

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SHENANDOAH

THIS DECLARATION, made on the date hereinafter set for by Octad, Inc., an Indiana corporation, (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the sole owner of the fee simple title to certain real estate in Indianapolis, County of Marion, State of Indiana, which is more particularly described in Exhibit "A", attached hereto and referred to as the "Tract", "Properties" or "Section I".

NOW, THEREFORE, Declarant hereby declares that all of the properties described in "Exhibit "A" 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 insure to the benefit of each owner thereof.

ARTICLE I

Name

This subdivision shall be known and designated as Shenandoah, subdivision located in Indianapolis, Marion County, Indiana.

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ARTICLE II

Definitions

Section 1: "Association shall mean and refer to Shenandoah Homeowners Association, Inc., an Indiana not-for-profit corporation, and 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 contract 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 described in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association, but does not include the personal property of the Owners.

Section 4: "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, and shall include exclusive driveway easements, exclusive parking easements, drainage, and utility easements as designated on a recorded plat. The Common Area to be owned by the Association at the time of the conveyance of the first lot.

Section 5: "Declarant" or "Developer" shall mean and refer to Octad, Inc., an Indiana corporation, its successors and assigns, if such successors or assigns should acquire undeveloped lots for the purpose of development. 850017405

Section 6: "Plat" shall mean and refer to the sub-division plat of the Properties recorded in the office of the Recorder

of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 7: "Drive Easements" shall mean and refer to the surface easements for vehicular ingress and egress appurtenant to the Lots, including streets and roads in the development.

Section 8: "Lot" shall mean and refer to any parcel of land designated as such upon the Plat. With respect to any Dwelling Unit that may be constructed on a part of more than one of such parcels, "Lot" shall mean and refer to the real estate conveyed in connection with such Dwelling Unit.

Section 9: "Building" shall mean and refer to any single family dwelling unit that may be constructed on a part of more than one (1) Lot.

Section 10: "Dwelling Unit" shall refer to each one of the single family homes.

Section 11: "Board of Directors" shall mean and refer to the Board of Directors of the Association.

ARTICLE III

Lots

Section 1: Number of Lots. This subdivision consists of Sixty Six (66) Lots numbered 1 thru 66, both inclusive, with streets and Common Area as shown on the Plat.

Section 2: Land Use. All Lots shall be used exclusively for single family residential purposes. 850017405

Section 3: Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions con-

veyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

ARTICLE IV

Property Rights

Section 1: Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area, excluding those areas designated as Driveway Easement, 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 suspend the voting rights and right of use of any recreational or other facilities located in the Common Area, if any, by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) 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.

Section 2: Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area, Dwelling Unit or Driveway Easement and any facilities located thereon to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3: Title to Common Area. The Declarant shall convey the Common Area to the Association, in fee simple absolute, prior to, or at the time of the first conveyance of a

Lot, such conveyance to be subject to taxes current, but unpaid at the time of conveyance, and to restrictions, conditions, limitations, and easements of record.

ARTICLE V

Easements and Encroachments and Rights of Access

Section 1: Utilities, Public Officials, the Association and Declarant. There is hereby created an easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewers, gas (if available), telephones, electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the company providing electrical service and/or the telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of dwelling units.

An easement is further granted to all police, fire protection, ambulance, and similar persons, to enter upon the streets and Common Area in the performance of their duties.

Further, an easement is hereby granted to the Association, its officers, agents and employees, and to any management company selected by the Association to enter in, or to cross over the common area any lot and dwelling units, lots or Common Area provided for herein or other duties required in this Declaration. This easement is also reserved for the Declaration. 850017405

Notwithstanding anything to the contrary contained in this paragraph, no sewers, 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 Properties, without conflicting with the terms hereof. The easements provided for in this Article V shall in no way affect any other recorded easement on said premises.

The Association and the Owners of Lots shall take title subject to the easements hereby created and subject at all times to the rights of the proper authorities to service the utilities and the easements hereby created. No permanent structure of any kind, and no part thereof, including fences, shall be built, erected or maintained on said drainage, utility and sewer easements except walkways and paving on the Driveway Easements located in a Common Area.

Section 2: Easements for Encroachment. If any part of the Common area encroaches upon any Lot or building thereon, a valid easement for such encroachment, and the maintenance thereof, so long as it continues, shall, and does, exist. If any part of any Lot or the building thereon encroaches upon the Common Area or upon another Lot, or Lots, a valid easement for such encroachment shall, and does, exist. In the event that any building upon a Lot in the Properties shall be partially or totally destroyed and then rebuilt, minor encroachments of the building upon the Common area, or other Lots, including, but not limited to, eaves and roof over-hang, valid easements for such encroachments, and the maintenance thereof,

shall exist.

