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# **DECLARATION OF COVENANTS AND RESTRICTIONS**

<u>OF</u>

DAKOTA SUNRISE

PROPERTY OWNERSHIP

AXA Run Phasanton Co.

# DECLARATION OF COVENANTS AND RESTRICTIONS

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# PROPERTY OWNERSHIP

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## DECLARATION OF COVENANTS AND RESTRICTIONS OF DAKOTA SUNRISE PROPERTY OWNERSHIP

THIS DECLARATION made this 29 day of JULY 1996, by Frank M Hehn ("Declarant")

### WITNESSETH:

#### WHEREAS, the following facts are true:

- A. Declarant is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly described in <u>Exhibit A</u>, attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").
- B. Declarant desires to develop the Real Estate for a single family residential development in accordance with the provisions of this declaration and the Plat to be filed with respect to the Real Estate.
- C. Declarant, by execution of this Declaration, assures that all properties which are conveyed which are a part of the Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE. Declarant hereby makes this Declaration as follows:

- 1. <u>Definitions</u>. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:
  - (a) Block \*A" means the ground designated as such upon the Recorded Plat
  - (b) "Declarant/Developer" shall mean and refer to Frank M. Hahn and any successors and assigns whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
  - (c) "Dakota Sunrise" means the name by which the Real Estate, which is the subject of this Declaration, shall be known.
  - (d) "Dwelling Unit" means one of the living units located upon a Lot
  - (e) "Lot" means any plot of ground designated as such upon the Recorded Plat and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit. If any, located thereon.

- (f) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (g) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (h) "Recorded Plat" means the plat of the Real Estate depicting thereon Lote and Block "A" that have been (i) prepared and certified by a registered land surveyor in the State of Indiana; (ii) executed by the Declarant and (iii) recorded in the office of the Recorder of Hamilton County, Indiana.
- (i) "Association" means The Dakota Sunrise Homeowner's Association
- (j) "Member(s)" means the persons belonging to the organization known as <u>The Dakota Sunrise Homeowner's Association.</u>
- (k) "Architectural Control Committee" means the person(s) elected or appointed to review and approve all architectural improvements to property located within Dakota Sunrise Subdivision
- (i) "Entry Sign and Landscape Easement" (E.S. & E.L.) means the sign, landscape easement and the public right-of-way located between Lots 1 &44 and South 171st Street at the entrance to Dakota Sunrise Subdivision
- (m) "Applicable Date" means the date that the Developer no longer owns any Lots nor any portion of individually numbered percel's of land shown upon and identified as a lot on the recorded subdivision plat thereof
- 2 <u>Declaration</u>. Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.
- 3. <u>Description of Dakota Sunrise</u> Dakota Sunrise shall be a single family residential development consisting of Lots and Blocked Areas as depicted on the Recorded Plat. Block "A" and the size of the Lots are as designated on the Recorded Plat.
- 4 Lot Boundaries The boundaries of each Lot in Dakota Sunrise shall be as shown on the Recorded Plat.
- 5. <u>Block "A"</u>. All the area designated as such on the Recorded Plat, including, but not limited to, the lake and drainage areas.
- 6. Ownership of Block "A". The parcel of land designated on the plat of DAKOTA SUNRISE is to be used as a drainage retention area. Owners of lots 5,6,7,8,9,10,11,12.13 & 14, abut Block "A". By purchasing one of these lots, each owner shall also acquire an undivided one-tenth (1/10th) ownership interest in Block "A". This ownership of Block "A" shall be indivisible from the ownership of the lot. This undivided interest shall run with the title to the above mentioned lots and shall not be separately conveyable therefrom.

