said subdivision, nor shall anything be done thereon which may be or become an annoyance or nuisance in said subdivision.

1.06 No trailer, tent, shack, garage, barn, car, or other temporary shelter or housing device shall be maintained or used as a residence, temporarily or permanently, in said subdivision, except by owner during construction of the project. No dwelling erected in said subdivision shall be used as a residence until the exterior thereof either has been completed in accordance with the detailed plans and specifications approved therefore as

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provided in paragraph 1.03 above or sufficient funds have been placed in escrow to assure such completion as weather conditions permit.

1.07 No clotheslines shall be located on any lot.

1.08 Any truck, motorcycle, boat, bus, tent, car, camper, trailer or other similar housing or recreational device, if stored on any said lot, shall be housed with a garage building.

1.09 No portion of any residential lot, except the interior of the residential dwelling located thereon and appurtenant garage, shall be used for the storage of automobiles, trailers, motorcycles or other vehicles, whether operative or not, scrap, scrap iron, water, paper, or glass, or any reclamation products, parts or materials, except that during the period an improvement is being erected upon any such lot, building materials to be used in the construction of such improvement may be stored thereon; provided, however, any building material not incorporated in said improvement within ninety (90) days after its delivery to such lot shall be removed therefrom. All improvements must be completed by an owner within one (1) year from the date of the beginning of the construction thereof. No sod, dirt or gravel other than incidental to construction of approved improvements, shall be removed from said lots without the written approval of the corporation or its successors and assigns.

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1.10 No portion of any lot nearer to any street than the existing setback line or lines shown upon the recorded plat of said subdivision shall be used for any purpose other than that of a lawn; provided, however, this covenant shall not be construed to prevent the use of such portion of said lot for walks, drives, trees, shrubbery, flowers, flower beds, ornamental plants, fence, hedge, wall or other enclosures which shall first have been approved as provided in paragraph 1.03 above for the purpose of beautifying said lot, but shall be construed to prohibit the planting or maintaining of vegetables and grains thereon except upon terms and conditions acceptable to and approved by the Sandpiper Lakes Homeowners Association.

1.11 No weeds, underbrush, or other unsightly growths or objects of any kind shall be placed, be permitted to grow, or suffered to remain on any part of said premises. All lawn areas shall be maintained in a neat and orderly manner and shall be mowed not less than is needed to maintain the lawn equal to or better in appearance than the surrounding neighborhood in general.

1.12 No trash burner, outdoor fireplace, or other device expelling gas or smoke shall be placed within twenty (20) feet of any adjoining lot line.

1.13 Television antennas shall be no higher than 5' above the peak of the roof. No towers of any kind including, but not limited to, radio and/or microwave towers, or dish-type antennas, shall be erected, placed or maintained on any lot in said subdivision.

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1.14 Any tanks for the storage of propane gas or fuel oil shall be located and buried beneath the ground level, provided, however, propane tanks for service to the entire subdivision, or for construction operations, may be located above ground.

1.15 No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, that they are limited in number so as not to become a nuisance or disturbance to others, and that they are not permitted to run loose.

1.16 No sign or billboard of any kind shall be erected or maintained on any lot except (i) signs approved by the corporation; and (ii) signs used by Owner, its successors and/or assigns, to advertise lots in residences for sale during the construction and initial sales period.

1.17 No lot owner shall alter, impair or change any easement without first obtaining the written consents of the corporation and the lot owner or owners for whose benefit such easement exists.

1.18 All rubbish and debris, combustible and non-combustible, and all garbage shall be stored in underground containers, or stored and maintained in containers entirely within the garage or basement. However, rubbish, debris, combustible and non-combustible, and garbage may be stored in outside containers if approved

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by the corporation. Additional regulations for the storage, maintenance and disposal of rubbish, debris, boxes and garbage may from time to time be established by the corporation or their successors and assigns.

1.19 No well for the production of gas, water, oil or otherwise, whether intended for temporary or permanent purposes, shall be drilled or maintained on any lot, nor shall such premises be otherwise used in any way which may endanger the health or unreasonably disturb the peaceable use of adjoining premises.

