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DECLARATION OF

JUL 28 1988

CONVENANTS, CONDITIONS, AND RESTRICTIONS

PIKA TOWNSHIP  
ASSESSOR

FOR ROBERTSON VILLAGE PLANNED DEVELOPMENT

THIS DECLARATION, made on the date hereinafter set forth by John E. Smith

A.S. 888

Enterprises, Inc. , an Indiana Corporation, hereinafter referred to as  
"Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Indianapolis,  
Marion County, State of Indiana, more particularly described as follows:

A part of the Southeast Quarter of Section 17, Township 16  
North, Range 3 East, Pike Township, Marion County, Indiana,  
more particularly described as follows:

Commencing at the Northwest corner of the West Half of the  
Southeast Quarter of said Section 17; thence South 0°00'00"  
East along the Western line of the West Half of the Southeast  
Quarter of said Section 17 and the centerline of Guion Road,  
444.23 feet to the Southern right-of-way line of West 41st  
Terrace as recorded January 8, 1980 as Instrument #80-01574  
in the Office of the Recorder, Marion County, Indiana and  
the point of beginning; thence traversing the Southern  
right-of-way line of West 41st Terrace the following four  
(4) courses: South 90°00'00" East, 35.00 feet;  
Northeasterly on a curve to the right having a central  
angle of 90°00'00", a radius of 25.00 feet, an arc length  
of 39.27 feet; South 90°00'00" East, 415.00 feet; Easterly  
on a tangent curve to the left having a central angle of  
14°33'02", a radius of 685.03 feet, an arc length of  
173.97 feet, thence South 13°04'46" East, 127.69 feet;  
thence South 02°31'34" West, 204.20 feet; thence South  
23°33'08" East, 85.09 feet; thence South 37°25'17" East,  
258.52 feet to the Western line of Robertson Village  
Subdivision, Phase I, Section One as recorded January 8,  
1980 as Instrument #80-01574 in the Office of the  
Recorder, Marion County, Indiana; thence South 00°13'00"  
West along the Western line of Robertson Village Subdivision,  
Phase I, Section One, 421.12 feet; thence North 90°00'00"  
West 957.66 feet to the Western line of the West Half of  
the Southeast Quarter of said Section 17 and the centerline  
of Guion Road; thence North 00°00'00" East along the Western  
line of the West Half of the Southeast Quarter of said  
Section 17 and the centerline of Guion Road, 792.15 feet  
to the point of beginning, containing 15.425 acres, more  
or less.

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BETH O'LAUGHLIN,  
MARION COUNTY RECORDER

RECORDED & INDEXED  
JUL 28 1988  
TAXATION  
SECTION FOR TRANSFER

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Robertson Village Homeowners' Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons, or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property as described below in its raw undeveloped state. In the event properties are added to the Association in the future, the commencement for assessment on those properties shall be governed by the conveyance of the common areas within those properties.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

John E Smith Enterprises, Inc., in recording this plat of Robertson Village, has designated all areas of land, except platted lots, as playgrounds and common area, intended for the use by the homeowners in Robertson Village for recreation and other related activities; also, to be known as Common Facilities.

Section 5. "Lots" shall mean and refer to any plot, plots, or parts of plots, of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area, upon which one dwelling unit is constructed.

Section 6. "Declarant" shall mean and refer to John E Smith Enterprises, Inc., its agents and employees, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Member" shall mean and refer to every person, or entity, who holds membership in the Association.

880075258

Section 9. "Class I Lots" shall mean and refer to any Lot upon which there is a residence, or single family unit, which has been completed as evidenced by a FHA, or VA, notice of final inspection, or other appropriate evidence of compliance.

Section 10. "Class II Lots" shall mean and refer to any vacant Lot, or Lots, upon which a residence, or single family unit, has not been completed.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment: Every owner shall have a right, and easement, of enjoyment in, and to, the Common Area which shall be appurtenant to, and shall pass with, the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission, and other fees, for the use of any recreational facility situated upon the Common Area.

(b) the right of the Association to suspend the voting rights, and right to use of the recreational facilities, by an owner, (1) for any period during which any assessment against his Lot remains unpaid; (2) for a period, not to exceed 60 days, for any infraction of its published rules and regulations.

(c) the right of the Association to dedicate, or transfer, all, or any part, of the Common Area to any public agency, authority, or utility, for such purposes, and subject to such conditions, as may be agreed to by the members. No such dedication, or transfer, shall be effective unless an instrument, signed by two-thirds (2/3) of each class of members, agreeing to such dedication, or transfer, together with an acceptance thereof, by the public agency, authority, or utility, has been recorded.

(d) the right of the Association to limit the number of guests of members.

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow for the purpose of improving the Common Area and common facilities, and in aid thereof, to mortgage said properties, and the rights of such mortgagee in such properties shall be subordinate to the rights of the homeowners hereunder; provided, however, that the improvements to the Common Area shown on the plat shall be completed and paid for by Declarant.

880075258

(f) the right of the Association, through its Board of Directors, to determine the time and manner of use of the recreation facilities by the members.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and common facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

#### ARTICLE III

##### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one 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 they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Notwithstanding the preceding paragraph, 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 votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or,
- (b) on December 31, 1997.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties hereby covenants, and each owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and

880075258

reasonable attorney's 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 attorney's 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.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to the Owner, the maximum annual assessment shall be \$600.00 per Lot.

(a) From and after January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year, not more than eight percent (8%) above the maximum assessment for the previous year, without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above eight percent (8%) by a vote of two-thirds (2/3) of each class of members who are voting in person, or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, 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 a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person, or by proxy, at a meeting duly called for this purpose.

Section 5. Certification of Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate, signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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 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 7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Class I Lots and Class II Lots, although the assessments on all Class II Lots shall be fixed at twenty-five percent (25%) of the assessment upon all Class I Lots.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence for the lots in each section as shown on attached Exhibit "A", on the first day of the month following the conveyance of the common area for each section. As each section is completed and recorded, the common area shall be deeded and the annual assessment commenced. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and, unless otherwise provided, the Association shall collect each month from the owner of each Lot one-twelfth (1/12) of the annual assessment for such Lot.

Section 9. Effect of Non-payment of Assessments. Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the 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 eighteen percent (18%) 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, with interest, costs, and reasonable attorney's fees of any such action, added to the amount of such assessment. No Owner may waive, or otherwise escape, liability for the assessment provided herein by non-use of the Common Area, or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not effect 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 assessments, as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All properties dedicated to, and accepted by, a local public authority, and the Common Area, shall be exempt from the assessment created herein.

Section 12. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of sixty percent (60%) of the votes of each class of the Members of the Association. In no event shall such management agreement be cancelled prior to the effecting by the Association, or its Board of Directors, of a new management agreement with a party, or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association, or its Board of Directors, to effect a management contract. Any and all management agreements shall be made with a responsible party, or parties, having experience adequate for the management of this type of project.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor deleted from the Properties, nor shall any exterior addition to, or change, including color, or alteration thereon, be made until the plans and specifications, showing the nature, kind, shape, height, materials, and location of the same, shall have been submitted to and approved in writing by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board, as to harmony of external design (and location) in relation to surrounding structures and topography.

It is the intent of this Article that the exterior of all buildings, including the requirement for at least a one car garage, remain intact. The patios, the driveways and parking areas shall remain in their original configuration. To change the said configuration, to add or delete a garage, or to make any other change to the exterior of the building, including change of color, adding or deleting the walls, fences, and patios, shall require written approval of two-thirds (2/3) of the members. (Refer to Article VIII, Section 6 and Section 9.)

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and connects two or more dwelling units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts, or omissions, shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in equal proportions to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed, or damaged, by fire, or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter

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make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, or willful acts, or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent, or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.)

#### ARTICLE VII

##### EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, patios, yard lights, and other exterior improvements. (Such exterior maintenance shall not include glass surfaces, screens, screen and/or storm doors, exterior door and window fixtures, and other hardware such as patio equipment.)

As long as the Properties are subject to this Declaration of Covenants, Conditions, and Restrictions, each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the exterior maintenance contemplated herein.

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In the event that the need for maintenance, or repair, is caused through the willful, or negligent, act of the Owner, his family, or guests, or invitees, and not covered, or paid for, by insurance on such Lot, the cost of such maintenance, or repairs, shall be added to, and become a part of, the assessment to which such Lot is subject.

#### ARTICLE VIII

##### USE RESTRICTIONS

Section 1. Said property is hereby restricted to residential dwellings for residential use. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding, shall be used on any portion of said Property, at any time, as a residence, either permanently, or temporarily.

Section 2. Each Lot shall be conveyed as a separately designated, and legally described, free hold estate, subject to the terms, conditions, and provisions hereof.

Section 3. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, or the Builder of said residential units, to maintain during the period of construction and said of said residential units, upon such portion of the premises as Declarant deems necessary, such facilities, as in the sole opinion of Declarant, may be reasonably required, convenient, or incidental, to the construction and sale of said residential units.

Section 4. No animals of any kind shall be raised, bred, or kept, on any of said Lots, or in the Common Areas, except that dogs, cats, or other household pets, may be kept within the residential units, subject to rules and regulations adopted by the Association, provided that such pets are not kept, bred, or maintained, for any commercial purposes, and provided further that any such pet causing, or creating, a nuisance, or unreasonable disturbance, shall be permanently removed from the property upon three (3) days written notice from the Association.