Section 3: Encroachments and Easements for Buildings.

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of the single family residence appurtenant to a Lot (hereinafter in this Article referred to as the "Encroaching Lot") now encroaches or shall hereafter encroach upon any other adjacent Lot, then in such event, an easement shall be deemed to exist and run to the Owner of the Encroaching Lot for the Maintenance, use and enjoyment of the Encroaching Lot and all appurtenances thereto.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in or on any other Lot and serving his Lot.

Section 4: Developer's Easement to Correct Drainage.

For a period of five (5) years from the date of conveyance of the first Lot in the Properties, the Developer reserves a blanket easement, and right, on, over, and under, the ground within the Properties, to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which, the Developer shall restore the affected property to its original condition as near as practicable. The Developer shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer, an emergency exists, which precludes

such notice.

Section 5: Access Rights of Association. If any Owner shall fail to adequately maintain the open area and the Dwelling Unit included within his Lot, the Association upon the giving of ten (10) days written notice to such Owner, shall have the right to enter upon such open area and do any necessary maintenance thereon. The cost of such maintenance shall be a special assessment against such Lot and the Owner thereof.

Section 6: Driveway Easement. Each Dwelling Unit will be connected to a street by a driveway, connecting the Lot to the street that services the individual dwelling unit Lot, and this driveway must be either concrete or asphalt and contain at least 400 square feet of off street parking space.

Driveway Easements are hereby reserved for the use and enjoyment of the Owner of the Lot, their families and invitees. Such Driveway Easement shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Lots. No velocipedes, bicycles, toys or other private property shall be allowed to obstruct any Driveway Easement, nor shall the same be stored in the open alongside building walls or other locations of public view. Cars, trucks and other vehicles shall not be parked on the paved portion of any Driveway Easement so as to impede access from or to any private street in the development. No fence, barrier or other obstruction of any kind shall ever be placed or constructed on any Driveway Easement without the prior written consent of the Association.

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Section 7: Recorded Restrictions. There are certain recorded restrictions affecting the Properties that run in favor of Texas Eastern Transmission Corporation, and, Indiana Bell Telephone Company. These should be read and understood by each owner.

ARTICLE VI

Association, Membership and Voting Rights

Section 1: Membership. 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: Classes of Membership. The Association shall have two (2) 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 (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) 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. 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:

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- (i) when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or
- (ii) on the first day of January, 1998.

Section 3: Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4: Further Powers. In addition to all other powers granted to the Association by the Declaration, its Articles of Incorporation and By-Laws, the Association, through its Board of Directors, may elect to enter into certain agreements providing for:

- (a) access by all Owners to recreational and social facilities located outside of the Properties;
- (b) security services upon the Properties;
- (c) assessment billing services;
- (d) professional management services; and,
- (e) snow removal and lawn care services.

The costs associated with such contracts shall be a common expense of the Association to be included in the regular common assessments as levied by the Association.

Any agreement for the professional management of the Properties or Common Area, or any other contract providing for the services of the Declarant, sponsor or builder, may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days, or less, written notice.

ARTICLE VII

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Covenant for Maintenance Assessments

Section 1: Creation of the Lien and Personal Obligation of Assessment: Declarant, for each plotted Lot owned within the

Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article V, Article VI and Article IX; such assessments to be established and collected as hereinafter provided.

Section 2: Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties and for the improvements, maintenance and other purposes as specifically provided herein.

Section 3: Maximum Annual Assessment: Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred and 00/100 (\$600.00) per Lot.

(a) 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 each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership unless such increase is pursuant to sub-section (b) hereafter.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment per Lot may also be increased each year without a vote of the membership, in conformance with the Consumer Price Index (CPI) published by the U.S. Department of Labor, specifically the Consumer Price Index for Uroan

Wage Earners and Clerical Workers, U.S. City Average, All Items, unadjusted for seasonal variation. The maximum assessment for any year shall be the amount determined by (a) taking the dollar amount specified above in the first sentence of this Section, (b) multiplying that amount by the published CPI number for the third month prior to the beginning of the subject year and (c) dividing that resultant by the published CPI number for the third month prior to the month in which this Declaration was signed by the Declarant.