1.20 No individual water supply system or sewage disposal system shall be permitted on any lot without prior written approval by the corporation and the Town of Westfield and Hamilton County, and, if approved, will be located and constructed in accordance with requirements, standards, and recommendations of the Indiana State Board of Health. No geothermal system shall be installed without prior approval by all applicable agencies. Solar heating systems of any nature must be approved by the corporation as to design and aesthetic quality prior to construction. Lot owners are hereby advised that solar heating systems will not be approved unless their design blends aesthetically with the structure and adjacent properties.

1.21 Drainage swales (ditches) or drainage retention areas along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled, or otherwise changed without the written

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permission of the Department of Public Works of the Town of Westfield. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Department of Public Works of the Town of Westfield. Access to dedicated easements by City or County agencies for the purpose of repair or replacement of drainage networks shall be permitted on private property when deemed necessary by City or County agencies. Such access shall include the right to use private property for the purpose of performing work in dedicated easement areas. City and County work crews shall take reasonable care when working on private property to cooperate with property owners when scheduled work may cause existing privately landscaped and planted areas to be disrupted. Such care shall include notifying property owners in advance of access if possible. City and County agencies shall bear no liability for any damage done to private property yards, landscaping or plantings due to the performance of work within dedicated Right of Way or easements. Any property owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action.

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ARTICLE 2 Pond Covenants and Restrictions

2.01 The areas marked D. & U. E. as shown on the plat of Sandpiper Lakes are protected areas and may include a storm water detention area designed so as generally to retain water and have the appearance of a pond. Any such storm water detention (pond) area may extend into any area included in Sandpiper Lakes.

2.02 No owner of any lot in Sandpiper Lakes shall do or permit to be done any action or activity which could result in the pollution of the pond, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage, or proper pond management, or otherwise impair or interfere with the use of the pond for drainage and related purposes for the benefit of Sandpiper Lakes.

2.03 No swimming or motorized boating activity shall be conducted in, on or above said pond area.

2.04 The corporation may from time to time establish rules regarding the use of the pond and related drainage and utility easement areas provided such rules are not in conflict with the rules contained herein and are established to protect the safety and welfare of the residents of Sandpiper Lakes and their guests as well as any other person or property in the vicinity of the pond and related drainage and utility easement area and/or are established to assure the continued service of the area for the purpose for which it was designed.

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2.05 The corporation or the Department of Public Works of the Town of Westfield, shall have the authority to institute an action for injunction to abate any activity in violation of these plat restrictions and covenants or any rules and regulations regarding the use and maintenance of the pond and related drainage and utility easement areas that have been established pursuant to the provisions hereof, or to seek mandatory relief for the correction of any damage caused to the pond, interference with the drainage system, together with any damages incurred, and upon recovery of judgement shall be entitled to costs of the action together with reasonable attorney's fees.

Article 3 Homeowners Association

A not-for-profit corporation to be known as Sandpiper Lakes Homeowners Association, Inc., shall be established to carry out the functions set forth for it in these Plat Restrictions and Covenants.

3.01 The Sandpiper Lakes Homeowners Association, Inc., shall be guided by three (3) directors who initially shall be appointed by the undersigned corporation. Each lot owner of a lot in Sandpiper Lakes shall become a shareholder of said corporation upon purchase of said lot.

3.02 The directors of said corporation shall serve until their successors are elected. Upon the incapacity, resignation or death of a director of the corporation, his successor shall be appointed by the remaining directors of

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the corporation within six (6) months of the incapacity, death or resignation of a director. In the event of the incapacity, resignation or death of a director of the corporation, and his successor is not appointed within six (6) months thereafter, the successor director shall be elected by the owners of a majority of the lots in said subdivision.

3.03 In requiring the submission of detailed plans and specifications as herein set forth, the parties hereto have in mind the development of said subdivision as an architecturally harmonious, artistic and desirable residential subdivision, and in approving or withholding its approval of any detailed plans and specifications so submitted, the corporation, or its successors and assigns, may consider the appropriateness of the improvement contemplated with relation to improvements on contiguous or adjacent lots, its artistic and architectural merits, its adaptability to the lot on which it is proposed to be made, and such other matters as may be deemed to be in the interest and benefit of the owners of the lots in said subdivision as a whole. Developer shall act as board of directors until 260 lots are sold.