Section 5. Nothing shall be done, or kept in any residential unit, or in the Common Areas, and common facilities, which will increase the insurance rates on any building, or the contents thereof, without the written consent of the Association. No Owner of a Lot shall permit anything to be done, or kept in his residential unit, or in the Common Areas, or common facilities, which will result in the cancellation of insurance on any residential building, or the contents thereof, or which would be in violation of any law. No waste shall be committed in the residential units, or in the Common Areas, and common facilities.

Section 6. No Owner shall cause, or permit, anything to be placed on the outside walls of any building, and no awning, canopy, shutter, radio, or television antenna, shall be affixed to, or placed upon the exterior walls, or roof, or any part thereof, without the prior written consent of the Association. No Owner shall change an exterior residential unit door without first obtaining the prior written consent of the Association as to the style, design, and quality, of such replacement door. (Refer to Article V.)

Section 7. No advertising signs (except one of not more than five (5) square feet "for rent" or "for sale" sign per Lot), billboards, unsightly objects, or nuisances, shall be erected, placed, or permitted, to remain on said property, nor shall said property be used in any way, or for any purpose, which may endanger the health, or unreasonably disturb the Owner, of any residential unit, or any resident thereof.

Section 8. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles, shall be kept from view of neighboring residential units and streets. All rubbish, trash, or garbage, shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All exterior clotheslines shall be confined to patio areas.

Section 9. Except in the individual patio areas appurtenant to a residential unit, no planting, or gardening, shall be done, and no fences, hedges, or walls, shall be erected, or maintained, upon said Property, except such as are installed in accordance with the initial construction of the buildings located thereon, or as approved by the Association's Board of Directors, or their designated representatives. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of said Property outside the exterior building lines, patio, and garage areas, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged, and agreed, by all parties concerned, that this paragraph is for the mutual benefit of all Owners of Lots in Robertson Village and is necessary for the protection of said Owners.

Section 10. Maintenance, upkeep, and repairs of any patio, screens, storm windows, and screen and/or storm doors, exterior door and window fixtures (including window panes), and other hardware shall be the sole responsibility of the

individual Owner of the Lot appurtenant thereto, and not in any manner the responsibility of the Board of Directors. Any cooperative action necessary, or appropriate, to the proper maintenance, and upkeep, of the Common Area, all exteriors, and roofs, of the residential units, including but not limited to, the walks, recreation, and parking areas, shall be taken by the Board of Directors, or by its duly delegated representatives.

Section 11. All fixtures and equipment installed within a residential unit, commencing at a point where the utility lines, pipes, wires, conduits, or systems enter the exterior walls of a residential unit, shall be maintained and kept in repair by the Owners thereof. An Owner shall do no act, nor any work, that will impair the structural soundness, or integrity, of another residential unit, or impair any easement, or hereditament, nor do any act, nor allow any condition to exist, which will adversely affect the other residential units, or their Owners.

Section 12. No noxious, or offensive activity, shall be carried on in any residential unit, or in the Common Areas, and common facilities, nor shall anything be done therein, either willfully, or negligently, which may be, or become, an annoyance, or nuisance, to the other Owners, or occupants.

Section 13. Except as otherwise provided herein, nothing shall be done in any residential unit, or in, or to, the Common Areas, and common facilities which will impair the structural soundness, or safety, of the Property, or which would structurally change any building, or would impair the value thereof, or impair any easement.

Section 14. No trucks of any kind that require a "truck license" shall be parked, or permitted to remain on any street, or parking area, or on any part of the common area, unless such truck shall be enclosed by a garage and not exposed to view. Trucks making deliveries, or present in connection with service, repair, or construction are excepted.

Section 15. No unlicensed vehicles shall be permitted on any part of the Common Area (an exception would be when the vehicle is stored in an Owner's garage and not exposed to view) more than twenty-four (24) hours.

Section 16. All automobile repairs for gain are prohibited, and if performed by owner for a member of that household, said repairs shall be performed in the garage and not exposed to view.

Section 17. Except for management of the affairs of the Association, no industry, business, trade, occupation, or profession, of any kind shall be conducted, maintained, or permitted, within any residential unit; provided, however, this restriction shall not be construed to prohibit an Owner from

- (a) maintaining his professional library, therein;
- (b) keeping his personal, business, or professional, records, or accounts therein. or
- (c) handling his personal, business, or professional, telephone calls, or correspondence therein.

Such uses are expressly declared customarily incident to the principle residential use and not in violation of any restriction under this Section.

Section 18. Nothing shall be altered, or constructed, or removed from the Common Areas, and common facilities, except with the written consent of the Association.

Section 19. No boat, boat trailer, travel trailer, camper, or recreational equipment of any description shall be stored, exposed to view, on the Common Area.

Section 20. No action shall at any time be taken by the Association, or its Board of Directors, which in any manner would discriminate against Owner, or Owners, in favor of the other Owners.

#### ARTICLE IX

#### EASEMENTS

Section 1. Each Lot, and the Property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling, and overhangs, as designed, or constructed, by the Declarant. A valid easement for said encroachments, and for the maintenance of same, so long as it stands, shall, and does exist. In the event the multi-family structure containing two or more residential units is partially, or totally destroyed, and then rebuilt, the Owners of the residential units so affected agree that minor encroachments of parts of the

adjacent residential units, or Common Areas, due to construction, shall be permitted, and that a valid easement for said encroachment, and the maintenance thereof, shall exist.

Section 2. There is hereby created a blanket easement upon, across, over, and under, all of said Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones, electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing of electrical and/or telephone company service, to erect and maintain the necessary equipment on said property, to affix and maintain electrical and/or telephone wires, circuits, and conduits on, above, across and under the roofs and exterior walls of said residential units. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, the Association shall have the irrevocable right, to be exercised by its Board of Directors, or by its duly authorized officers, agents, or employees, to have access to each residential unit, and to the Common Areas, and common facilities, from time to time during reasonable hours, as may be necessary for purposes of inspection in connection with the enforcement of any provision of this Declaration, the Articles of Incorporation of the Homeowners' Association, By-Laws (or Rules) and Regulations of the Association; for the maintenance, repair, or replacement, of any of the Common Areas and common facilities therein, or accessible therefrom, or any other facility, or easement this Association is obligated to maintain; or, at any time, for the purpose of making emergency repairs therein, which are deemed by the Association necessary to prevent damage to the Common Areas, and common facilities, or to the common walls, or to another residential unit. Notwithstanding anything to the contrary contained in this paragraph, no new electrical lines, water lines, or other utilities may be installed, or relocated, on said Property except as initially programmed, and approved, by the Declarant, or thereafter approved by Declarant, or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement, herein provided, request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. The easements provided for in this Article IX shall in no way affect any other recorded easement on said premises.

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Section 3. There is hereby created an ingress egress easement over all paved streets for the purpose of accessing each residential unit by the Owners, tenants, contract buyers, and guests and to the Declarant for purposes of continuing and extending said development in the future. Said easement to be extended section by section as the common area is dedeed.

Section 4. Underground single phase electric service shall be available to all residential units on the aforesaid Lots, and the metering equipment shall be located on the exterior surface of the wall at a point to be designated by the Declarant company. The utility company furnishing the service shall have an easement, as designated, on the recorded plat thereof.

Easements for the underground service may be crossed by driveways and walkways, provided the Declarant, or Builder, makes prior arrangements with the utility company furnishing said service. Such easements for the underground services shall be kept clear of all other improvements, including buildings, patios, or other pavings.

#### ARTICLE X

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law, or in equity, all restrictions, conditions, covenants, reservations, liens, and charges, now, or hereafter imposed, by the provisions of this Declaration. Failure by the Association, or by the Owner, to enforce any covenant, or restriction, herein contained, shall, in no event, be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, or restrictions, by judgement, or Court order, shall in no wise affect any other provision, which shall remain in full force and effect.

Section 3. Amendments. The covenants, and restrictions, of this Declaration shall run with, and bind, the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

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Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees, or any other person, to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure, or guaranty first mortgages covering Lots, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus, or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to subject Section Two and/or Section Three to this Declaration, or (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute, and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant shall no longer hold or control title to any Lot or to Section Two or Section Three.



Section 4. Annexation of Additional Property. Annexation of additional property, other than as provided in Section 5 hereof, shall require the assent of two-thirds (2/3) of the Class A members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Class A members, not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting, setting forth the purpose of the meeting. The presence of members, or of proxies, entitled to cast sixty percent (60%) of the votes of Class A members shall constitute a quorum. If the required quorum is not forthcoming at the first meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership are not present in person, or by proxy, Class A members not present may give their written consent to the action taken thereat.

Section 5. Annexation of Other Sections of the Tract. At any time, and without the necessity of any consents from Owners, or Members of the Association, the Declarant may, but is not obligated to, cause other sections of the Original Tract to be annexed to this Declaration. Said Tract is more fully described on Page One herein. When such other sections are annexed, the Declarant shall add such sections, one by one, to this Declaration by a Supplemental Declaration referring to this Declaration, describing the other sections, and submitting said property to the provisions of this Declaration. Any Owner, by acceptance of a Deed to his Lot acknowledges, consents, and agrees, that the following rights and conditions shall be applicable upon the recording of such Supplemental Declaration:

(a) The Lots described in the Supplemental Declaration shall be governed in all respects by the provisions of this Declaration, the Articles of Incorporation of Robertson Village Homeowners' Association, Inc., and its By-Laws.

(b) The rights of any Owner of a Lot in the Other Section of the Tract shall be equal to the rights of any Owner (or member), of a Lot in Section 1.

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(c) Each Owner agrees to execute and deliver such additional documents as may be necessary, or desirable, to accomplish the Annexation of the Other Sections.