(c) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment amount specified above in the first sentence of this Section and used in the above CPI adjustment formula may be changed by a vote of the members, provided that any such change 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, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 4: Special Assessments for Capital Improvements and Operating Deficits: In addition to the monthly assessments

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authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5: Notice and Quorum for any Action Authorized under Sections 3 and 4: Written notice of any meeting necessary 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 the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) 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 6: Date of Commencement of Monthly Assessments:
Due Dates: The monthly assessment provided for herein and the insurance assessment provided for in Article X shall commence as to each Lot on the first day of the first month following the conveyance of the Common Area. The first annual assess-

ment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form, signed by an officer of the Association, setting forth whether the assessments on specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association on the date of its issuance.

Section 7: Effect of Non-Payment of Assessments:

Remedies of the Association: If any assessment (or monthly installment of such assessment, if applicable) is not paid within thirty (30) days of the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon at the rate of fourteen percent (14%) per annum from the due date, attorney fees and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

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If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of fourteen percent (14%) per annum, from the due date, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney fee to be fixed by the court, together with the costs of this action.

No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 8: Subordination of the Lien to Mortgages:
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 affect the assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which become 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 9: Collection by Mortgagee. Nothing in this Declaration shall be construed as prohibiting any first mortgagee from collecting the assessments due as a part of, or in

addition to, any monthly payment due the mortgagee, provided, any mortgagee collecting assessments from any owner, shall pay said assessments when they become due.

ARTICLE VIII

Declarant's Rights

Section 1: Control of Development. Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain a model, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements. Declarant further reserves the right, until the first conveyance of a Lot to a resident Owner, to amend the Declaration by the recording of an amended declaration.

Section 2: Use of Property. Declarant reserves the right to grant easements for utilities and other reasonable purposes across the Common Area, to use any of the Lots as models, and to sell, assign, or conduct other businesses in connection with the construction and development of the project, from any of such Lots prior to their being sold. This reservation of right or privilege in the Declarant includes, but is not limited to, the right to maintain models,

erect signs, maintain an office, staff the office with employees, and to the use of any and all of the Common Area and to show Lots then unsold. Any improvements placed on the Properties for the purpose of such sales, such as signs, telephones, or any other promotional items, shall not be considered as a part of the Common Area, nor attachments thereto, but shall remain the property of the Declarant, and may be removed at any time convenient to the Declarant. The Declarant retains the right to be considered as Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.

Section 3: Management. So long as Declarant owns twenty-five percent (25%) of the Lots in the Properties (or owns, or has a contract to purchase, any property that may be annexed thereto), the Declarant shall, at its option, have the right to perform the functions of the Association and to manage the Properties. Declarant's right to manage shall include the right to manage the Common Area, to set annual assessments subject to the limitations herein contained, and to adopt rules and regulations governing the use of the Properties. Such rights shall be subject to the following:

- (a) Declarant may manage, or cause to be managed, the Properties, and it shall have the right to assess and collect the maximum annual assessment as set forth in Article IV above. Also, Declarant may increase the amount of the annual assessment, so long as such increase shall not exceed the maximum percentage increase permitted by such Article IV, Section 3, without vote of the Members, unless a greater increase is approved by the membership as

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therein provided.

- (b) Declarant shall have the right to transfer the management of the Properties, or any part thereof, to the Association, at any time it believes that the Association is able to manage the Properties without undue difficulty. The Declarant's right to manage the Properties shall expire, when seventy-five percent (75%) of the Properties have been sold, or when Declarant owns no portion (or holds no right to acquire the fee in any portion) of certain adjacent property, described in Article VIII, Section 4, whichever shall occur later. So long as the management of the Association is being borne by the Declarant, the rights of the Association to manage the Properties and set assessments shall be suspended.
- (c) Declarant will pay deficiencies in usual and ordinary operating expenses during the period of time of the initial project construction.

Section 4: Declarant's Easement for Adjoining Property.

Certain other Properties may be annexed to the Properties as provided in Article VIII, Section 4 hereof. Declarant reserves unto itself, its successors and assigns, a non-exclusive easement over the streets, driveways, and walks of the Properties in order to provide access through the Properties to and from such adjoining property. Declarant further reserves the right to connect to, extend and utilize the utilities that will be located on the Properties. Declarant further reserves the right to permit future owners of all, or any portion, of such adjoining property, their tenants, invitees, and guests, to use the recreational facilities of the Common Area, provided that such persons pay a pro rata share of the operating and maintenance cost of such recreational facilities, and that all persons having the right to use the same shall abide by the reasonable rules and regulations adopted by the Association governing such use.

