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**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**OF**  
**SOUTHPORT GREEN**  
**PROPERTY OWNERSHIP**

02/19/97 12:12PM JOHN W. ROBERTS MANITOWOC COUNTY RECORDER MAC 84.00 PAGES: 38  
Inst # 1997-0028771

APPROVED THIS 16<sup>TH</sup>  
JAN 1997  
TOWNSHIP ACCORD  
DRAFT

**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**SOUTHPORT GREEN**  
**PROPERTY OWNERSHIP**

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Exhibit "A" The Real Estate

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
SOUTHPORT GREEN PROPERTY OWNERSHIP**

THIS DECLARATION made this 6<sup>th</sup> day of JANUARY, 1997, by Southport Road Associates Limited Partnership, an Indiana limited partnership ("Declarant").

**WITNESSETH:**

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

A. Declarant is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Real Estate").

B. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

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

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Applicable Date" means the date determined pursuant to subparagraph (b) of Paragraph 9 of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation (also herein the "Board").

(d) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(e) "Common Area" means the ground designated as such upon the Plat of Southport Green.

(f) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and all sums lawfully assessed against the Members of the Corporation.

(g) "Corporation" means Southport Green Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Paragraph 9 of this Declaration; such Corporation being more particularly described in Paragraph 9 of this Declaration.

(h) "Declarant" shall mean and refer to Southport Road Associates Limited Partnership, 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 Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(i) "Dwelling Unit" means one of the living units located upon a Lot.

(j) "Lot" means any plot of ground designated as such upon any Recorded Plat(s) and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(k) "Member" means a member of the Corporation.

(l) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(m) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(n) "Plat" means any plat of a portion of the Real Estate depicting thereon Lots and Common Areas that has been (i) prepared and certified by registered surveyor in the State of Indiana; (ii) executed by the owner of the Real Estate that is the subject of the plat; and (iii) recorded in the Office of the Recorder of Marion County, Indiana.

(o) "Southport Green" means the name by which the Real Estate, which is the subject of this Declaration, shall be known.

2. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Southport Green. Southport Green consists of one hundred four (104) Lots numbered 1 through 104 inclusive, together with the Common Area as designated on the Plat. The Common Area and the size of the Lots are as designated on the Recorded Plat(s). The legal description for each Lot in Southport Green shall be as follows:

Lot \_\_\_\_\_ in Southport Green, a subdivision in Marion County, Indiana as per plat thereof recorded \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the Office of the Recorder of Marion County, Indiana.

4. Lot Boundaries. The boundaries of each Lot shall be as shown on the Recorded Plat(s).

5. Common Area. Common Area includes all the area designated as such on the Recorded Plat(s), including, but not limited to, the lakes, ponds, drainage areas and recreational areas, if any, but excluding all Lots. It may also include all streets, roads, sidewalks, parking areas and similar areas, designated as such on the Recorded Plat(s) which have been or are hereafter constructed for the purpose of providing common access to any or all lots. However, the Common Area does not include any portion of the Real Estate that has been donated or dedicated to the public and accepted for maintenance by the appropriate public agency. Declarant has the right, but not the obligation, to construct recreational facilities in any of the Common Area, and if such facilities are constructed, such facilities shall be part of the Common Area.

6. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the

Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members, and by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 10, including but not limited to the right of the Corporation to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and the right of the Corporation to suspend the voting rights and right to use recreational facilities by an Owner (i) for any period during which any assessment against a Lot owned by such Owner remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of the Corporation's rules and regulations.

(c) The Common Area, including all real and personal property subject to easements in the Common Area, shall be conveyed to or owned by the Corporation on the Applicable Date or earlier; provided, however, that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate (including, but not limited to construction of lakes and recreational facilities) at any time prior to the Applicable Date.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his/her right of enjoyment, and use of the Common Area and facilities to members of his/her family, his/her tenants or contract purchasers who reside on any Lot.

8. Easements. Unless otherwise provided for in this Declaration, each Owner shall have an easement in common with each other Owner to use all sidewalks, roads, streets, pipes, wires, ducts, cables, conduits, utility lines and other facilities, if any, located in the Common Area. Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.



An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area and Lots to perform its duties. Except in the case of an emergency, reasonable notice shall be given the Lot Owner.