Section 6. Notice. Any Notice to be given hereunder shall be deemed conclusively when given to the recipients in the following manner respectively: (1) in the case of an Owner; if delivered personally to him, or to a member of his household of the age of at least sixteen (16) years, or placed in the United States Mail, First Class Postage Fully Prepaid, addressed to him at his most recent address, as shown on the records of the Association, (2) in the case of the Declarant; upon delivery to an Officer of the Declarant, or to its Resident Agent, for service of process in person, (3) in the case of the Association; upon delivery to its President, its Secretary, its Manager, or its Resident Agent, for service of process in person, or when placed in the United States Mail, First Class Postage Fully Prepaid, addressed to the Association, in care of its then Resident Agent.

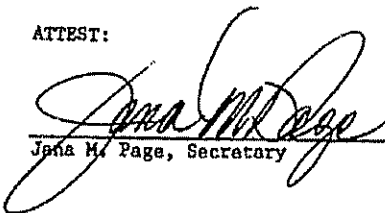
Section 7. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply; (1) either to coporation, or (2) individuals (men or women), shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, Declarant by its Corporate Officers has fully executed this Declaration of Covenants, Conditions, and Restrictions this 14th day of July, 1988.

JOHN E SMITH-ENTERPRISES, INC.

By:   
John E Smith, President

ATTEST:

  
John H. Page, Secretary

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STATE OF INDIANA )  
                  ) SS:  
TIPPECANOE COUNTY )

Before me, a Notary Public in and for said County and State, personally appeared John E Smith and Jana M. Page, President and Secretary, respectively, of JOHN E SMITH ENTERPRISES, INC., who acknowledged the execution of the foregoing Declaration for, and on behalf of, John E Smith Enterprises, Inc., and by authority of its Board of Directors.

Witness my hand and Notarial Seal this 14th day of July, 1988.

Madge Mills  
Notary Public

My Commission Expires:

January 19, 1992

Madge Mills . .  
Notary resides in Tippecanoe County, IN

- This Instrument Prepared by G. Mark Smith, Attorney at Law

/s/

88007525S

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROBERTSON VILLAGE PLANNED DEVELOPMENT, PHASE IV A

THE FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROBERTSON VILLAGE PLANNED DEVELOPMENT, PHASE IV A ("AMENDMENT") is made this 24th day of November 1999, by Robertson Village Homeowners' Association, Inc, an Indiana Corporation. WITNESSES as follows:

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions for Robertson Village Planned Development was executed on July 14, 1988 by the Declarant, John E. Smith Enterprises, Inc. and recorded on July 28, 1998 as Instrument No. 880075258 in the Office of the Recorder of Marion County, Indiana and

WHEREAS Article X, Section 3 permits the amendment of the Declaration of Covenants, Conditions and Restrictions for Robertson Village with the approval of not less than ninety percent (90%) of the Lot Owners; and

WHEREAS, the Board of Directors of Robertson Village Homeowners' Association, Inc. review and affirmed the following First Amendment to the Declaration of Covenants, Conditions and Restrictions of Robertson Village Planned Development, Phase IV A, which was approved by not less than ninety percent (90%) of the Lot Owners.

NOW THEREFORE, pursuant to the foregoing, Robertson Village Homeowners' Association, Inc. hereby amends the Declarations as follows:

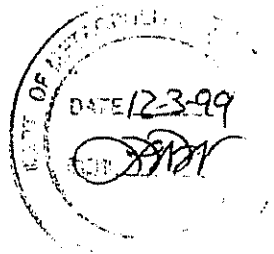
Inst # 1999-0229638  
12/03/99 12:30PM WANDA MARTIN MARION CTY RECORDER ADH 44.00 PAGES: 17

MARTHA A. WOMACKS  
MARION COUNTY CLERK  
204135 DEC-3 99  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

FILED

DEC 01 1999

PIKE TOWNSHIP ASSESSOR



**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 1**

**Declaration  
ARTICLE I**

**NAME**

The name by which the Real Estate shall be known is "Robertson Village."

**ARTICLE II**

**DEFINITIONS**

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

**2.1 "Association"** means Robertson Village Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns."

**2.2 "Committee"** means Robertson Village Architectural Control Committee established pursuant to Article VIII, paragraph 8.1, of this Declaration for the purposes herein stated.

**2.3 "Common Areas"** means (i) all portions of the Real Estate (including improvements thereto) shown on any Plat of all or any part of the Real Estate which are not Lots and which are not dedicated to the public, (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time.

**2.4 "Common Expenses"** means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, maintenance, repair or replacement of the Common Areas and the improvements therein and thereon and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance, repair or replacement of the Landscape Easements and the drainage system located within and upon the Drainage Easements, (iii) all sums lawfully assessed against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses

**2.5 "Developer"** means Robertson Village Associates, an Indiana limited partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including (without limitation) 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 Developer.

**2.6 "Drainage Easements"** means those areas designated on any Plat of all or any part of the Real Estate as Drainage Easements, either separately or in combination with any other easement designated on such Plat.

**2.8 "Landscape Easements"** means those areas designated on any Plat of all or any part of the Real Estate as Landscape Maintenance Easements, either separately or in combination with any other easement designated on such Plat.

**2.9 "Lot"** means any numbered parcel of land shown and identified as a lot on any Plat of all or any part of the Real Estate.

**2.10 "Mortgagee"** means the holder of a recorded first mortgage lien on any Lot.

**2.11 "Nonaffiliated Owner"** means any Owner other than Developer or any entity related to Developer

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 2**

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

**2.13 "Plat"** means the subdivision plat of the Initial Real Estate identified as the "Final Plat for Robertson Village Phase VI A," as hereafter recorded in the office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time), and any subdivision plat(s) for additional section(s) of Robertson Village which are hereafter recorded in the office of the Recorder of Marion County, Indiana (as the same may be amended or supplemented from time to time)

**2.14 "Utility Easements"** means those areas designated on any Plat of all or any part of the Real Estate as Utility Easements, either separately or in combination with any other easement designated on such Plat.

**ARTICLE III**

**APPLICATION**

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

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

**ARTICLE IV**

**PROPERTY RIGHTS**

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

- (i) The right of the Association (after conveyance of the Common Areas to the Association) to dedicate or transfer all or any part of the Common Areas to any public agency, authority, utility or any other entity for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval two thirds (2/3) of the membership of each class of members of the Association;
- (ii) The right of the Association to promulgate reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas;
- (iii) The rights of Developer as provided in this Declaration and in any Plat of all or any part of the Real Estate;



**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**Page 4**

**ARTICLE V**

**USE RESTRICTIONS**

**5.1 Lot Use and Size of Buildings.** Every Lot is a residential lot and shall be used exclusively for single-family residential purposes. No business buildings shall be erected on any Lot, and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any Lot, other than one detached single-family dwelling not to exceed two stories in height and permanently attached residential accessory buildings. Any attached garage, attached tool shed, attached storage building or any other attached accessory building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

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

**5.3 Garages and Storage Area** No garage shall be erected which is not permanently attached to the main building.

**5.4 Accessory and Temporary Buildings.** No trailers, shacks, outhouses, (Detached storage sheds or tool sheds are permitted with Architectural Approval.)

**5.5 Temporary Structures.** No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent. Nor may any structure of a temporary character be used as a residence.

**5.6 Nuisances.** No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot. No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**5.7 Fences.** No fence shall be erected on or along any Lot line or on any Lot, the purposes or result of which will be to obstruct reasonable vision, light, or air. All fences shall be kept in good repair and erected so as to enclose the Lot and decorate the same without hindrance or obstruction to any other property. All metal fencing must have a factory finish of either brown or black vinyl. No fence shall be higher than six (6) feet. No fencing shall extend forward of the furthest back front corner of the residence. Fencing style and color shall be consistent with the subdivision. No fencing shall be permitted in the Landscape Easements. Fences shall be permitted upon Architectural Review by the Architectural Committee.

**5.8 Site Obstructions.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and ~~five~~ <sup>nine</sup> (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street and property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**5.9 Driveways.** All driveways shall be paved simultaneously with the construction of the residence, and the type of construction and materials must be first approved by the Committee.



**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**Page 5**

**5.10 Vehicle Parking.** No camper, motor home, commercial truck, trailer, boat, or recreational vehicle of any kind may be stored on any Lot in open public view for more than two (2) out of ten (10) consecutive days.

**5.11 Mailboxes.** All mailboxes shall be in accordance with the standards set forth by the Committee and shall be installed by the builder simultaneously with the construction of the residence. Mailboxes shall be maintained, by the homeowner, in good repair.

**5.12 Signs.** No sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than six (6) square feet may be displayed for the purposes of advertising the property for sale. Open house signs from 5:00 p.m. Friday until 6:00 p.m. the following Sunday and signs of a temporary basis, will be permitted without express approval of the Board of Directors. Other signs will be removed at the expense of the homeowner.

**5.13 Vegetation.** Each Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot and shall keep his Lot reasonably clear from unsightly growth at all times. Failure to comply shall entitle (but not obligate) Developer, the Association or the Department of Metropolitan Development of Marion County, Indiana, to cut weeds and clear the Lot of such growth at the expense of the Owner; and any cost therefor incurred by the Association shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the enforcement of assessments generally.

**5.14 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall at all times be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon. Trash shall not be put out earlier than the evening prior to collection.