Section 5: Construction and Sale Period. Notwithstanding

any provisions contained herein to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of construction and sale of Lots, upon such portion of the Properties as the Declarant may deem necessary, such facilities, as in the sole opinion of the Declarant may be reasonable required, or be convenient or incidental to the construction and sale of the Lots, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices, and business offices.

ARTICLE IX

Maintenance

Section 1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance and repairs of all improvements thereon (or in the case of rentals, by the tenants and owner). All such improvements, including dwelling, driveway, sidewalks, garages, porches, decks, or any other such improvements shall be maintained in good condition and repair at all times. The owners of Lots on the West line of this sub-division shall maintain the appearance and grade of the West embankment so as to prevent any unsightly appearance to be visible from the property West of and adjacent to said West line, and so as to prevent erosion of said embankment or otherwise cause washing down or deposit of soil or other debris from this sub-division into and upon land adjoining this sub-division to the West.

In the event the Association or any committee appointed by said Board shall determine that this covenant or any other

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covenant of maintenance or other recommendation duly adopted by said Board of Directors with respect to maintenance has been violated and not cured within thirty (30) days after written notification of demand for curing the same, then said Board or committee may authorize and contract for the curing of said condition and the cost of such activity shall be and become a lien upon the real estate of said owner who has failed to comply with this or other provision for maintenance and said lien may be collected and discharged as any other lien upon the real estate by execution or otherwise.

Section 2: Maintenance of Driveway and Parking Easements.

The Association shall be responsible for the maintenance, repair and repaving of all streets and roads in the development.

Section 3: The Willful or Negligent Act of the Owner.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests or invitees, and not covered and paid in full by insurance on such Lots, 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 X

Insurance and Taxes

Section 1. Casualty Insurance on Insurable Common Area.

The Association shall keep all insurable Improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against other hazards and casualties as the Association may deem desirable. The Association may also insure any

other property whether real or personal, owned by the Association, against loss by damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage, with respect to the Common Area, shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 2: Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts, if any, as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association's obligations under this Declaration, its Articles of Incorporation and By-Laws.

The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the

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Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association. However, no person, other than the Association, the Owner of a Lot, or the mortgagee, where permitted by the mortgage, shall have the right to place hazard or liability insurance for that Lot, nor may the Association require an Owner to place insurance through a particular company or agent or require its approval of such policies.

Section 3. Included Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro-rata cost thereof shall be included in the regular monthly (unless amended to a quarterly or annual) assessment to which each Lot shall be subject under the terms and provisions of Article VIII.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event, any remittances shall be to the Owner and his Mortgagee jointly.

Section 5. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area Improvements, 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 Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any

other Common Assessments made against such Lot Owners.

In the event that the Association is maintaining blanket casualty and fire insurance on the Dwelling Units on the Lots in the Properties, the Association shall repair or replace the same from the insurance proceeds available.

For purposes of Section 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Section 6. Surplus of Insurance Proceeds. In the event that there is a surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing wilful and malicious damage.

Section 7. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 8. Taxes. Each Owner shall pay all installments of real estate taxes on the Lot, or Lots, owned by him. In the event that any installment of such taxes becomes delinquent, then the Association shall have the right to pay such

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installments, and any amount so paid by the Association shall become a lien on such Owner's property, in accordance with the provisions in Article VII, Section 1 of this Declaration.

ARTICLE XI

Architectural Control

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, including window air conditioners, other than by Declarant, 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 as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE XII

Signs and Home Occupations

Section 1. Signs. Prior to the sale of the last Lot in

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the Properties by Declarant, no advertising signs of any kind (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nothing contained herein shall be construed or interpreted to affect the activities of Declarant in the sale of Lots or Dwelling Units as a part of the development of this subdivision.

ARTICLE XIII

Use Restrictions and Prohibited Activities

Section 1. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that a maximum of two domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and they are reasonable size and number. The decision of the Board of Directors with regard to the reasonableness of the size, type, or number of pets shall be final. Any mess created by such animal outside of the Dwelling Unit shall be promptly cleaned up by the animal's owner.

Section 2. Waste Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste

matter or materials shall be kept only in sanitary containers and all incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3. Offensive Activities. No noxious or offensive activity shall be carried on upon any Lot nor shall anything done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 4. Minimum Square Footage of Individual Dwelling. No dwelling shall be erected on any Lot unless it contains a total living area of at least 900 square feet, excluding from living area, the attic, garages, carports, patios and basements.