3.04 All plans and specifications submitted to the corporation for consideration must be prepared by a registered architect or civil engineer, or by an experienced draftsman in form generally used by architects and engineers, except that proposals for exterior changes

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that generally would be made without the need for detailed plans and specifications, such as repainting a building with a different color plan or replacing a window and door can be made without the submission of professionally prepared plans and specifications provided, however, that the corporation reserves the right to require the proposer to provide the opinion of a professional architect, surveyor or engineer in support of any proposal before giving its approval.

3.05 The corporate approval or disapproval as required in these Covenants shall be in writing, and any determination made by the corporation in good faith shall be binding on all parties in interest. If the corporation shall fail to approve or disapprove, within thirty (30) days after the same shall have been submitted to it for approval, such plans and specifications shall be deemed to have received the approval of said corporation.

3.08 Notwithstanding compliance with the foregoing minimum living area requirements, the Department of Metropolitan Development of Town of Westfield shall not issue an Improvement Location permit for any dwelling upon any lot in this development.

3.07 The corporation, in addition to those remedies granted to it by law, such as the pursuit of court-ordered injunctions and other judicial relief, shall have the right in the event of any action or condition which the corporation or their successors and assigns determine to be

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in violation of these restrictions, to enter the property  
whenever violation is deemed by it to be in violation  
hereof, and said corporation or their successors and  
assigns shall not by reason thereof be guilty of trespass  
or trespass for such entry, abatement or removal, or liable  
for damages by reason thereof, to any person whatsoever.  
Any failure to enforce these restrictions shall not be  
deemed a waiver thereof or any acquiescence in, or consent  
to, any continuing, further or succeeding violation  
hereof. If, in the opinion of the corporation, by reason  
of the shape, dimensions or topography of a particular lot  
in the subdivision, enforcement of these restrictions with  
respect to size of structure would constitute a hardship,  
the corporation may permit a variation which will, in its  
judgment, be in keeping with the maintenance of this  
subdivision as a desirable subdivision.

3.08 Sandpiper Lakes may contain certain landscaped  
areas lying within the plat and certain landscaped areas  
lying within the adjacent public rights-of-way. In  
addition, landscape easement areas may be imposed on a  
portion of certain lots. The corporation shall have the  
right to enter onto such public rights-of-way and landscape  
easement areas from time to time as it deems necessary for  
purposes of maintaining all landscaped areas and landscape  
easement areas described above which are located in  
Sandpiper Lakes and may participate in the reasonable and  
proper maintenance of all other landscaped areas and  
landscape easement areas located in Sandpiper Lakes. In

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In addition, the corporation shall provide weekly trash collection service if same is not provided by the municipality and, upon the approval of a majority of the lot owners in Sandpiper Lakes, may provide other services such as snow removal if they are not adequately provided by the appropriate municipal government.

The plat drawing of Sandpiper Lakes contains areas marked D. & U. E. (Drainage Utility Easement). The corporation shall have the right to enter onto any D. & U. E. area as it deems necessary or desirable for the purpose of maintaining same or otherwise clearing obstructions that impede or might impede the designed flow of storm water across such areas.

In order to provide the funds necessary to pay for the services described in this paragraph, as well as other provisions of these Restrictions and Covenants, the corporation shall be empowered to levy, assess and collect from each and every lot owner in said Sandpiper Lakes, such sums as may be approved by a vote of not less than 75% of the owner occupants of residences in Sandpiper Lakes. Any amount so assessed or levied shall become a lien on each lot. In the event any amount so assessed or levied is not paid when due and remains in arrears for more than sixty (60) days, the corporation may cause to be filed with the Hamilton County Recorder a Notice of Lien describing the lot and the amount due and executed in accordance with the formalities then required to record a lien against real estate. The lien of the assessment provided for herein

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shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to the payments which became due prior to such sale or transfer period. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

3.09 The corporation has the power to expend its money on the reasonable care and proper maintenance of the landscaped areas and "easement areas", including drainage, utility and sewer easement areas in any section of the Sandpiper Lakes subdivision, and such other community services approved by a majority of the lot owners in Stable Run. The corporation herein established shall act as the Homeowners Association of Sandpiper Lakes for purposes of establishing a budget for the maintenance of the landscaped areas and "easement areas" and the provision of other approved services as described above, and divide the cost of same among the lot owners in Sandpiper Lakes.