The Board of Directors and Declarant, even after the Common Area has been conveyed to the Corporation, shall have the right to grant an easement in any Common Area to the appropriate public agency for a public right-of-way and/or for utilities.

9. Corporation: Membership: Voting: Functions

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his/her ownership of a Lot ceases at which time such membership shall terminate and will be transferred to the new Owner of such Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he/she realizes upon such security, at which time he/she shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member

shall be entitled to ten (10) for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the resident agent of the Corporation, (ii) the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or (iii) September 1, 2006.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

10. Board of Directors

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he/she is, or is deemed in accordance with this Declaration to be, an Owner, or is a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 10.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of three persons appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall hereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration,

the Articles, the Bylaws or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he/she is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) 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 or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 10, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date (which, if appropriate, may be a special meeting) one (1) member of the Board of Directors shall be elected for a three (3) year term, one (1) for a two (2) year term, and one (1) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. If such election is at a special meeting, the Directors elected shall serve for the applicable period plus the time from the special meeting to the first annual meeting. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his/her election and until his/her successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 10 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 10. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his/her successor is elected and qualified. At the first annual meeting following

any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his/her successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his/her successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners) and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) Landscaping, maintenance and upkeep of the Common Area;
- (ii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (iii) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (iv) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

- (v) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (vii) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area.

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

- (i) To employ a Managing Agent to assist the Board in performing its duties (such Managing Agent may be Declarant or firms owned by or affiliated with Declarant);
- (ii) To purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (iii) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (vi) To open and maintain a bank account or accounts in the name of the Corporation;

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

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5,000.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (i) Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget; and
- (iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

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

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been

made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his/her heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he/she is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him/her in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his/her duties. The Corporation shall also reimburse any such Director 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 was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his/her duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he/she failed or neglected to attend a meeting or meetings of the Board of Directors.

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

11. Initial Management. The Initial Board of Directors has entered or will hereafter enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term not to exceed three (3) years with either party

having the right to terminate upon ninety (90) days' notice under which Declarant (or such affiliate of Declarant as appropriate) will provide supervision, management and maintenance of the Common Area, and in general, perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years. Such management agreement is or will be subject to termination by Declarant (or its affiliate as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or its affiliate as appropriate) is in effect, Declarant (or its affiliate as appropriate) shall have and Declarant hereby reserves to itself (or to its affiliate as appropriate), the exclusive right to manage the Real Estate and perform all the functions of the Corporation.

12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his/her proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his/her Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

13. Utilities. Each Owner shall pay for his/her own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

14. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Each Owner shall be responsible for maintaining and keeping his/her Lot, Dwelling Unit and all other structural improvements located on his/her Lot in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The



obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his/her family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, 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 Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the Regular Assessment to which such Owner's Lot is subject.

If any Owner shall fail to maintain and keep his/her Lot, Dwelling Unit and other structural improvements located on his/her Lot in a good, clean and sanitary condition as determined by the Board of Directors, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's Lot.

So long as the Real Estate is subject to this Declaration each Owner, by his/her acceptance of a deed to any Lot, irrevocably grants to the Corporation, 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 maintenance, cleaning, repair, landscaping or other work contemplated herein.

15. Architectural Control

(a) The Architectural Control Committee. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Control Committee consisting of three (3) or more persons. Until the Applicable Date, the Architectural Control Committee shall be the Initial Board of Directors. After the Applicable Date, the Architectural Control Committee shall be appointed by the Board of Directors and may be different than or the same as the Board of Directors. After the Applicable Date, the Architectural Control Committee members shall serve for a term of two (2) years. If any member of the Architectural Control Committee shall resign prior to the expiration of such term,

the remaining members of the Architectural Control Committee shall select a successor. After the Applicable Date, each such Architectural Control Committee member shall be an Owner of a Lot in Southport Green. A majority of the Architectural Control may designate one of the members to act on behalf of the Architectural Control Committee. No member shall be entitled to compensation.

(b) Purposes. The Architectural Control Committee shall regulate the external design, appearance, use, location and maintenance of the Real Estate (Common Area, Dwelling Units and Lots) and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements, the normal topography and vegetation.

(c) Conditions. No improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling Unit or other improvement thereon shall be made or done without the prior written approval of the Architectural Control Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the plans by the Architectural Control Committee.