Section 5. Residential Use. Said property is hereby restricted to dwelling for residential use. All structures erected upon said Property shall meet the minimum square footage requirements and shall be constructed or placed on a foundation of at least 32" (4 concrete blocks high) resting on a poured concrete footing containing minimum dimensions of 8" deep by 15 and 5/8" inches wide. A minimum of 400 square feet of off street parking for vehicles is required and at least a two foot wide sidewalk connecting the driveway to the front door of the unit. Each owner is encouraged to build a garage or a carport but they are not required, however, if there is no garage, a storage building with a minimum size of 10'x12' is required for each home. The maximum height of any home above the finish Lot grade is 16" inches.

Section 6. Separate Estate. Each Lot shall be conveyed as

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a separately designated freehold estate, subject to the terms, conditions, and provisions hereof, and of the plat.

Section 7: Signs. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on the Properties, nor shall said Properties be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof. No business activities of any kind whatsoever shall be conducted in any building, or in any portion of said Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards, or the construction and maintenance of buildings, if any, of Declarant, its successors, and assigns, in furtherance of its powers and purposes as herein set forth.

The Declarant or the Association may deem it desirable to install a permanent entry sign, private street signs or directional signs, in which event same shall become part of the Common Area and shall be properly maintained by the Association.

Section 8: Outside Equipment. No clotheslines, equipment, garbage cans, service yards, or storage piles, shall be regularly exposed to view upon the Properties. All rubbish, trash, or garbage, shall be regularly removed from the premises, and shall not be allowed to accumulate thereon.

Section 9: Landscape. Except in the individual patio areas appurtenant to a Lot, no planting, or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon said Properties, except such as are installed

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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 rights as granted by this Declaration, the Owners of Lots are hereby prohibited and restricted from using any of said Properties outside of their individual Lots, except as may be expressly 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 and is necessary for the protection of said Owners.

Section 10: Antennae. Individual radio and TV antennas, not exceeding four feet in height shall be permitted; or a central system utilizing underground wiring to individual dwellings, may be installed.

Section 11. Trucks. No trucks other than "pick up" types shall be parked, or permitted to remain on any street, driveway or parking area, or on any part of the Common Area, semi-trailers and tractors are expressly Prohibited. Trucks making deliveries or present in connection with service, repair or construction are excepted.

Section 12. Unlicensed Vehicles. No unlicensed vehicles shall be permitted on any part of the Common Area more than twenty-four (24) hours. (An exception would be when the vehicle is stored in an Owner's garage and not exposed to view).

Section 13. Auto Repair. 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 be exposed to view.

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Section 14. Drainage. Any field tile or underground drain which is encountered in the construction of any improvements on any Lot shall be perpetuated and the Association as well as all Owners of Lots and their successors shall comply with the Indiana Drainage Code of 1965, and all amendments thereto.

ARTICLE XIV

Mortgagee's Rights

Section 1. Notice of Rights of Mortgagee of a Lot.

Upon written request by a mortgagee to the Association, a mortgagee of a Dwelling shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot of any obligation of the Owner under the Declaration, the By-Laws of the Association or the Articles of Incorporation of the Association. The request for notification can be made by any mortgagee of a Dwelling its successor or assign. The notification shall be sent not later than the 65th day after the occurrence of an uncured default.

Section 2. Rights of First Refusal. Any right of first refusal now or hereafter contained in this Declaration or any amendment or modification hereto or otherwise arising in favor of the Association or certain Owners of Lots shall not apply to or preclude or impair in any way the right of the first mortgagee to (i) foreclose or take title to any Lots or to remedies provided in its mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of a default under the mortgage; or (iii) sell or lease a unit acquired by the mortgagee.

Section 3. Rights of Mortgagee. Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), and seventy-five percent (75%) of the Class A Members have given their prior written approval, the Association shall not:

(a) by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Properties or Common Area or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Dwellings. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties by the Association shall not be deemed a transfer within the meaning of this clause.

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner.

(c) fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

(d) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such Common Area.

Section 4. Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

Section 5. Taxes and Insurance. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are

in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The Association shall duly execute an agreement to such effect in favor of all first mortgagees and shall deliver an original or certified copy of such agreement to all first mortgagees.

Section 6. Insurance Proceeds and Condemnation Awards.

No provision of this Declaration, or any other documents or instrument affecting the title to the Property, Common Area, any Lot or the organization or operation of the Association, shall give a Lot Owner or any other party, priority over any rights of first mortgagees of Lots within the Properties pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or taking of Common Areas.