3.10 Any and all of the rights, powers, duties and obligations which, in this instrument are assumed by, reserved to or given to the corporation may be assigned or transferred to any one or more corporations or associations which will agree to assume said rights, powers, duties and

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obligations and carry out and perform the same. Any such assignment or transfer shall be made by appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its acceptance of such rights, powers, duties and obligations, which instrument shall be recorded and such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by said corporation. In the event of such assignment or transfer, the assignor or transferor and its successors and assigns of said corporation, shall thereupon be released from all the rights, powers, duties and obligations in this instrument reserved to or given to and assumed by said corporation. The right of assignment hereby reserved to the corporation is so reserved to the end that the rights, powers, duties and obligations reserved or given to it may be assigned to an association or corporation formed by the owners of lots in said subdivision together with contiguous subdivisions, for the purpose of accepting said assignment; and such assignment may be made at such time as the corporation may determine. Whenever in this instrument reference shall be deemed to include the successors and assigns of said corporation.

Article 4 Other Conditions

4.01 These covenants and restrictions shall be taken to be real covenants running with the land and shall be

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binding upon all parties, persons and corporations owning or possessing land in said subdivision, and their heirs, assigns, administrative successors and assigns until July 1, 2024, and these restrictions shall be automatically extended in their entirety for successive periods of ten (10) years unless by appropriate instrument and writing, and consenting to their termination in whole or in part, shall be filed for record, executed and acknowledged by the owners of not less than a majority of the lots.

4.02 Any violation or attempt to violate any of the covenants or restrictions herein while the same are in force shall be sufficient reason for any other person or persons owning any lot in said subdivision to initiate proceedings at law or in equity against the person or persons to prevent him or them from so doing, or to cause the removal of any violation and to recover damages or other dues for such violation or attempted violation.

4.03 All transfers and conveyances of each and every lot of said subdivision shall be made subject to these covenants and restrictions.

4.04 It is expressly agreed that if any covenant or condition or restriction hereinabove contained, or any portion thereof, is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction.

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3.06 All costs of litigation and attorney's fees resulting from violation of these Covenants shall be the financial responsibility of the lot owner or owners found liable in litigation.

4.06 Any corporation or association which may be the transferee or assignee as provided in paragraph 3.10 hereof shall have the same power to levy, assess and collect funds from lot owners and expend such funds as are set forth in paragraphs 3.06 and 3.08 hereof for the Sandpiper Lakes Homeowners Association.

In addition, any transferee or assignee that is a non-profit association in which the owners of lots in Sandpiper Lakes have the right to elect the directors of the association on a one-vote-per-lot basis shall have the right to levy, assess and collect an amount not to exceed \_\_\_\_\_ to be determined \_\_\_\_\_ per year from each and every lot owner in said Sandpiper Lakes subdivision for purposes of carrying out its responsibility to the lot owners, provided such power shall not be effective unless persons making up a majority of the Board of Directors are owner-occupants of Sandpiper Lakes, and provided further that such limit of to be determined per year may be increased in proportion to any increase in the Consumer price index of the U.S. Bureau of Labor Statistics from the base period of \_\_\_\_\_ 1990 \_\_\_\_\_.

4.07 Any homeowner's association formed for the purpose of maintaining and caring for all landscaped areas

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and easement areas in Sandpiper Lakes and otherwise to protect the interests of the owners of lots in any section of Sandpiper Lakes shall include in its membership the owners of all lots in Sandpiper Lakes and subject each of them to this Declaration of Covenants, Conditions and Restrictions.

4.08 Wherever in the drawings and documents recorded as the plat of Sandpiper Lakes, statements appear to conflict with, or be inconsistent with this Declaration, then the statements in this Declaration shall prevail.