**5.15 Storage Tanks.** Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view.

**5.16 Tree Preservation.** No trees may be removed from any Lot without the prior written approval of the Committee; provided, however, that nothing herein shall prevent the removal of trees by Developer or any entity related to Developer during its development of the Real Estate and during the construction by Developer or any entity related to Developer of a residence or accessory building on any Lot. Any such requests shall be made to the Committee in writing. In the event the Committee does not indicate in writing its approval or disapproval of requests for tree removal within thirty (30) days after submission of such request by the Owner, the Committee shall be deemed to have approved such request. Trees that are dead or that present a hazard may be removed without prior approval.

**5.17 Water Supply and Sewage Systems.** No private or semi-private water supply and/or sewage disposal system may be located upon any Lot which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any Lot.

**5.18 Antenna.** Antennas may be installed with the approval of the Architectural Committee. Height will be based on neighborhood standards, so long as adequate reception is obtainable.

**5.19 Satellite Dishes.** Satellite dishes may be installed with the location approved by the Architectural Control Committee prior to installation. (One meter or less, as per FCC ruling.)

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**Page 6**

**5.20 Awnings.** No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot without Architectural Committee review.

**5.21 Swimming Pools.** Swimming pools shall not be permitted without prior approval of the Architectural Control Committee. (Temporary "kiddie" pools do not require permission so long as they do not present a hazard or nuisance: i.e. blowing away or providing mosquito breeding ground.)

**5.22 Solar Panels.** No solar heat panels shall be permitted on roofs of any structures on any Lot. All such panels shall be enclosed within a fenced area and shall be concealed from the view of neighboring Lots and the streets.

**5.23 Modular Homes.** Modular-type construction shall not be permitted on any Lot.

**5.24 Lot Access.** All Lots shall be accessed from the interior streets of the subdivision

**5.25 Use of Recreational Facilities.** The recreational facilities located within and upon the Common Areas shall not be used for commercial purposes.

**ARTICLE VI**

**ASSOCIATION**

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

**6.2 Voting Rights.** Each class of membership of the Association shall have the respective voting rights set forth in this paragraph 6.2, provided they are in good standing.

Each member in good standing shall be entitled to one (1) vote for each Lot of which such member is the Owner. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot.

**6.3 Board of Directors.** The Board of Directors of the Association shall manage the affairs of the Association.

**6.4 Professional Management.** No contract or agreement for professional management of the Association nor any other contract between the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee, on written notice of thirty (30) days or less.

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

- (i) installation and replacement of such improvements, foliage and landscaping in and upon the Common Areas as the Association deems necessary or appropriate, and maintenance of the Common Areas and any improvements therein and thereon in a clean and attractive condition and in good repair

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**Page 7**

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

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

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

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

(vi) Assessment and collection from the Owners of the Common Expenses

(vii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

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

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

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

**6.8 Additional Indemnity of Directors and Officers.** The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnity"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**Page 8**

reasonably incurred by the Indemnity in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnity is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnity for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such director or officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnity, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof, nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnity in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnity to repay the amount paid by the Association if it shall ultimately be determined that the Indemnity is not entitled to indemnification as provided in this paragraph 6.9.

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

**ARTICLE VII**

**BOARD OF DIRECTORS**

**7.1 Qualifications.** Except as otherwise provided in the following paragraphs 7.2 and 7.3, no person shall be eligible to serve as a member of the Board of Directors of the Association unless he is a member of the Association.

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

**ARTICLE VIII**

**ROBERTSON VILLAGE ARCHITECTURAL CONTROL COMMITTEE**

**8.1 Creation.** There shall be, and hereby is, created and established Robertson Village Architectural Control Committee to perform the functions provided for herein. The Committee shall be a standing

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**  
**Page 9**

committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association.

**8.2 Purposes and Powers of Committee.** The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, fence, wall, barbecue, patio, swimming pool or improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any residence or accessory building located on a Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings submitted to the Committee shall be drawn to a scale of 1" equals 10', or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or plot plans which shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to repaint, construct, place or make the requested improvement, when:

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

(b) The design, the finished elevation or the color scheme of a proposed improvement (or the repainting thereof) is not in harmony with the general surroundings of the Lot (including, without limitation, topography) or with adjacent buildings or structures; or

(c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner

(iii) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any Plat of all or any part of the Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

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## **DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 10**

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

**8.4 Liability of Committee.** Neither the Committee, Developer, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. --

**8.5 Inspection.** The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VIII.

**8.6 Nonapplication to Developer.** Notwithstanding the provisions of this Article VIII or any other provisions of this Declaration requiring the approval of the Committee, the Developer, or any entity related to Developer, shall not be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by the Developer, or any entity related to Developer, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

### **ARTICLE IX**

#### **ASSESSMENTS**

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

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

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 11**

**9.3 Regular Assessments.** The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessment against each Lot.

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

**9.5 Uniform Rate of Assessment.** The Regular Assessments and Special Assessments levied by the Association shall be uniform for all lot categories..

**9.6 Date of Commencement of Regular Assessments: Due Dates.** The Regular Assessment shall commence for each Lot on the first day of the first calendar month following the conveyance of such Lot by Developer to a Nonaffiliated Owner. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments or Special Assessments shall be owed or payable by Developer, or any entity related to Developer, with respect to any Lot or shall become a lien on any Lot while such Lot is owned by Developer, or any entity related to Developer. The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of the annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

**9.7 Failure of Owner to Pay Assessments.**

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon, by nonuse of the Common Areas or abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors of the Association shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 12**

(ii) Notwithstanding anything contained in this paragraph 9.7 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor. Such unpaid share of any assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

**ARTICLE X**

**INSURANCE**

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

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

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

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



**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 13**

**ARTICLE XI**

**MAINTENANCE**

**11.1 Maintenance of Lots and Improvements.** Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of unsightly weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper

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

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

**ARTICLE XII**

**MORTGAGES**

**12.1 Notice to Association.** Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

**12.2 Notice to Mortgagees.** The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

**ARTICLE XIII**

**AMENDMENT**

**13.1 BY the Association.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the By Laws.
- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two thirds (2/3) in the aggregate of the votes of all Owners in good standing. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 12.1.
- (v) Special Amendments. No amendment to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 402.02 of Part V, Chapter 4, of the Fannie Mac Selling Guide or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 12.1

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

**13.2 Recording.** All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

**DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**Page 15**

**ARTICLE XIV**

**GENERAL PROVISIONS**

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

**14.2 Government Enforcement.** The Metropolitan Development Commission of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority to enforce any covenants, commitments, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance of Marion County, Indiana, 58-AO-3, as amended, or any conditions attached to approval of any Plat of all or any part of the Real Estate by the Plat Committee.

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

**14.4 Duration.** These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until January 1, 2008, and thereafter shall be automatically extend for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then Owners of Lots within and upon the Real Estate, it is agreed that this Declaration shall terminate in its entirety; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

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

**14.6 Titles.** The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

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

**14.8 Annexation.** Additional land may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed a part thereof for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration by Developer; and such action shall require a vote of approval by the Owners.

DECLARATIONS, COVENANTS, CONDITIONS AND RESTRICTIONS  
Page 16

IN WITNESS WHEREOF, Robertson Village Homeowners' Association, Inc. has executed this First Amendment as of the date first written above.

ROBERTSON VILLAGE ASSOCIATION, Inc.

By: Charles Haines, Jr.  
(President)

Attest: Charles Haines, Jr.

Laura M. Haines  
(Secretary)

Laura M. Haines

By:  
STATE OF INDIANA    )  
                                  )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the State of Indiana, personally appeared CHARLES HAINES, JR. President of Robertson Village Homeowners Association, Inc., and LAURA M. HAINES Secretary of Robertson Village Homeowners' Association, Inc. who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions of Robertson Village Phase IV A

WITNESS my hand and Notarial Seal this day of NOVEMBER 21, 1999

My Commission Expires:

01-28-00

Cindy L. Dean  
Notary Public

CINDY L. DEAN  
Printed

Residing in PUTNAM  
County, Indiana

( This instrument was prepared by Robertson Village Homeowners' Association, Inc., c/o Harmony Management 3643 Mission Drive, Indianapolis, Indiana 46224:

7650

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NOTE: Rules of the Metropolitan Development Commission requires use of this form in recording commitment modification(s) or terminations(s) with respect to rezoning and approval cases in accordance with P.L. 185 of the Acts of 1973, Article VI, Section 3. (b).

EXHIBIT C

METROPOLITAN  
DEVELOPMENT COMMISSION  
APPROVAL PETITION

NO. 1  
CAUSE NO. Re-AP-77  
DATE 10/20/80

COMMITMENTS MODIFYING OR TERMINATING EXISTING COMMITMENTS RELATIVE TO USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH AN APPROVAL PETITION OR REZONING OF PROPERTY.

In accordance with I.C. 1971, 18-7-2-20 as amended by P.L. 185 of the Acts of 1973 and 18-7-2-84.1 as added by P.L. 185 of the Acts of 1973, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or terminations(s) of commitment(s) relative to the use and development of that parcel of real estate:

Legal Description:

See Exhibit A attached hereto and by this reference incorporated herein.

Statement of Commitments:

The area designated "Single Family Residence", Phase I, lying along the east boundary of the subject property as designated on Sheet 1 of the Preliminary Plan shall be developed to the standards of the D-2 (Dwellings) district of the Dwellings District Zoning Ordinance of Marion County, Indiana, excepting Developer may deviate from sideyard standards to preserve trees.

Further, Developer agrees that housing in Phase I shall contain plat restrictions providing that one-story structures shall contain a minimum of 1500 sq. ft. of living area and higher than one-story structures shall contain a minimum of 1600 sq. ft. of living area.