- (a) Each Block "A" owner shall share pro rata in the expenses of construction, maintaining, repairing, altering, reconstructing, improving, removing, and insuring the improvements in Block "A". If one or more lot owners fail to pay allocable share of such expenses, then the owners paying such expenses may file a lien for the reasonable value of the work performed and materials furnished as prescribed by the lien laws of the State of Indiana against any such lot and the owner thereof, and recover the full assessment owed together with interest from the due date and reasonable attorney fees and costs
- (b) Owners of Block "A" shall be members of an unincorporated association known as "Block "A" Property Owners Association" The Association shall meet at least annually to elect three (3) Board of Directors. Each lot shall be entitled to one (1) vote. The Board of Directors shall determine, by majority vote, what is necessary to maintain, repair, after, reconstruct, improve, remove, or insure the improvements in Block "A" including any reasonable reserve. The Board shall determine the amount of the annual assessment to be paid by each Block "A" owner for these necessary expenses. No assessment shall ever be levied against the Developer.
- (c) The Board of Directors shall make and enforce reasonable rules and regulations for the use of Block "A" by its members. Sanctions may include reasonable monetary fines, suspension of the right to vote, and the right to use Block "A". The Board shall have the power to seek relief in any court for violation, to abate nuisances, and to collect unpaid assessments on behalf of the Association.
- Access to Block "A" Access to Block "A" and facilities is restricted to the Owners of the
  Lots which do not abut said parcel. A fifteen (15) foot (7.5" half) Lake Maintenance Access
  Easement exists centered on a common lot line between Lots 9 and 10.
- 8. <u>Easements in Block "A"</u> Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in Block "A". Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.
- 9. Drainage and Utility Easements. The drainage easements shown on the within plat are reserved for the drainage of storm water, whether by swale, ditch, or storm sewer. No structure other than storm sewer drainage structures, retaining walls, or elevated walks and driveways shall be erected in, on, over, under, or across any such easement; except that a drainage easement may also be used as a utility easement, and structures permitted in a utility easement may be erected therein, provided that they do not interfere with the flow of water. The owners in this subdivision shall take their title to the land contained in such drainage easements subject to the perpetual easement herein reserved. The utility easements shown within the plat are reserved for use by the city or county in which this subdivision is located, owners in this subdivision, and public utility companies for the installation, use, maintenance, repair, and removal of sewers. watermains, utility poles, wires and other facilities and utilities necessary or incidental to the common welfare and use and occupancy for residential purposes of the houses to be erected in this subdivision. No building or other structure, except walks or driveways, shall be erected or maintained upon, over, under, or across any such utility easement for any use except as set forth herein. The owners in this subdivision shall take their title to the land contained in such utility easement subject to the perpetual easement herein reserved

- (a) On drainage easements, the Town of Westfield shall be responsible for the care, maintenance, repair and/or replacement of actual structures in place, such as sewer pipes, manholes, castings, etc., and each property owner as it pertains to his lot or lots shall maintain surface drainage systems and open swales. The Town shall have access rights over and across said easements.
- (b) The Cable Television Easements shown on the within plat reserved for the approved franchised "Company" and its successors and assigns, forever, the easement and right from time to time hereafter to erect, install, lay, use, maintain, replace, increase or decrease the size of and remove coaxial cable and other fixtures and appurtenances for the purpose of transmitting and distributing radio and television signals by way of said coaxial cable, on, over, under and across said easement. This also includes the right of Ingress and egress of all purposes incident to such easement, and the "Company" is hereby granted the express right to make clearences of brush and debris from said easement in order to successfully install and maintain said coaxial cable. The owners in this subdivision shall take their title to the land contained in such utility easement subject to the perpetual easement herein reserved.
- (c) In the event storm water drainage from any lot or lots flows across another lot, provision shall be made to permit such drainage to continue without restriction or reduction, across the downstream lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on the within plat
- 10. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each. Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that pert thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole

Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against Block "A" shall be paid by the Block "A" Property Owners Association

11 <u>Maintenance, Repelrs and Replacements</u>. Each Owner shall be responsible for maintaining and keeping his Lot, Dweiling Unit and all other structural improvements located on his Lot in a good, clean, neat, senitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