4.09 Sandpiper Lakes Subdivision with all 261 lots, has been presented for annexation into the Town of Westfield (or whatever form of government exists at that time). No original purchaser nor any subsequent purchaser shall have the right to remonstrate, or vote against, or in any way impede annexation regardless of how much time elapses before annexation might occur.

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IN WITNESS WHEREOF, THE SAID Wolfson-Young Corporation, an Indiana Corporation, has caused this instrument to be executed by its respective duly authorized representative this 26<sup>th</sup> day of September, 1994.

Signed, acknowledged and delivered in the presence of: Wolfson-Young Corporation

By: *[Handwritten Signature]*

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State personally appeared Richard R. Young, President, who acknowledged the execution of the foregoing instrument to be his voluntary act and free will.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name and affixed my official seal this 26<sup>th</sup> day of September 1994.

Commission Expires:

1/12/98

*[Handwritten Signature]*  
Notary Public  
Jurith R. Engledow



Printed

County of Residence: Boone

Prepared by: Richard R. Young, President.

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LAND DESCRIPTION

A part of the Southeast Quarter of Section 32, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, and being bounded as follows:

Commencing at the southwest corner of the Southeast Quarter of Section 32, Township 19 North, Range 4 East, (p. 11) thence North 00 degrees 00 minutes 00 seconds (measured bearing) (675.87 feet) along the west line of said Southeast Quarter to the northeast corner of 0.35 acre tract of land described and recorded in Instrument Number 48919513; thence North 89 degrees 13 minutes 22 seconds East 58.39 feet along the north line of said 0.35 acre tract of land to the POINT OF BEGINNING of this description thence North 00 degrees 51 minutes 39 seconds East 197.66 feet thence South 89 degrees 06 minutes 21 seconds East 150.60 feet thence North 00 degrees 51 minutes 39 seconds East 15.31 feet thence South 89 degrees 06 minutes 21 seconds East 290.00 feet thence North 00 degrees 51 minutes 39 seconds East 21.46 feet thence South 89 degrees 19 minutes 35 seconds East 185.19 feet thence South 00 degrees 05 minutes 49 seconds West 400.11 feet thence South 01 degrees 40 minutes 04 seconds West 105.04 feet thence North 88 degrees 19 minutes 35 seconds West 58.00 feet thence South 01 degrees 40 minutes 04 seconds West 170.00 feet thence South 88 degrees 41 minutes 14 seconds East 62.41 feet thence South 11 degrees 42 minutes 18 seconds West 146.51 feet thence South 39 degrees 09 minutes 21 seconds West 185.19 feet thence South 51 degrees 00 minutes 39 seconds West 105.18 feet to the north right-of-way line of State Road 62 (50 feet half right-of-way) thence South 89 degrees 15 minutes 30 seconds West 211.66 feet along the north right-of-way line of said State Road 62 to the intersection with the furtherly extension of an existing fence line thence North 01 degrees 18 minutes 28 seconds West 225.19 feet along the quarterly extension and along said existing fence line to a wood or tree post thence South 89 degrees 15 minutes 30 seconds West 174.41 feet parallel with the north right-of-way line of said State Road 62 to the east line of said subdivision the plat of which is recorded in Plot Book 7, page 144, thence North 00 degrees 00 minutes 27 seconds East 605.44 feet along the east line of said subdivision to the square line of said 0.35 acre tract of land, the next thence (3) courses are along the boundary of said 0.35 acre tract of land thence North 89 degrees 14 minutes 40 seconds East 314.54 feet thence North 00 degrees 51 minutes 39 seconds East 195.15 feet thence 3) South 89 degrees 13 minutes 42 seconds West 120.65 feet to the POINT OF BEGINNING.