Developer agrees that the type of homes in this Phase I Residential Area will be consistent with and equal to the quality and type of homes in the Wolflington-On-Kessler Addition, Plat Book 23, page 27, Office of Recorder, Marion County, Indiana, and Northern Estates, 3rd Section, Plat Book 22, page 76 as recorded in said Recorder's office, which area abuts the Single Family Residential Area on the east.

The Developer agrees to lay out, plat, develop and price lots in the Phase I residential area first and to put them on the market together with commencement of construction of not less than three dwellings prior to platting and development of Phase II Residential Development or the construction of any apartments, condominiums or commercial buildings as described and defined in the Final Approved Preliminary Plan on file with the Department of Metropolitan Development.

Further these commitments shall not be altered or modified as to lot size or quality of housing for a period of fifteen years from date of approval of these commitments without the approval of the Metropolitan Development Commission and the Wolflington Civic Association.

The area designated "Single Family Residence", Phase II, comprising 19.2 acres on Sheet 1 of the Preliminary Plan and lying at the north-west corner of the Planned Unit Development shall consist of not more than 89 homes and be developed to D-3 standards with D-4 lot sizes.

Both single family residential areas shall have paved streets, curbs and sidewalks with paved private drives. All residences shall have at least one-car attached garages.

2. There shall be no rights-of-way, connections or access by street or otherwise, of any kind across or through the total eastern property line of the Planned Unit Development.

3. Surface drainage along the east boundary of the Planned Unit Development shall be designed in a manner that no surface water shall drain on residential lots to the east, and existing water impoundment along this boundary, particularly in the wooded area to the west of Melbourne

Circle and road shall be eliminated. That as part of the drainage plan for the Planned Unit Development, Developer will install a storm sewer in the right-of-way of the street in the Single Family Residential Area as a part of his drainage plan, so that all street areas will have positive drainage. Developer will connect the storm sewers to his surface drainage plan as the engineering thereof dictates. Developer agrees that in eliminating drainage impoundment along the back portion of the lots known as Melbourne Circle and road that abuts on the eastern property line of the Single Family Residential Area, the two existing twelve inch culverts leading into Wolfington-On-Kessler shall be cleaned and opened up; and in the alternative, catch basins shall be installed and this impacted drainage area shall be diverted to the west into the drainage system of the Planned Unit Development.

4. The north boundary of the Planned Unit Development shall have no rights-of-way or vehicular outlets to the north which could result in an ultimate connection to 46th Street or other streets extending east to Kessler Boulevard. This same restriction shall apply to the entire south boundary line of the Planned Unit Development so as to deny all rights-of-way or vehicular outlets to the south of said property, if such outlets should seek access to Kessler Boulevard. It is further acknowledged that the former "stubbed out" right-of-way of 42nd Street abutting the east boundary of said Single Family Residential Area has been vacated and shall not be available for vehicular access.

5. Tree preservation and a landscape plan including perimeter boundary treatment as prescribed in the Planned Unit Development section of the Dwellings District Ordinance shall be subject to the approval of the Administrator of Planning and Zoning or his duly designated landscape architect. Prior to soil disturbance in each phase of development, Developer shall notify the Administrator or a member of his staff and an on-site inspection shall be made and trees appropriately marked for preservation together with an agreement on the manner of implementing boundary treatment on the perimeters of the Planned Unit Development for that phase.

6. Developer does, by this commitment, and will include in the plat restrictions on the Single Family Residential Area lying along the east boundary of the Planned Unit Development, the following condition and limitation on lots that are in the wooded area that is in the middle of the Single Family Residential Area as shown on Sheet 1 of the Preliminary Plan:

The rear 50 feet of each residence lot in the wooded area in the middle of the Single Family Residential Area (in the plat restrictions to be specified by lot numbers) shall be left in its natural state and no structure of any type or kind shall be erected in said 50 foot area for any purpose other than underground utilities and drainage structures, if any.

Developer agrees that those Single Family lots in the Planned Unit Development abutting the eastern boundary line of the Planned Unit Development that are in the wooded area hereinabove referred to shall be platted having no less than 100 foot frontage.

7. That the number of living units, wherever they may be located within the total Planned Unit Development, shall not exceed a total of five hundred sixty-two (562).

8. Developer, at his expense, shall separate the Planned Unit Development from the Single Family Area lying immediately to the east of the Planned Unit Development by erecting a privacy fence no less than five (5) feet in height and of no lesser quality than a weather-resistant treated wood so as to deny and prohibit any pedestrian or vehicular passage from the Planned Unit Development. Where mature trees on this boundary are located, the fence shall have a two (2) foot inset around the tree and within the Planned Unit Development so that the tree will not have to be removed.

This fencing shall extend from the south boundary line of the Single Family Residential Area within the Planned Unit Development and extend on and along the entire eastern boundary line of said Single Family Residential Area to the northeast corner of the Planned Unit Development. Maintenance of this screening shall be at Developer's expense, and Developer reserves the right to make minor deviations in the location of fencing along said east line in order to preserve trees.

9. The agreements and commitments in Nos. 2,3,4,6 and 8 above shall also be included as restrictive covenants in any plat of the Single Family Residential Area lying along the east boundary of the Planned Unit Development.

10. Developer will provide sanitary utility easements in the Phase I Single Family Residential development at the south end thereof, at or near the vacated right-of-way of 42nd Street and at a point within 600 feet south of the north property line for purposes of neighborhood connection to the sanitary sewer system. Any neighboring connection shall be conditioned upon upgrading the lift station to provide a sewage flow in excess of 700 gallons per minute which is the design capacity for the present Planned Unit Development when all phases are completely developed. Said utility easements shall also include the right to install water lines

11. Presently recorded plat restrictions in the Phase I Single Family Residential area shall be modified by eliminating the requirement that exteriors of buildings shall be 50% masonry; the 200 foot setback restriction in the area formerly designated commercial which is now being included as a part of Phase I Single Family Residential shall be eliminated, and the provision for maintenance of fencing along the east boundary of the property shall be expanded to include "Developer, grantees, successors and assigns".

12. In the case of a discrepancy in the Drawings composing the preliminary plans and these commitments, the commitments shall control.

These COMMITMENTS supercede commitments recorded as Instrument Nos. 73-67305 and 75-37119, respectively, recorded in the Office of Recorder of Marion County, Indiana, and shall be binding on the owner, subsequent owners, and other persons acquiring an interest in the real estate. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the adoption of a petition for approval, Approval No. 80-AP-77 superceding prior recorded commitments as hereinbefore recited.

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission;
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the rezoning petition who were not petitioners for the rezoning. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the bound volumes of the most recent real estate tax assessment records as they appear in the offices of the various township assessors of Marion County. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning under the rules in force at the time the commitment was made); and

The undersigned hereby authorizes the Division of Planning and Zoning of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana upon final approval of modification and/or termination of commitment(s) of petition # 80-AP-77 by the Metropolitan Development Commission.

IN WITNESS WHEREOF, owner has executed this instrument this 15th day of October, 19 80.  
By: CARSON CITY, INC.  
Signature \_\_\_\_\_ (Seal) Signature \_\_\_\_\_ (Seal)  
Printed \_\_\_\_\_ Printed John E. Smith, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Carson City, Inc. by John E. Smith, Pres. owner(s) of the real estate who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

I witness my hand and Notarial Seal this 15th day of October, 19 80.

Signature Judi A. LeMond  
Printed Judi A. LeMond, Notary Public  
County of residence: Marion

My Commission Expires: 4-1-82

This instrument was prepared by William F. LeMond

This Modification and/or Termination Agreement was approved by the Metropolitan Development Commission on the 15th day of October, 19 80.

[Signature]  
Secretary, Metropolitan Development Commission

MD-153, 4/30/80

80 66665



EXHIBIT A

COMMITMENTS

DESCRIPTION: Robertson Village - Overall

A Part of the West Half of the Northeast Quarter and a Part of the West Half of the Southeast Quarter of Section 17, Township 16 North, Range 3 East, Pike Township, Marion County, Indiana, described as follows:

Beginning at the northeastern corner of the Southeast Quarter of said Section Seventeen, thence South  $0^{\circ} 13'$  West, along the eastern line of the West Half of the Southeast Quarter of said Section Seventeen, 1,950.80 feet; thence South  $89^{\circ} 35'$  West, 1,335.02 feet to the western line of the West Half of the Southeast Quarter of said Section Seventeen; thence North  $0^{\circ} 00' 00''$  East, along the western line of the West Half of the Southeast Quarter of said Section Seventeen, 1,949.35 feet to the southwestern corner of the West Half of the Northeast Quarter of said Section Seventeen; thence North  $89^{\circ} 31' 30''$  East along the southern line of the West Half of the Northeast Quarter of said Section Seventeen, 135.00 feet; thence North  $0^{\circ} 8'$  East, crossing into the West Half of the Northeast Quarter of said Section Seventeen, 509.00 feet; thence South  $89^{\circ} 31' 30''$  West, 135.00 feet to the western line of the West Half of the Northeast Quarter of said Section Seventeen; thence North  $0^{\circ} 8'$  East along the western line of the West Half of the Northeast Quarter of said Section Seventeen, 1,680.14 feet; thence North  $89^{\circ} 35'$  East, 1,355.76 feet to the eastern line of the West Half of the Northeast Quarter of said Section Seventeen; thence South  $0^{\circ} 29'$  West, along the eastern line of the West Half of the Northeast Quarter of said Section Seventeen, 2,188.00 feet to the point of beginning, containing 126.13 acres, more or less, of which 59.93 acres lie in the West Half of the Southeast Quarter of said Section Seventeen and 66.20 acres lie in the West Half of the Northeast Quarter of said Section Seventeen.