- 12 Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Block "A" shall be in addition to any other covenants or restrictions contained herein and in the Recorded Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner. Present or future Owners shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:
  - (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family No Lot shall be subdivided to form lots of less area.
  - (b) All Dwelling Units shall have a minimum of 1,200 square feet of finished living area for a single story Dwelling Unit and a minimum of 1,200 square feet with at least 660 square feet on the first floor of a multi-story Dwelling Unit (exclusive of garages, carports, basements and porches)
  - (c) No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of Block "A" which will result in a cancellation of insurance on any Dwelling Unit or any part of Block "A", or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau
  - (d) No nuisance or other unlawful activity shall be permitted on any Lot.
  - (e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit
  - (f) No animals, fivestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Block "A", except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance.
  - (g) All rubbish, trash or garbage shall be stored in closed sanitary containers, shall be regularly removed from the premises, and shall not be allowed to accumulate
  - (h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted. practiced or permitted on the Real Estate
  - (i) No structure of a temporary character, trailer, boat, camper, bus or tent shall be maintained on any Lot, nor shall any garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently

- (j) All Owners and members of their families, their guests or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy Block "A" or any part thereof shall observe and be governed by such rules and regulations as may, from time to time, be promulgated and issued by the Block "A" Property Owners Association governing the operation, use and enjoyment of Block "A"
  - No Owner, members of their families, their guests or invitees or occupants of any Dwelling Unit or other persons entitled to use the lake may engage in any activity on or near Block "A" which would inhibit the proper functioning of the lake as a retention pond
- (k) No boats, campers, trailers of any kind, busses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, minibikes or mopeds shall be permitted, parked or stored anywhere within the Real Estate, unless stored completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles unless completely enclosed within a garage.
- (I) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes
- (m) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lease to comply with the terms of the Declaration, shall be a default under the lease
- (n) There are building lines designated on the Recorded Plat. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area
- (o) Each Owner by acceptance of a deed to a Lot shall be deemed to have waived such Owner's right to remonstrate against annexation of all or any portion of the Real Estate.
- (p) Each Owner shall maintain the Lot and any landscaping thereon in an attractive manner.

- (q) No antenna, satellite dishes or other device for the transmission or reception of radio, television or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground whether attached to a Dwelling Unit or otherwise on any lot; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if (a) is not visible from neighboring Lots, streets or Black "A"; (b) the Owner prior to installation has receiving the written consent of the Owners of all Lots who would have views of the device from their Lots or (c) the device is virtually indistinguishable from structures, devices or improvements such as heat pumps, air conditioning units, barbecue grills, patio furniture and garden equipment which are allowed in Dakota Sunrise and/or by this Declaration or (d) it is a satellite dish two (2) feet or less in diameter.
- (r) No fences shall be erected in this subdivision between the building lines and the right-of-way lines of the streets as shown on the within plat.
- (s) All lot owners will be required to Install, or have installed, at least one gas or electric "dusk to dawn" yard light in the front yard.
- 13. The Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon any lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials 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 Developer or by the Architectural Control Committee. The first Committee members shall consist of Frank M. Hahn and/or whomever he assigns.
- 14. <u>Construction Along Street</u> No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain 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. This same sight line limitation shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway. No tree shall be permitted to remain within such distances of intersections unless the follage line is maintained at sufficient height to prevent obstruction of sight lines.
- 15. <u>Dakota Sunrise Homeowners Association</u>. The homeowners' association shall be known and designated as DAKOTA SUNRISE HOMEOWNERS ASSOCIATION.
  - (a) Each lot owner shall, automatically upon becoming an owner, be and become a member of the Association and shall remain a member until such time as his ownership of a lot ceases. Membership in the Association shall terminate when such owner ceases to be an owner and will be transferred to the new owner of his lot; provided, however, that any person who holds the interest of an owner in a lot in this subdivision merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an owner and a member of the Association