ARTICLE XV

General Provisions

Section 1. Right of Enforcement: In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them, shall have the right to enforce the covenants conditions and restrictions contained herein, and pursue any and all remedies at law or in equity available under applicable Indiana Law, with or without proving

any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorney fees, costs and expenses incurred as a result thereof. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of any right do so thereafter.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the office of the Recorder of Marion County, Indiana, signed by at least a majority of the then Owners and thereafter by a similar recorded instrument signed by at least seventy-five percent (75%) of such Owners; provided, however, none of the rights of Declarant reserved hereunder may be amended or changed without Declarant's prior written approval. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period, it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions or restrictions of this Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

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Section 3: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4: Annexation of Additional Property.

(a) Additional property may be brought within the jurisdiction of the Association, or made subject to the provisions of this Declaration in the manner provided herein.

Additional land adjacent to the Properties, and owned by the Declarant, may be annexed by the Declarant, without the consent of Owners or Members within five (5) years of the date of this instrument, and said annexation shall be effective upon the Declarant recording an instrument referring to this Declaration, describing the property to be annexed, and submitting said property to the provisions of this Declaration.

Any such annexation shall consist of improvements, which will be of comparable quality in construction, as the existing residential units, and that the density of the amended units will be no greater than the density of the existing units, and provided further, that any such annexation will not adversely affect the use of any recreational facilities which may serve the existing residential units.

(b) The Developer plans to phase the development of a Section of the platted Real Estate and to add-on

subsequent Sections and phases to the Section I. As the Developer determines to continue the expansion of the project to include further property lying to the south and west of Section I, it may acquire another Section and amend the Plat. Upon the add-on of another Section, the Owner's interest and voting control in Shenandoah Homeowner's Association (which holds the fee to the common areas) shall be reduced apportionately to the increased number of platted units.

(c) No change in the interest in the common elements may be affected pursuant to phasing or add-on plan more than seven (7) years after this Declaration becomes effective.

Section 5. Prior Approval. As long as there is a Class B membership, the following actions will require the approval of the initial construction or development lender, said approvals not to be unreasonably withheld: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

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IN WITNESS WHEREOF, Octad, Inc., by Robert W. Halcomb
President, has caused this declaration to be executed this
6th day of February, 1985

OCTAD, INC.
BY: Robert W. Halcomb
Robert W. Halcomb, President

Attest:

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said county and State,
personally appeared Robert W. Halcomb, President of Octad, Inc.,
an Indiana corporation, after having been first duly sworn,
acknowledged the execution of the foregoing Declaration for and
on behalf of said corporation.

Dated this 6th day of February, 1985

Written

Printed

Mark E. Bell
MARK E. BELL
Notary Public

My Commission expires:

SEPT. 3, 1987

This instrument prepared by:

Mark E. Bell, Attorney at Law
220 Merchants Bank Building
Indianapolis, Indiana 46204
(317) 634-0220

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APPROVED THIS 11th
DAY OF March 1985
DECATUR TOWNSHIP ASSESSOR
Charles L. Calverman DRAFTSMAN

EXHIBIT A

Part of the Northeast $\frac{1}{4}$ of Section 35, and a Part of the West $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 36, All in Township 15 North, Range 2 East, Marion County, Indiana, Described As Follows: Beginning at the Southeast Corner of the Northeast $\frac{1}{4}$ of said Section 35; Thence South 89 degrees 18' 03" West 678.00 Feet along the South Line of the Northeast $\frac{1}{4}$ of said Section 35; Thence North 25 degrees 57' 20" East 299.29 Feet; Thence North 89 degrees 18' 03" East 17.00 Feet; Thence North 18 degrees 46' 45" East 108.71 Feet; Thence North 15 Degrees 41' 28" West 51.76 Feet; Thence North 11 degrees 09' 18" East 106.57 Feet; Thence North 46 degrees 30' 16" West 350.00 Feet; Thence North 21 degrees 44' 02" East 91.52 Feet; Thence North 7 degrees 51' 14" West 75.67 Feet; Thence North 88 degrees 51' 12" East 723.83 Feet; Thence South 0 degrees 00' 00" East 933.26 Feet to the South Line of the Northwest $\frac{1}{4}$ of said Section 36; Thence South 87 degrees 59' 24" West 5.00 Feet along said South Line to The Point of Beginning and Containing 12.976 Acres, More or less.

Subject To All Easements Of Record.

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