(d) Procedures. An Owner desiring to erect, place or alter a Dwelling Unit, building, fence or wall on any Lot shall submit to the Architectural Control Committee construction plans, specifications and a site plan sufficient for the purpose of allowing the Architectural Control Committee to understand and visualize the proposed improvement and/or landscaping. Within thirty (30) days of receipt of said plans and specifications, the Architectural Control Committee shall, in writing, approve or disapprove said plans and specifications by a majority vote. If disapproval is given, the Architectural Control Committee shall set forth in writing the reasons for such disapproval and the Owner shall have the right to again submit revised plans and specifications for approval. After a second disapproval, an Owner may appeal the decision of the Architectural Control Committee to the Board of Directors which may reverse or modify such decision by a majority vote. An Owner who builds more than one (1) Dwelling Unit may submit representative plans and specifications for each type of unit to be built. Approval by the Architectural Control Committee of the representative plans and specifications shall constitute approval for all units of that type which do not vary in exterior appearance (except color), provided the site plan for each Dwelling unit is in accordance with the setbacks and other restrictions on the Recorded Plat.

16. Assessments

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the combined votes of all Class A and Class B Members entitled to vote either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area that must be repaired and replaced on a periodic basis, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved

budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget, as adopted by the Owners, shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment, against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots on the Real Estate. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his/her respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance monthly, quarterly or annually as determined by the Board with the first payment due on the first day of the first month of each fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, the Owners may elect to pay assessments semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year,

or

- (ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his/her Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his/her Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his/her Lot or any interest therein, shall not relieve or release such Owner or his/her successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his/her successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 17 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and with the approval of two-thirds (2/3) of all of the combined Class A and

Class B Members entitled to vote in person or by proxy at a meeting duly called for such purpose, unless otherwise provided in this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is selling Lots and Dwelling Units are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the Bylaws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 16.

Prior to the Applicable Date, the Corporation will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent or Managing Agent") in accordance with the provisions of Paragraph 11 of this Declaration. So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Management Agent shall guarantee that until December 31, 1997, the yearly Regular Assessment shall not exceed \$100.00 (the "Guaranteed Charge"). After December 31, 1997, the yearly Regular Assessment shall not exceed the amount of the Guaranteed Charge (\$100.00), plus ten percent (10%). From and after December 31, 1997, the Regular Assessment may be increased above ten percent (10%) only by a vote of two-thirds of the votes of all Class A and Class B Members, voting in person or by proxy, at a meeting duly called for such purpose. Such yearly charge shall, during such guaranteed period, entirely defray the Owner's obligation for his/her share of Common Expenses or shall be the Owner's entire Regular Assessment. Management Agent shall be responsible for any

deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund.

Ten percent (10%) of the Regular Assessment prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and if required, applied to the replacement of Common Areas. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Written notice of any meeting called for the purpose of taking any action with respect to Regular Assessments after December 31, 1997 or the imposition of Special Assessments shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of all Class A and Class B Members 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.

Both Regular and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on January 1, 1997 for all Lots in Section 1 of Southport Green and thirty (30) days following completion of the Lots and the availability of such Lots for sale in Section 2 of Southport Green (Commencement Date). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next monthly payment is due. Thereafter, payment of the Regular Assessment shall be paid monthly beginning with the first day of the next month.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 11 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself/herself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him/her. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. 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 ten percent (10%) per annum and the Corporation may bring an action at law against the Owner personally obligated to pay the same and shall be entitled to collect the costs of the assessment, interest thereon and reasonable attorneys' fees for such action. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit 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 at the rate of ten percent (10%).

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the



lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special 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).

17. Mortgages and Unpaid Assessments.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his/her Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee, as may be otherwise required by this Declaration, the Bylaws 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 Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be

binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

18. Insurance.

(a) Casualty Insurance. The Corporation may purchase an insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area, unless the Board determines that a lesser amount of insurance is appropriate.

All proceeds payable as a result of property losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate.

Each Owner shall be solely responsible for loss or damage to his/her Dwelling Unit and the contents thereof, however caused, and his/her personal property stored elsewhere on the Real Estate and the Corporation shall have no liability to the Owner for such loss or damage. Each Owner shall be solely responsible for obtaining his/her own insurance to cover any such loss and risk.

(b) Public Liability Insurance. The Corporation shall also purchase a public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time.

(c) Other Insurance. The Corporation may also obtain any other insurance as the Board of Directors shall from time to time deem necessary.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.