- (b) The Association shall have the following classes of membership, with the following voting rights:
  - 1. Class A members shall be all owners except Class B members. Each Class A member shall be entitled to one (1) vote for each lot of which such member is the owner with respect to each matter submitted to a vote of the members upon which the Class A members are entitled to vote. When more than one (1) person constitutes the owner of a particular lot, all such persons shall be members of the Association, but all of such persons shall have only one (1) vote for such lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such lot.
  - 2 Class B members shall be the Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the President of the Association Each Class B member shall be entitled to five (5) votes for each Lot of which it is the owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, of which it is the owner (either as to the entire numbered parcel or any part thereof) which is not a "lot" as defined in this declaration of Covenants, Conditions And Restrictions, on all matters requiring a vote of the members of the Association The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B members as such is delivered to the President of the Association, (ii) the date that the Developer no longer owns any Lots nor any portion of any individually numbered parcel of lend shown upon and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof Each former Class B member shall be entitled to one (1) Class A membership for each Lot owned and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the subdivision, or any part thereof, of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein
- (c) There shall be up to three (3) additional Special members of the Association, being the persons from time to time appointed by Developer to serve on the Architectural Control Committee. Persons who are Special members shall not be deemed or considered members of the Association nor owners of lots for any purpose other than to qualify to act as members of the Architectural Control Committee
  - 1 Special members shall have no voting rights on any matters submitted to a vote of the members (unless such Special member is also a Class A member, in which event his voting rights shall be governed by this Section?

- (d) The Association has been (or will be) formed for the purpose of providing for the meintenance, repair, replacement, administration and operation of the entry sign and tandscaping easement and the public right-of-way between Lots 1 & 44 and South 171st Street as and to the extent provided herein. to pay any other necessary expenses and costs in connection with the entry sign and landscaping easement, and to perform such other functions as may be designated for it to perform under this Declaration or under any recorded subdivision plat of the real estate, whether heretofore or hereafter recorded.
  - 1 The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an owner, including a person appointed by Declarant as provided in this Section.
- (e) The initial Board of Directors shall be composed of the persons designated or to be designated by the Developer Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration or these Articles, (a) the Initial Board shall hold office until the first meeting of the members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Developer, who shall thereafter be deemed a member of the initial Board. Each owner, by acceptance of a deed to a lot, or by acquisition of any interest in a dwelling house by any type of juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Developer as such owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said owner's right to vote, and to vote as Developer determines, on all matters as to which members of the Association are entitled to vote under the Declaration, these Articles or otherwise. This appointment of Developer as such owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Developer to fill a vacancy, shall be deemed a Special member of the Association and an owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose.

No such person serving on the Initial Board shall be deemed or considered a member of the Association nor an owner of a lot for any other purpose (unless he is actually the owner of a lot and thereby a member of the Association)

1 Where an owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple owner, or a partner or an officer or trustee, shall be eligible to serve on the Board of Directors, except that no single lot or dwelling house may be represented on the Board of Directors by more than one person at a time

- ( Subject to the provisions of above, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed be elected and re-elected as the Board of Directors at each annual meeting until the st meeting of the members occurring on or after the Applicable Date provided herein ach member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of this election and until his successor is elected and qualified. Subject to the provisions of this Article as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the owners if a Director is removed in accordance with this Article. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.
  - 1 A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the owners and until his successor is duly elected and qualified.
- (g) The Board of Directors shall be the governing body of the Association representing all of the owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Entry sign and Landscape Easement (unless the same are otherwise the responsibility or duty of owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:
  - Protection, surveillance and replacement of the Entry Sign, unless the same are
    otherwise the responsibility or duty of owners of lots; provided, however, that this duty
    shall not include or be deemed or interpreted as a requirement that the Association,
    the Board or any Managing Agent must provide any on-site or roving guards, security
    service or security system for protection or surveillance, and the same need not be
    furnished;

procuring of utilities used in connection with the lots, dwelling houses, the Entry Sign (to the extent the same are not provided and billed directly to owners of lots and dwelling houses by utility companies) and snow removal from the streets; streets within the subdivision (if the appropriate governmental authority exercising jurisdiction over such streets is unable or unwilling to provide such snow removal);

landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Entry Sign and Landscape Easement

assessment and collection from the owners of the owners' respective shares of the Common Expenses;