06.07.88 04130PK \*WOLFMEON YOUNG, 2ND P 02

INSTR. # 9537311

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AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

OF  
SANDPIPER LAKES

Instrument  
9609649532

The undersigned, WARSTLER ACQUISITIONS, LLC, ("Declarant"), as fee simple owner of all the following described real estate in Washington Township, Hamilton County, Indiana, does hereby amend the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SANDPIPER LAKES, recorded as Instrument #9537311 in the Office of the Recorder of Hamilton County, Indiana, as follows:

Part of the Southeast Quarter of Section 32, Township 19 North, Range 4 East, located in Washington Township, Hamilton County, Indiana, and being bounded as follows:

Commencing at the southwest corner of the Southeast Quarter of Section 32, Township 19 North, Range 4 East, (P.K. Nail found), thence North 00 degrees 00 minutes 00 seconds (assumed bearing) 1075.87 feet along the west line of said Southeast Quarter to the northwest corner of a 3.65 acre tract of land described and recorded in Instrument Number 8919513, said point also being the Point of Beginning of this description, thence continuing North 00 degrees 00 minutes 00 seconds 1592.60 feet along the west line of said Southeast Quarter to the northwest corner of said Southeast Quarter (5/8 inch iron rod found); thence North 89 degrees 38 minutes 01 seconds East 1979.25 feet along the north line of said Southeast Quarter to a point, said point being 668.25 feet (40.5 rods) west of the northeast corner of said Southeast Quarter, thence South 00 degrees 02 minutes 45 seconds East 2605.58 feet to the north right-of-way line of State Road #32 (50 feet half right-of-way) said point being 668.25 feet (40.5 rods) west of the east line of said Southeast Quarter, thence South 89 degrees 15 minutes 30 seconds West 374.41 feet parallel with the north right-of-way line of said State Road #32 to the east line of Emlee Subdivision to plat of which is recorded in Plat Book 2, page 144; thence North 00 degrees 00 minutes 27 seconds East 606.44 feet along the east line of said Emlee Subdivision to the south line of said 3.65 acre tract of land. The next three (3) courses are along the bound of said 3.65 acre tract of land; thence 1) North 89 degrees 14 minutes 40 seconds East 314.54 feet; thence 2) North 00 degrees 51 minutes 33 seconds East 196.16 feet; thence 3) South 89 degrees 13 minutes 42 seconds West 813.04 feet to the Point of Beginning. Containing 103.71 acres, more or less, and being subject to all applicable easements and rights-of-way of record.

9609649532

THIS AMENDMENT, made on the 10<sup>th</sup> day of November, 1996, by WARSTLER ACQUISITIONS, LLC,

9609649532  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 11-25-1996 At 11:38 am.  
DEC COV RES 60.00

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF SANDPIPER LAKES

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**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision known as Sandpiper Lakes; and

**WHEREAS**, Declarant is the sole owner of the real estate which was governed by the Declaration and now wishes to replace the Declaration with this AMENDED DECLARATION;

**NOW, THEREFORE**, Declarant hereby declares that all the Property shall be held, sold and conveyed, subject to the following easements, restrictions, limitations, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

*Name*

The subdivision of the Property created by this Amended Declaration shall be known and designated as Sandpiper Lakes, a subdivision located in Hamilton County, Indiana.

**ARTICLE II**

*Definitions*

The following terms, when used throughout this Amended Declaration, shall have the following meanings and definitions:

**Section 2.1** "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

**Section 2.2** "Association" means the SANDPIPER LAKES HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, its successors and assigns.

**Section 2.3** "Board of Directors" means the Board of Directors of the Association.

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF SANDPIPER LAKES

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Section 2.4 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.5 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Amended Declaration to be Common Expenses.

Section 2.6 "Declarant" means *Warstler Acquisitions, LLC* and its successors and assigns.

Section 2.7 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property. The Development Period shall recommence each time the Declarant acquires any part (or all) of the Additional Property.

Section 2.8 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereafter defined).

Section 2.9 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.10 "Limited Lake Area" means any Lake Area on which the Lake is completely surrounded and enclosed by Lots.

Section 2.11 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted



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dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.12 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.13 "Plat" means the subdivision plats of the Property, which are recorded with the Recorder of Hamilton County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Amended Declaration.