19. Casualty and Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction.

20. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) Each Lot will be a residential lot used exclusively for one single-family residence and one (1) free standing storage building. Other than a permitted storage building as herein described, no structure of a temporary nature or temporary or permanent building of any kind not connected to the Dwelling

Unit, including but not limited to any trailer, tent, basement, shack, garage, barn, or dog house shall be erected, altered, placed or permitted on any Lot.

(b) The minimum square footage of finished living space of each Dwelling Unit constructed, exclusive of garage, carports, open porches or basements below ground level, shall be 1,400 square feet of main floor area for a one-story Dwelling Unit or 800 square feet of main floor area if higher than one-story with any Dwelling Unit higher than one story having a minimum total finished living space of 1,400 square feet. No storage building shall be erected, altered, placed or permitted on any Lot unless it has no less than 80 square feet of floor area and no more than 150 square feet of floor area on one story. No two or more story storage buildings shall be permitted.

(c) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his/her Dwelling Unit or on his/her Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No noxious or offensive activity shall be carried on or upon any lot. Nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(e) No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that domestic animals such as dogs, cats or other normal and usual household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. Such pets shall be kept reasonably quiet and contained either on a leash or in a fenced area whenever outside. The location and design of all such fenced run areas shall be subject to the review and approval of the Architectural Control Committee.

(f) All rubbish, trash or garbage shall be stored in closed sanitary containers, shall be regularly removed from the premises, and shall not be allowed to accumulate. No Owner shall burn or permit the burning out-of-doors of rubbish, trash or garbage. All Dwelling Units shall be equipped with a garbage disposal unit.

(g) No industry, trade, business or other commercial or for profit activity shall be conducted, practiced or permitted on the Real Estate; provided, however, that home professional pursuits without employees, visits by the public, product storage or other activities not consistent with a wholly residential community shall be permissible.

No activities, including not for profit, altruistic, religious or related types of activities, which create traffic, noise, or other disruptions not usual to or consistent with a wholly residential community shall be permissible.

Notwithstanding the foregoing, any use or activity otherwise permissible under this Section shall be permissible only if all of the following conditions are met: (i) there is no significant increase in traffic in and around the Real Estate as a result of such use or activity; (ii) no signs, billboards or other advertising materials are displayed or posted on the exterior of any Dwelling Unit, on any Lot or anywhere else on the Real Estate; (iii) the use or activity does not violate existing zoning laws; (iv) the use or activity does not violate any of the other provisions of this Declaration; (v) the owner of the Dwelling Unit shall maintain all necessary casualty and public liability insurance; and (vi) such use or activity is conducted during reasonable hours.

(h) No trailer of any type, camper, motorhome, recreational vehicle, truck (other than 3/4 ton or less, vans and pickup trucks), school bus, boat, or any disabled, inoperative or unlicensed vehicle of any type including private passenger cars, vans and pickup trucks shall be stored or repaired in any manner on any Lot (unless such vehicle is kept in the garage) or in front of the Lot on the public street. For purposes of this covenant, storage shall consist of the continuous parking of the vehicle without movement for a period of seven (7) days or noncontinuous parking of the vehicle at any time during the day or night for over thirty-three percent (33%) of the days in any thirty (30) day period.

(i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.

(j) No Owner shall be allowed to plant trees, landscape, do any gardening in any of the Common Area, remove or clear any trees, bushes, growth or vegetation from the Common Area, or build or place any kind of improvement on any Common Area, except with express permission from the Board.

- (k) The Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.
- (l) No Owner may rent or lease his/her Dwelling Unit for transient or hotel purposes.
- (m) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.
- (n) No Dwelling Unit shall be erected, altered, placed or permitted on any Lot unless it has at least a two-car attached garage. No detached garages, nor open-sided carports shall be permitted. Storage buildings shall not be used as garages.
- (o) No Dwelling Unit shall be erected, altered, placed or permitted nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the Plat. No storage building shall be erected, altered, placed or permitted on any Lot unless the rear wall of such storage building is placed within five (5) feet of the rear lot line or easement located along the rear of said Lot.
- (p) No driveways or sidewalks shall be altered, placed or permitted on any Lot unless of hard surface constructed in a manner befitting other lots in Southport Green. Said decision and judgment on suitability of construction and maintenance of driveways shall be under the control of the Architectural Control Committee.
- (q) No fence, wall or hedge shall be erected, altered, placed or permitted on any Lot closer to the front lot line than the rear wall line of the Dwelling Unit (extended to the side lot lines), it being intended that only backyard should have fences, walls or hedges. Side yard and front yards shall not have fences, walls or hedges of any type. Fences installed (i) shall comply with the standards of the Dwelling District Zoning Ordinance, (ii) shall be shadow box (painted or stained the same color as the house trim), black vinyl covered chain link, black iron or aluminum picket style (unless otherwise approved by the Architectural Control Committee), and (iii) shall otherwise meet the approval of the