preparation of the proposed annual budget, a copy of which will be mailed or delivered to each owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is malled or delivered; preparing and delivering annually to the owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year;

keeping a current, accurate and detailed record of receipts and expenditures affecting the Entry Sign and Landscape Easement and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an owner at any time during normal business hours;

procuring and maintaining for the benefit of the Association, the owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

paying assessments levied and assessed against, and payable with respect to, the Entry Sign and Landscape Easement and paying any other necessary expenses and costs in connection with the Entry Sign and Landscape Easement;

and all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles or any recorded subdivision plat of the Real Estate, whether heretofore or hereafter recorded.

(h) The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power.

to employ a Managing Agent to assist the Board in performing its duties; to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep and repair and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

to open and maintain a bank account or accounts in the name of the Association;

to promulgate, adopt, revise, amend and after from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Entry Sign and Landscape Easement (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and

to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the tots, dwelling houses with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more easements shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

- (i) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less that \$2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the owners, except that in the following cases such approval shall not be necessary:
  - 1 contracts for replacing or restoring portions of the Entry Sign damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;

proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the owners at the annual meeting; and

expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the owners

(j) No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

- (k) The Directors and officers of the Association shall not be liable to the owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors and officers against any and all liablility to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association.
- (I) The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director or officer the reasonable costs of settlement or of judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the owners that such Director or officer was not quilty of gross negligence of misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director or officer relied on the books and records of the Association or statements of advice made by or prepared by the Managing Agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advise or service unless such Director or officer had actual knowledge of the falsity or incorrectness thereof, nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.
- (m) The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and any other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

(n) Notwithstanding anything to the contrary contained in this Declaration. Developer shall have, and Developer hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and the E.S. & E.L. and Block "A", and to perform all the functions of the Association, until the Applicable Date. Developer may, at its option, engage the services of a Managing Agent affillated with it to perform all the functions of the Association, until the Applicable Date Developer may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation for its services

These Covenants, Conditions and Restrictions shall be and continue in full force and affect for a period of twenty (20) years from the date of this plat, and for successive twenty (20) year terms thereafter unless and until by a vote of the then owners of a two-thirds majority of the total lots in this subdivision it is agreed to change any of these covenants in whole or in part. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect Witness my signature this 24<sup>73</sup> STATE OF ARIZONA COUNTY OF YAVAPAI Before me, the undersigned, a Notary Public in and for said County and State, personally appeared, Frank M. Hahn, who acknowledged the execution to the foregoing instrument as his voluntary act and deed for the uses and purposes therein expressed Witness my Hand Notarial Seal this C My Commission Expires: County of Residence: (

D		
Requested By: plc9705739 03/09/2005		
DULY ENTERED FOR TAXATION Subject to final acceptance for transfer  18 day of 19 1  Auditor Hamilton County  Parcel # To Whom It May Concern:	9709705739 Filed for Record in HAMILTON COUNTY, INDIANA MARY L CLARK On 02-18-1997 At 12:44 pm, MISC 10.00	
We, the developer and builders in Dakota Sunrise, in Hamilton Indiana, (the plat of which is recorded in Hamilton County in the office Instrument #9631489, Page 1, Silde No. 696) as the owner of all lots, change the name of said development to "Pheasant Run"	of the Recorder as	
Hahn & Assoc, Developer Pete Gray, Executive Bu	lding Group	
by Riend 1. O'Brin, ottomy in fact	lding Group	
Reffrey Hörner, Owner, Lot 15  Angels/Horner, Owner, I		
Before me, a Notary Public, personally appeared Frank M. Hahr Ey. Richard A. O'Breen, Larry & Cowell Victo Green,		
this/2th day of February, 1997.	ngla Horner	
Witness my hand and notarial seal this / I day of Let	, 1997. Adelnayz	
Printed KATHELINE A. VA  Residing in Marion County, Indiana	CHMATIC	
My commission expires:  6-17-00		
Prepared By KATHERINE A. PACH	NAYR	
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