ARTICLE III

*Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Subject to the following provisions, the use and enjoyment of a Limited Lake Area shall be restricted to the Owners of Lots which abut such Limited Lake Area, shall be per the covenants, conditions and restrictions which are set forth in this Amended Declaration, and shall pass with title to every Lot which abuts such Limited Lake Area (in the form of a right to membership in the Association). Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which is not also a Limited Lake Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;
- (b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

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(d) The rights of Declarant as provided in this Amended Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Amended Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Amended Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Amended Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association; and

(h) All other rights, obligations and duties as set forth in this Amended Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Amended Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Amended Declaration, the Association, subject to the rights of the Owners as set forth in this Amended Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or

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appropriate to perform its obligations and duties as set forth in this Amended Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or ponds(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Amended Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the

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remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof, and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

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Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any recorded plat of Sandpiper lakes as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the SANDPIPER LAKES HOMEOWNERS ASSOCIATION for the common enjoyment of all residents in Sandpiper Lakes.

Section 3.7 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

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Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

*Section 3.8 Designated Mounding, Landscaping, and Screening Easements.* Any strips of grounds shown or designated on the Plat for (i) mounding easements, (ii) landscape or landscape maintenance easements, and/or (iii) sign easements, are hereby reserved for such (i) mounding easements, (ii) landscape easements and/or landscape maintenance easements and/or (iii) sign easements. Declarant hereby reserves unto itself during the Development Period, and, thereafter, unto the Association, any such easements for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period. Furthermore, notwithstanding anything in this Amended Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

*Section 3.9 Street Dedication.* All streets now or hereafter located upon the Property are hereby dedicated to the public.

**ARTICLE IV*****Association Membership, Voting Rights Board of Directors and  
Professional Management***

*Election 4.1 Membership.* Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s),

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a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

*Class A.* Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

*Class B.* The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or, (b) December 31, 2000.

Section 4.3 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 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 and without payment of any termination fee upon written notice of ninety (90) days or less.

ARTICLE V

*Covenant for Maintenance Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any 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:

(a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses); and

(b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Amended Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be \$120.00 per Lot per year.



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(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than 10% above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than 10% above the maximum Regular Yearly Assessment for the previous year, with the approval of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

*Section 5.4 Special Assessments for Capital Improvements and Operating Deficits.* In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose.

*Section 5.5 Notice and Quorum for Any Action Authorized Under this Article.* Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

*Section 5.6 Uniform Rate of Assessment.* Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots, except that Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Yearly Assessments and Special Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

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Section 5.7 Date of Commencement of Yearly Assessments: Due Dates. The Regular Yearly Assessment provided for herein shall commence as to each Lot within a recorded Plat the first day of the first month following conveyance of the Common Area within such Plat to the Association, or if there is no Common Area, the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.8 Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Amended Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Amended Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.9 Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or

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otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Amended Declaration, as to whether or not such assessments have been paid.

## ARTICLE VI

*Use, Restrictions, and Architectural Control*

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Amended Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Amended Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 6.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. However, there shall be no such approval of the planting of hedges, walls, fences, structures and/or other improvements prohibited under Section 3.8 above, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, approval will

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be required and this Section will be deemed to be fully complied with. The front elevations of all Dwelling Units within the Property shall include masonry as part of the exterior finish materials.

Section 6.3 Leasing. Any Lot may be leased by its Owner.

Section 6.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Property, on any Lot, or in any Dwelling Unit, except that no more than a total of two (2) dogs, cats, or other normal household pets may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose.

Section 6.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Association Board of Directors or Architectural Review Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.7 Side and Rear Yard Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Amended Declaration.

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Section 6.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Amended Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 6.13 Number of Dwelling Units. The number of Dwelling Units shall not exceed the number of Lots within the Property.

Section 6.14 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one half (2-1/2) stories or thirty-five (35) feet in height.

Section 6.15 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 6.16 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 6.17 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or

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permitted to remain on any corner Lot within the triangular area formed by the street 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 sightline 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. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.18 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, builder's or Association's business on the Property.

Section 6.19 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Amended Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Amended Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes, Lake Areas and Limited Lake Areas may or may not exist on the Property, and the reference throughout this Amended Declaration to Lakes, Lake Areas, and Limited Lake Areas is made in order to address Lakes, Lake Areas and Limited Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake, Lake Area or Limited Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake, Lake Area, or Limited Lake Area upon the Property. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 6.20 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall

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have current copies of the Amended Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

*Section 6.21 Development and Sale Period.* Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

*Section 6.22 Outside Use of Lots.* Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors. Above ground swimming pools are prohibited on the Property.