The above bearings are based on Robertson Village.

PREPARED BY:

John E. Fisher, L.S. 50025

1526 Main Street,  
Lafayette, Indiana 47905

Tel No: (317) 448-1535

80 66665

8-18-77

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EX. CV  
8/22/86

~~XXXXXXXXXX~~

860092254

NOTE: ARTICLE VI, Section 3 of the rules of the Metropolitan Development Commission requires use of this form in recording covenant or commitment modification (s) or termination(s) with respect to rezoning, approval, variance or special exception cases in accordance with I.C. 36-7-4-607, I.C. 36-7-4-918 and 36-7-4-921.

COMMITMENTS MODIFYING OR TERMINATING EXISTING COVENANTS OR COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH AN APPROVAL PETITION, REZONING OF PROPERTY, A VARIANCE PETITION OR SPECIAL EXCEPTION PETITION

In accordance with I.C. 36-7-4-607 and/or I.C. 36-7-4-918 and 921, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of covenant(s) or commitment(s) concerning the use and development of that parcel of real estate:

Legal Description: See Exhibit A, attached hereto and by this reference incorporated herein.

Statement of Modification or Termination of Covenants or Commitments:

1. The area designated "Single Family Residence", Phase One, lying along the east boundary of the subject property as designated on Exhibit D of the Preliminary Plan shall be developed to the standards of the D-2 (Dwellings) District of the Dwellings District Zoning Ordinance of Marion County, Indiana, excepting Developer may deviate from sideyard standards to preserve trees. Developer agrees that the type of homes in this Single Family Residential Area will be consistent with and equal to the quality and type of homes in the Wolfington-On-Kessler Addition, P.B. 23, Pg. 27 and Northern Estates 3rd Section, P.B. 22, Pg. 76, Office of Recorder of Marion County, Indiana, which areas abut the Single Family Residential Area on the east. Developer further agrees that residence homes constructed in this Single Family Residential Area will be located on the lots, if possible, so as to have garages opening to the side or to the rear of said homes. The Developer agrees to lay out, plat and price lots in the residence area first and to put it on the market simultaneously with the construction of any offices, cluster housing or two-family dwellings.

Further, Developer agrees that housing in Phase One shall contain plat restrictions providing that one-story structures shall contain a minimum of 1500 sq. ft. of living area and higher than one-story structures shall contain a minimum of 1600 sq. ft. of living area. Lots at the south end of Phase One not presently platted shall be platted to the same size and development standards as the existing plat of Phase One.

The Developer agrees to lay out, plat, develop and price lots in the Phase One residential area first and to put it on the market together with commencement of construction of not less than three homes prior to development of Phase Two Residential Development or residential construction upon other phases of development as described and defined in the Final Approved Preliminary Plan on file with the Department of Metropolitan Development.

Further these commitments shall not be altered or modified as to lot size or quality of housing for a period of fifteen years from date of approval of these commitments without the approval of the Metropolitan Development Commission and the Wolfington Civic Association.

The area designated "Single Family Residence", Phases Two and Three, comprising 19.15 acres and 26.64 acres on Exhibit D of the Preliminary Plan

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DEPT. O'LAUGHLIN  
RECORDER-MARION CO. 1  
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FILED  
AUG 22 1986  
DEPT. METRO DEVELOPMENT  
BY \_\_\_\_\_

and lying along Guion Road and at the northwest corner of the Planned Unit Development, shall consist of not more than 90 homes and 93 homes, respectively, and with Phase Two developed to D-3 standards with D-4 lot sizes and sideyard requirements and Phase Three homes to be developed to D-3 standards with D-3 lot sizes, excepting housing shall have a minimum of 1000 square feet of living area with two-car garages and minimum aggregate sideyards of 13 feet.

All single family residential areas shall have paved streets, curbs and sidewalks with paved private drives. Phases One and Three shall have 2-car attached garages, and Phase Two shall have not less than a 1-car attached garage.

Phase Four shall be developed of like size, kind and quality to Exhibit L in the Revised Final Preliminary Plan with minimum living areas per unit of not less than 900 square feet living area exclusive of garages, patios and porches and each unit shall have not less than a one-car garage with paved drive.

Phase Six Cluster Housing consisting of single family units along the unwooded lake area and combinations of attached or detached living units within the wooded area. All living units shall have not less than 900 square living area, exclusive of garages, patios and porches and each living unit shall have not less than a one-car garage with paved drive.

2. There shall be no rights-of-way, connections or access by street or otherwise, of any kind across or through the total eastern property line of the Planned Unit Development.

3. Surface drainage along the east boundary of the Planned Unit Development shall be designed in the manner that no surface water shall drain on residential lots to the east, and existing water impoundment along this boundary, particularly in the wooded area to the west of Melbourne Circle, shall be eliminated. As part of the drainage plan for the Planned Unit Development, Developer will install a storm sewer in the right-of-way of the street in the Single Family Residential Area as a part of his drainage plan, so that all street areas will have positive drainage. Developer will connect the storm sewers to his surface drainage plan as the engineering thereof dictates. Developer agrees that in the grading of the Single Family Residential Areas to establish elevations and grades for drainage, building sites, etc., that any extra dirt not needed by Developer will be graded into any erosion conditions that runs along the back portion of the lots known as Melbourne Circle that abuts on the eastern property line of the Single Family Residential Area. Before such action occurs, all such property owners, who have a title interest in said erosion area will be contacted for permission to fill such by developer.

4. The north boundary of the Planned Unit Development shall have no rights-of-way or vehicular outlets to the north which could result in an ultimate connection to 46th Street or other streets extending east to Kessler Boulevard. This same restriction shall apply to the entire south boundary line of the Planned Unit Development so as to deny all right-of-way or vehicular outlets to the south of said property, if such outlets should seek access to Kessler Boulevard. It is further acknowledged that the former "stubbed out" right-of-way of 42nd Street abutting the east boundary of said Single Family Residential Area has been vacated and shall not be available for vehicular access.

5. Following Plat Approval in the Single Family, Phase One, Residential Area, prior to any disturbance of the land for installation of streets and utilities, there shall be installed a temporary snow fence fifty feet west and parallel to the east boundary to prevent construction equipment from damaging trees in this rear yard area on lots to be developed. After streets and utilities are installed and building lot lines staked, prior to the construction or other disturbance of these lots, the builder of homes

on the lots shall obtain a site plan approval by the landscape architect on the staff of the Department of Metropolitan Development and all trees to be saved shall be appropriately banded to optimize preservation of good trees.

Existing trees of more than six inches caliper diameter measured twelve inches above ground grade on the north, south and west perimeter boundaries of the property shall be appropriately identified with surveyors tape for tree preservation and reviewed and approved by the Administrator of the Division of Development Services or his designated landscape architect.

Like care shall be taken in all phases of development to optimize preservation of trees on all wooded lots in all phases of development it being understood, however, that there must be tree removal on lots for siting buildings, drives, utility easements and proper drainage of the building sites and surrounding lands.

6. Developer does, by this commitment, and will include in the plat restrictions on the Single Family Residential Area lying along the east boundary of the Planned Unit Development, the following condition and limitation on lots that are in the wooded area that is in the middle of the Single Family Residential Area as shown on Exhibit D of the Preliminary Plan:

The rear 50 feet of each residence lot in the wooded area in the middle of the Single Family Residential Area in Phase One development (in the plat restrictions to be specified by lot numbers) shall be left in its natural state and no structure of any type or kind shall be erected in said 50 foot area for any purpose other than underground utilities and drainage structures, if any.

Developer agrees that those Single Family lots in the Planned Unit Development abutting the eastern boundary line of the Planned Unit Development that are in the wooded area hereinabove referred to shall be platted and have no less than an average of 100 foot frontage in the wooded area.

7. That the number of living units, wherever they may be located within the total Planned Unit Development, shall not exceed a total of four hundred twenty (420).

8. Developer, at his expense, shall separate the Planned Unit Development from the Single Family Area lying immediately to the east of the Planned Unit Development by erecting a privacy fence no less than five (5) feet in height and of no lesser quality than a weather-resistant treated wood so as to deny and prohibit any pedestrian or vehicular passage from the Planned Unit Development.

This fencing shall extend from the southeast corner of the total property along the entire Single Family Residential Area within the Planned Unit Development to the northeast corner thereof. This screening covers a distance of approximately 3,520 feet. Maintenance of this screening shall be at Developer's expense, and Developer reserves the right to make minor deviations in the location of fencing along said east line in order to preserve trees.

9. The agreements and commitments in Nos. 2, 3, 4 and 8 above shall also be included as restrictive covenants in any plat of the Single Family Residential Area lying along the east boundary of the Planned Unit Development.

10. Developer will provide sanitary utility easements in the Phase One Single Family Residential development at the south end thereof, at or near the vacated right-of-way of 42nd Street for purposes of neighborhood connection to the sanitary sewer system. Any neighboring connection shall be

conditioned upon upgrading the lift station to provide a sewage flow in excess of 700 gallons per minute which is the design capacity for the present Planned Unit Development when all phases are completed developed.

Further, said easement shall be designated drainage and utility easement and neighbors to the east may connect to the public water line in Phase One provided they obtain the consent of the Indianapolis Water Company and pay all expenses incident thereof.

11. Presently recorded plat restrictions in the Phase One Single Family Residential area shall be modified by eliminating the requirement that exteriors of buildings shall be 50% masonry; the 200 foot setback restriction in the area formerly designated commercial which is now being included as a part of Phase One Single Family Residential shall be eliminated, and the provision for maintenance of fencing along the east boundary of the property shall be expanded to include "Developer, grantees, successors and assigns."

12. In the case of a discrepancy in the Drawings composing the preliminary plans and these commitments, the commitments shall control.

These COMMITMENTS supercede commitments recorded as Instrument Nos. 73-67305, 75-37119 and 80-66665 respectively, recorded in the Office of Recorder of Marion County, Indiana, and shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the adoption of modification or termination approved by the Metropolitan Development Commission in petition 86-2-100.

These COMMITMENTS may be enforced jointly or severally by:

1. The Metropolitan Development Commission; and
2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the rezoning petition who were not petitioners for the rezoning. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the bound volumes of the most recent real estate tax assessment records as they appear in the offices of the various township assessors of Marion County. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning under the rules in force at the time the commitment was made).

The undersigned hereby authorizes the Division of Development Services of the Department of Metropolitan Development to record this Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of modification and/or termination of Covenants(s) or Commitments(s) of petition 86-2-100 by the Metropolitan Development Commission.

860092254

IN WITNESS WHEREOF, owner(s) has executed this instrument this 20th  
day of August, 1986.

CARSON CITY, INC.

By: [Signature]  
JOHN E. SMITH, PRESIDENT

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State,  
personally appeared CARSON CITY, INC., by JOHN E. SMITH, its  
President, who, for and in behalf of said corporation and with  
full corporate authority to do so, acknowledged the execution of  
the foregoing instrument and who, having been duly sworn, stated  
that any representations therein contained are true.

Witness my hand and Notarial Seal this 20th day of  
August, 1986.

My commission expires: November 14, 1989  
William M. Bell, Notary Public  
Residing in Marion County In.

This instrument was prepared by William F. LeMond, Attorney at Law. ✓

This Modification and/or Termination Agreement was approved by the  
Metropolitan Development Commission on the 3rd day of September,  
1986.

Paul G. Roland  
Secretary, Metropolitan Development Commission

file 3246  
code 4/86SMIT.2-.3  
MD-171c, 2/83

PAUL G. ROLAND

860092254

FILED  
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DEPT. METRO DEVELOPMENT  
BY

AGREEMENT RE DRAINAGE  
ROBERTSON VILLAGE  
PLANNED UNIT DEVELOPMENT

The undersigned Petitioner-owner, Carson City, Inc., and Remonstrators neighborhoods, Wolfington Civic Association and Northern Estates, in consideration of their mutual promises hereby agree and covenant as follows:

That said Petitioner-owner shall construct and install a drainage swail along the east boundary of Robertson Village in accordance with the grading plan of Lafayette Engineers dated May 5, 1986, Sheet No. 3, Drawing No. 86461R as approved by Kevin Kirk of the Department Of Public Works, with drainage pipes and catch basin structures installed between Lots 24 and 25 and Lots 14 and 15, a copy of which grading plan is attached hereto and made a part hereof.

Said above drainage plan shall include the dredging or excavating of the existing ditch along said boundary so as to drain the impounded areas along said east boundary to the south during the interim period from the date of this agreement until May of 1987 when, weather permitting, said Petitioner-owner will commence construction of its retention pond and construction of a 42" outfall storm sewer extending west to Little Eagle Creek allowing the drainage retention basin to be lowered to 746' M.S.L. so as to drain the impounded areas along said east boundary thereafter.

IN WITNESS WHEREOF, owner(s) has executed this instrument this 15th day of Sept, 1986.

CARSON CITY, INC.

By [Signature]  
John E. Smith, President

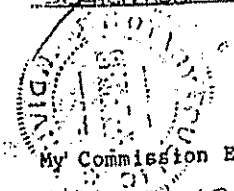
STATE OF INDIANA )  
COUNTY OF MARION )

SS:

860092254

Before me, a Notary Public in and for said County and State, personally appeared CARSON CITY, INC., by JOHN E. SMITH, its President, who, for and in behalf of said corporation and with full corporate authority to do so, acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 5<sup>th</sup> day of September, 1986.



Tammara M. Bell  
Notary Public  
Tammara M. Bell  
My County of Residence is:  
marion

IN WITNESS WHEREOF, remonstrators have executed this instrument this 5<sup>th</sup> day of September, 1986.

WOLFINGTON CIVIC ASSOCIATION

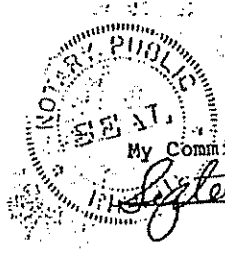
By Clifford D. Allen  
Clifford D. Allen  
NORTHERN ESTATES

By Mark V. De Fabis  
Mark V. De Fabis

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared CLIFF ALLEN, president of WOLFINGTON CIVIC ASSOCIATION, and MARK DE FABIS, president of NORTHERN ESTATES, and acknowledged the execution of the foregoing Agreement Re Drainage Robertson Village Planned Unit Development for and on behalf of said corporations, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 5<sup>th</sup> day of September, 1986.



Halbert W. Kunz  
Notary Public  
Halbert W. Kunz  
My County of Residence is:  
marion

860092254



EXHIBIT A

COMMITMENTS

DESCRIPTION: Robertson Village - Overall

A Part of the West Half of the Northeast Quarter and a Part of the West Half of the Southeast Quarter of Section 17, Township 16 North, Range 3 East, Pike Township, Marion County, Indiana, described as follows:

Beginning at the northeastern corner of the Southeast Quarter of said Section Seventeen, thence South  $0^{\circ} 13'$  West, along the eastern line of the West Half of the Southeast Quarter of said Section Seventeen, 1,950.00 feet; thence South  $89^{\circ} 35'$  West, 1,335.02 feet to the western line of the West Half of the Southeast Quarter of said Section Seventeen; thence North  $0^{\circ} 00' 00''$  East, along the western line of the West Half of the Southeast Quarter of said Section Seventeen, 1,949.35 feet to the southwestern corner of the West Half of the Northeast Quarter of said Section Seventeen; thence North  $89^{\circ} 31' 30''$  East along the southern line of the West Half of the Northeast Quarter of said Section Seventeen, 135.00 feet; thence North  $0^{\circ} 8'$  East, crossing into the West Half of the Northeast Quarter of said Section Seventeen, 509.00 feet; thence South  $89^{\circ} 31' 30''$  West, 135.00 feet to the western line of the West Half of the Northeast Quarter of said Section Seventeen; thence North  $0^{\circ} 8'$  East along the western line of the West Half of the Northeast Quarter of said Section Seventeen, 1,680.14 feet; thence North  $89^{\circ} 35'$  East, 1,355.76 feet to the eastern line of the West Half of the Northeast Quarter of said Section Seventeen; thence South  $0^{\circ} 29'$  West, along the eastern line of the West Half of the Northeast Quarter of said Section Seventeen, 2,188.00 feet to the point of beginning, containing 126.13 acres, more or less, of which 59.93 acres lie in the West Half of the Southeast Quarter of said Section Seventeen and 66.20 acres lie in the West Half of the Northeast Quarter of said Section Seventeen.

The above bearings are based on Robertson Village.

PREPARED BY:

John E. Fisher, L.S. 50025

1526 Main Street,  
Lafayette, Indiana 47905

Tel No: (317) 448-1535

860092254

86-2-100

86-DP-8

0-10-71

CROSS REFERENCE

870134290

CROSS REFERENCE

Cross Reference: 80-01574  
80-01575  
86-92254

*Approved  
11-20-87  
Frank [unclear]*

AFFIDAVIT MODIFYING RESTRICTIVE COVENANTS  
FOR ROBERTSON VILLAGE SUBDIVISION, PHASE I,  
SECTION ONE AND SECTION TWO

Commitments modifying or terminating existing covenants or commitments concerning the use or development of real estate made in connection with an approval petition, rezoning of property, a variance petition or special exception petition (Exhibit "D") for Robertson Village, approved by Metropolitan Development Commission on 8/20/86 Rezoning #86-2-100 (86-DP-8), recorded as Instrument #86-92254 in the Office of the Recorder, Marion County, Indiana, modify the restrictive covenants for Robertson Village Subdivision, Phase I, Section One recorded as Instrument #80-01574 and the restrictive covenants for Robertson Village Subdivision, Phase I, Section Two recorded as Instrument #80-01575 as per the following:

1. Paragraph 11 modifies Restriction F of the presently recorded plat restriction by eliminating the requirement that exteriors of buildings shall be 50% masonry.
2. Paragraph 11 modifies Restriction M of the presently recorded plat restriction by eliminating the 200 foot setback restriction in the area formerly designated commercial which is now included as a part of Phase One Single Family Residential.
3. Paragraph 11 modifies Restriction U of the presently recorded plat restriction by expanding the provision for maintenance of fencing along the east boundary of the property to include "Developer, grantees, successors and assigns."
4. Paragraph 1 and Restriction O of the presently recorded plat restrictions states "Developer agrees that residence homes constructed in the Single Family Residential Area will be so located on the lots, if possible, so as to have garages opening to the side or to the rear of said homes." Garage openings to the front of homes are permissible. The individual builder is responsible for determining if the garage opening to the side or the rear of the home is possible on each individual lot on the basis of lot dimensions, setback restrictions, easements, house dimensions, driveway dimensions, and tree preservation.
5. Paragraph 8 which requires installation of privacy fencing along the eastern property line to separate the Planned Unit Development from the Single Family Area lying immediately to the east eliminates Restriction P of the presently recorded plat restrictions.