**ARTICLE VII***Maintenance, Repairs and Replacements*

*Section 7.1 By Owners.* Except as specifically provided in this Amended Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

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Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area.

(ii) Maintenance of the Entry Signs and perimeter landscaping installed by the Declarant.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or 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 Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the 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 become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.



## ARTICLE VIII

*Insurance*

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or 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 Association. It shall also cover all Common Area owned by the Association, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds 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 Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be

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applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

*Section 8.5 Insufficiency of Insurance Proceeds.* If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

*Section 8.6 Surplus of Insurance Proceeds.* In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

**ARTICLE IX***Mortgages*

*Section 9.1 Mortgagee Rights.* In addition to any other rights provided elsewhere in this Amended Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

*Section 9.2 Notice to Mortgagees.* The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such

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Owner's obligations under this Amended Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge maybe made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Amended Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Amended Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Amended Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Amended Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

ARTICLE X

*General Provisions*

Section 10.1 Right of Enforcement. In the event of a violation, or threatens a violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Amended 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. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 Amendment. During the first-twenty (20) years following its recordation, this Amended Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of \_\_\_\_\_ County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Amended Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the first mortgagees of the Lots (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes

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consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Change the method of determining the obligations, assessments, dues or other charges that may be levied per the terms hereof,

(c) By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of the Common Area owned by the Association, party walks, common fences and driveways, and the upkeep of lawns and plantings in the Property;

(d) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least 100 percent of the insurable value (based on current replacement costs);

(e) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

(f) Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided for in this Amended Declaration;

(g) Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;

(h) Change the rights to the use of the Common Area owned by the Association, except as provided for in this Amended Declaration;

(i) Change the boundaries of any Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, except as provided for in this Amended Declaration;

(j) Any change concerning convertibility of Dwelling Units into Common Area owned by the Association or vice versa, except as provided for in this Amended Declaration;

(k) Allow for the annexation of additional property;

(l) Any requirements for insurance or fidelity bonds set forth in this Amended Declaration;

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(m) Any change in the manner in which units may be leased except as set forth in this Amended Declaration;

(n) Any imposition of any restriction on a Dwelling Unit Owner's right to sell or transfer his or her Dwelling Unit;

(o) Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in the Amended Declaration;

(p) Any action to terminate the legal status of the development after substantial destruction or condemnation occurs;

(q) Any provision that expressly benefits mortgage holders, insurers or guarantors; or

(r) Any termination of legal status of the development for reasons other than substantial destruction or condemnation of the Property.

If an addition or amendment is not considered as a material change, such as the correction of a technical error or the clarification of a statement within the Amended Declaration, Association Articles, Association By-Laws or other constituent documents, there shall be an implied approval to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after proposal is made. The covenants, restrictions and all other provisions of this Amended Declaration shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of such ten-year period this Amended Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4 HUD Amendment Approval. All other provisions of the Amended Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

- (a) Annexation of additional properties;
- (b) Dedication of Common Area; and
- (c) Amendment of the Amended Declaration of Covenants, Conditions and Restrictions.

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Section 10.5 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 10.6 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

IN WITNESS WHEREOF, Warstler Acquisitions, LLC, has caused this Amended Declaration to be executed as of the date first written above.

WARSTLER ACQUISITIONS, LLC

By: Robert B. Warstler  
Printed: Robert B. Warstler  
Title: Member

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named ROBERT B. WARSTLER as A MEMBER for and on behalf of Warstler Acquisitions, LLC, who acknowledged the execution of the foregoing instrument to be his voluntary act and deed.

WITNESS, my hand and notarial seal this 12th day of NOVEMBER, 1996.

My commission expires: 7/15/98

KRYSTAL J. HUNTER  
Notary Public  
Resident of HAMILTON County

This document prepared by Douglas B. Floyd, Attorney At Law, 970 Logan Street, Noblesville, IN 46060.