IN WITNESS WHEREOF, JOHN E SMITH ENTERPRISES, INC., has executed its hand and seal this 19th day of November, 1987.

ATTEST:

*Jana M. Page*  
Jana M. Page, Secretary/Treasurer

JOHN E SMITH ENTERPRISES, INC.

By: *[Signature]*  
John E. Smith, President

Nov 20 11 46 AM '87

RECEIVED

NOV 20 1987

PIKE TOWNSHIP  
ASSESSOR

NOTY/1100  
DUTY PERFORMED  
NOV 20 03 55 25  
TOWNSHIP CLERK

STATE OF INDIANA )  
 ) SS:  
TIPPECANOE COUNTY )

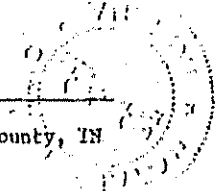
Before me, a Notary Public, in and for said County and State, personally appeared John E Smith and Jana M. Page, President and Secretary/Treasurer respectively, of John E Smith Enterprises, Inc., and acknowledged the execution of the foregoing Affidavit Modifying Restrictive Covenants this 19th day of November, 1987.

Anita L. Himes  
Notary Public

My Commission Expires:

September 19, 1991

Anita L. Himes  
(Name Printed)  
Notary resides in Montgomery County, IN



870134290

This Instrument Prepared by John E Smith

/s/ah  
11/19/87

90 AP 198

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#34

NOTE: ARTICLE VI, Section 3 of the rules of the Metropolitan Development Commission requires use of this form in recording covenant or commitment modification (s) or termination(s) with respect to rezoning, approval, variance or special exception cases in accordance with I.C. 36-7-4-607, I.C. 36-7-4-918 and 36-7-4-921.

**COVENANTS OR COMMITMENTS MODIFYING OR TERMINATING EXISTING COVENANTS OR COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE MADE IN CONNECTION WITH AN APPROVAL PETITION, REZONING OF PROPERTY, A VARIANCE PETITION OR SPECIAL EXCEPTION PETITION**

In accordance with I.C. 36-7-4-607 and/or I.C. 36-7-4-918 and 921, the owner of the real estate located in Marion County, Indiana, which is described below, makes the following modification(s) or termination(s) of covenant(s) or commitment(s) concerning the use and development of that parcel of real estate:

Legal Description: See Exhibit A, attached hereto and by this reference incorporated herein.

**Statement of Modification or Termination of Covenants or Commitments:**

1. The owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".

2. Commitment 1, page 2, paragraph 3 shall be revised to provide that Phase IV (a/k/a, Four-A) consisting of 18.83 acres extending east off Guion Road and south of W. 41st Terrace shall be developed as single family dwellings instead of duplexes with minimum size of all living units 1000 square feet, exclusive of garages, patios and porches. At least 80% of all living units shall have two-car garages and paved drives and the remaining living units shall have not less than a one-car garage with paved drive. Existing fencing along the west line of Phase IV shall be painted and a row of street trees shall be installed 10' to 12' in height and planted 30' on center the entire length of the west boundary.

3. Public Street Commitments shall be in accordance with Exhibit B, attached hereto and by this reference incorporated herein.

4. Except as otherwise provided herein, all terms and conditions of Commitment recorded as Instrument No. 86-92254 in the Office of Recorder of Marion County, Indiana, pursuant to approved Revised Final Preliminary Plan in Case No. 86-Z-100 (86-DP-8) of the Metropolitan Development Commission shall remain the same.

These COMMITMENTS shall be binding on the owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other persons acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A", which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Development Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon the adoption of modification or termination approved by the Metropolitan Development Commission in petition 90-AP-198.

These COMMITMENTS may be enforced jointly or severally by:

- 1. The Metropolitan Development Commission;

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91 FEB 25 AM 10:02  
JOHN H. ROBERTS  
MARION COUNTY RECORDER

2. Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six hundred sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the rezoning petition who were not petitioners for the rezoning. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the bound volumes of the most recent real estate tax assessment records as they appear in the offices of the various township assessors of Marion County. (This paragraph defines the category of persons entitled to receive personal notice of the rezoning under the rules in force at the time the commitment was made);
3. Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and,
4. Wolfington Civic Association.

The undersigned hereby authorizes the Division of Development Services of the Department of Metropolitan Development to record this Covenant or Commitment in the office of the Recorder of Marion County, Indiana, upon final approval of modification and/or termination of Covenants(s) or Commitments(s) of petition 90-AP-198 by the Metropolitan Development Commission.

IN WITNESS WHEREOF, owner(s) has executed this instrument this 28th day of January, 1991.

John E. Smith Enterprises, Inc.

By [Signature]  
John E. Smith, President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONTGOMERY )

Before me, a Notary Public in and for said County and State, personally appeared John E. Smith Enterprises, Inc. by John E. Smith, President, owner(s) of the real estate who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 28th day of January, 1991.

Signature Anita L. Himes

Printed ANITA L. HIMES

County of Residence Montgomery

My Commission expires: 9-19-91

This instrument was prepared by William F. LeMond, Attorney at Law.

This Modification and/or Termination Agreement was approved by the Metropolitan Development Commission on the 20 day of February, 1991.

[Signature]  
Secretary, Metropolitan Development Commission

file 3838  
code 1/91SMIT.7

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ATTACHMENT "A"

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a.) The owner commits that he shall not discriminate against any person on the basis of race, color, religion, ancestry, national origin, handicap or sex in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
  - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
  - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b.) The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, color, religion, ancestry, national origin, handicap or sex.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
  - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
  - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
  - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;
2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

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EXHIBIT A

A part of the Southeast quarter of Section 17, Township 16 North, Range 3 East, Pike Township, Marion County, Indiana, described as follows:

Commencing at the Northeast corner of the West Half of the Northeast Quarter of said Section 17, thence South  $00^{\circ}29'00''$  West along the Eastern line of the West Half of the Northeast Quarter of said Section 17, 481.00 feet; thence South  $89^{\circ}35'00''$  West 1,355.76 feet to the West line of the West Half of the Northeast Quarter of said Section 17; thence South  $00^{\circ}08'00''$  West along said West line 1,600.16 feet; thence North  $89^{\circ}31'30''$  East, 135.00 feet; thence South  $00^{\circ}00'00''$  West 509.00 feet to the North line of the West Half of the Southeast Quarter of said Section 17; thence South  $89^{\circ}31'30''$  West along said North line 115.00 feet to the east right-of-way line of Union Road; thence South  $00^{\circ}00'00''$  East along said right-of-way line 304.23 feet to the point of beginning; thence North  $90^{\circ}00'00''$  East 455.00 feet; thence northeasterly on a tangent curve to the left having a central angle of  $17^{\circ}29'30''$ , a radius of 656.03 feet and an arc length of 198.44 feet; thence North  $72^{\circ}40'30''$  East 160.28 feet; thence northeasterly on a tangent curve to the right having a central angle of  $17^{\circ}01'00''$ , a radius of 207.43 feet and an arc length of 85.37 feet; thence North  $89^{\circ}31'30''$  East 53.98 feet; thence South  $00^{\circ}13'00''$  West 944.12 feet; thence South  $90^{\circ}00'00''$  West 937.66 feet to the East right-of-way line of Union Road; thence North  $00^{\circ}00'00''$  East along said right-of-way line 852.15 feet to the point of beginning. Containing 18.89 acres, more or less.

EXCEPT: Lot 346 and Lot 347 in Robertson Village, Phase IV-A, Section 6, Block 1 as recorded July 28, 1988 as Instrument Number 880075259 in the Office of Recorder, Marion County, Indiana. Containing 0.06 acres, more or less.

TOTAL NET AREA CONTAINING 18.83 acres, more or less.

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EXHIBIT B

90-AP-198

PUBLIC STREET COMMITMENTS

1. All streets within Phase IV and IV-A shall be public streets with 40' rights-of-way, except however, the rights-of-way for the turn-around of the cul-de-sacs shall be a dimension 5 feet greater than the constructed radius. Streets shall be constructed in accordance with DOT standards except as modified by the following standards:
  - a. All streets shall be constructed of concrete at a minimum depth of 6 inches with all streets to have sidewalks on both sides.
  - b. Those portions of Luxembourg Circle, Bern Place and Oslo Place, as named by the conditional plat, shall be dedicated as constructed. However, the existing curb located at the intersection of Luxembourg and Oslo Place, shown as recorded 12/3/90 as Instr. #90-124905 in the Office of Recorder, Marion County, Indiana, shall be removed prior to dedication.
  - c. The remaining portions of Luxembourg Circle to be constructed shall be constructed to a minimum width of 34 feet, curb and gutter inclusive, within a 40 foot public right-of-way.
  - d. The cul-de-sac, Avon Place, as named by the conditional plat, shall be constructed with a 20 foot throat and the turn-around shall be a radius of 25 feet.
  - e. The cul-de-sac, Dorval Place, as named by the conditional plat, shall be constructed with a 24 foot throat and the turn-around shall be a radius of 25 feet.
  - f. The cul-de-sacs, Sofia Place and Vienna Place, as named by the conditional plat, shall be constructed with a 24 foot throat and the turn-around shall be a radius of 38 feet.
  - g. On-street parking shall be limited to one side of the street.
  - h. Front building setback lines on Luxenbourg Circle shall be 25 feet from edge of pavement and all remaining streets leading off said streets 20 feet from edge of pavement with minimum distance between buildings of 10 feet and minimum rear setback lines from Phase IV and IV-A perimeter boundary lines 20 feet unless otherwise shown.
2. A 35 foot half right-of-way shall be dedicated along Guion Road.

file 3838  
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