Architectural Control Committee and other requirements as established by the Declaration. Notwithstanding the foregoing, the rear yard fences in all Lots that abut Southport Road shall be of the same style as determined and approved by the Architectural Control Committee.

(r) All storage buildings shall be constructed of new materials, shall be architecturally compatible with the Dwelling Unit and shall be constructed with the same or equivalent materials including exterior finish and colors as the Dwelling Unit. All storage buildings shall be subject to the approval of the Architectural Control Committee.

(s) Upon completion of the construction of a Dwelling Unit, the Owner is required to plant at least two deciduous shade (overstory) trees (one (1) each in the front yard and backyard) and one (1) deciduous ornamental (understory) tree in the front yard of each Lot. At least eight (8) shrubs shall be installed as foundation plantings. Front yards shall be sodded and all other portions of the yard shall be seeded and covered with straw.

(t) The street number shall be installed on the front of each Dwelling Unit using at least 3 inch high numbers. All mailboxes shall be of a common design and painted to conform to a common scheme as determined and approved by the Architectural Control Committee.

(u) No sign of any kind shall be displayed on any Lot except one (1) sign of not more than 5 square feet advertising the property for sale or rent or signs used by a builder or developer to advertise during the construction and sales period.

(v) No shrub, planting, tree or other obstruction which obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property line and a line connecting them at 25 feet from the intersection of the street lines or in the case of a rounded property corner from the intersection of the street lines extended.

(w) No above ground pools other than children's wading pools of a size not more than 10 feet in diameter and 2 feet in depth shall be erected or permitted upon any Lot. No above ground hot tubs or spas visible from any public street shall be erected or permitted on any Lot.

(x) No towers, antennas, receivers, satellite dishes (more than 20 inches in diameter) or similar apparatus shall be placed, kept or built on any Lot. Satellite dishes of less than 20 inches in diameter must be installed so as not to be readily visible from any public street.

(y) Solar heat panels are not permitted unless approved by the Architectural Control Committee.

(z) No outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted either above or below ground.

(aa) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near any lake or retention pond. No Owner of any Lot shall do or permit to be done any action or activity which could result in the pollution of any lake or retention pond, diversion of water, change in elevation of the water level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper lake management or otherwise impair or interfere with the use of the lake for drainage and related purposes.

No swimming, boating, fishing, other recreational activities or activities of any kind shall be allowed on, in, near or around any lake or retention pond.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant (or any person or entity constructing Dwelling Units on Lots for resale, which for the purposes of this paragraph shall be considered to be included in Declarant) shall have the right to maintain a construction trailer on any Lot owned by Declarant and in addition shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, maintaining model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices, business offices and construction trailers. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated



by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

21. Amendment of Declaration.

(a) Generally. 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 duly called and held in accordance with the provisions of the Bylaws.
- (iv) Adoption. Any proposed amendment to this Declaration must be approved (i) until September 1, 2016, by a vote of not less than ninety percent (90%) in the aggregate of the votes of all Owners and (ii) after September 1, 2016, by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit 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 in accordance with the provisions hereof.
- (v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance to be maintained by the Corporation, or (3) the

provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 15 of this Declaration establishing the Architectural Control Committee and providing for its functions, or (5) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Lot, or (6) the provisions of paragraph 21(f) of this Declaration with respect to amendments solely by Declarant without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

- (vi) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, 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 requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Association, the Veteran's 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 include any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical, typographical or other errors in this Declaration or any Exhibit hereto or any supplemental or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 21 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 or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to act pursuant to rights reserved or granted under this Paragraph 21 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

22. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Real Estate in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

23. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his/her negligence or by that of any member of his/her family or his/her or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

24. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

25. Waiver. No Owner may exempt himself/herself from liability for his/her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his/her Lot.

26. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

27. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

28. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

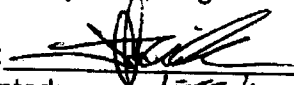
29. The Plat. The Plat of Southport Green is incorporated into this Declaration by reference and has been filed in the Office of the Recorder of Marion County, Indiana, as of the 19<sup>th</sup> day of February, 1997, as Instrument No. 1997-0028770.

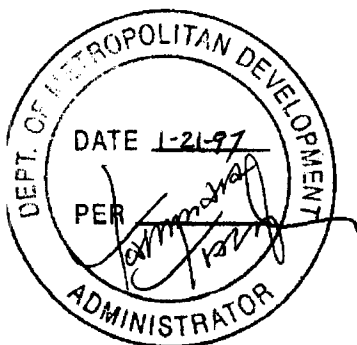
30. Annexation. Additional real estate may be subjected to this Declaration with the approval of two-thirds (2/3) of all of the Class A and Class B votes. Such additional real estate shall be subjected to this Declaration by the recording of a plat and appropriate amendment of or supplement to this Declaration.

**IN WITNESS WHEREOF**, the undersigned has caused this Declaration to be executed the day and year first above written.

SOUTHPORT ROAD ASSOCIATES LIMITED  
PARTNERSHIP, an Indiana limited partnership

By: Mainstay, Inc, its general partner

By:   
Printed: JEFF W. MILLER  
Title: V.P.



RECORDED  
MAR 2 1997  
MARION COUNTY RECORDERS OFFICE  
075852 FEB 19 97  
FOR TRANSFER

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared JEFF W. MILLER, by me known and by me known to be the \_\_\_\_\_ of Mainstay, Inc., the general partner of Southport Road Associates Limited Partnership, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Southport Green Property Ownership" on behalf of said partnership.

Witness my hand and Notarial Seal this 6<sup>th</sup> day of JANUARY, 1997.

Steve B. Granner  
Notary Public

STEVEN B. GRANNER  
(Printed Signature)

My Commission Expires:  
OCT. 14, 2000

My County of Residence:  
MARION



This instrument prepared by Philip A. Nicely, Attorney-at-Law, Bose McKinney & Evans, 8888 Keystone Crossing, Suite 1201, Indianapolis, Indiana 46240.

Part of the Southeast Quarter of Section 11, Township 14 North, Range 4 East in Marion County, Indiana being more particularly described as follows:

Commencing at the Southeast corner of said Southeast Quarter Section; thence North 90 degrees 00 minutes 00 seconds West (assumed bearing) along the South line of said Southeast Quarter Section 754.28 feet to the POINT OF BEGINNING; thence continuing North 90 degrees 00 minutes 00 seconds West along said South line 598.58 feet to the Southwest corner of the East Half of said Quarter Section; thence North 01 degrees 35 minutes 35 seconds East along the West line of said Half Quarter Section 1245.97 feet; thence North 88 degrees 24 minutes 25 seconds West 10.00 feet; thence North 01 degrees 35 minutes 35 seconds East 50.00 feet; thence South 88 degrees 24 minutes 25 seconds East 10.00 feet to a point on said West line; thence North 01 degrees 35 minutes 35 seconds East along said West line 740.93 feet; thence North 88 degrees 24 minutes 25 seconds West 10.00 feet; thence North 01 degrees 35 minutes 35 seconds East 50.00 feet; thence South 88 degrees 24 minutes 25 seconds East 10.00 feet to a point on said West line; thence North 01 degrees 35 minutes 35 seconds East along said West line 594.07 feet to the Northwest corner of the East Half of the Southeast Quarter Section; thence South 89 degrees 56 minutes 53 seconds East along the North line of said Half Quarter Section 687.28 feet to a point being North 89 degrees 56 minutes 53 seconds West 650.70 feet from the Northeast corner of said Half Quarter Section; thence South 01 degrees 16 minutes 33 seconds West parallel with the East line of said Quarter Section 1606.51 feet; thence South 89 degrees 42 minutes 18 seconds East 252.64 feet; thence South 01 degrees 16 minutes 44 seconds West 670.85 feet; thence North 90 degrees 00 minutes 00 seconds West parallel with said South line 356.20 feet; thence South 01 degrees 16 minutes 33 seconds West parallel with said East line 401.32 feet to the place of beginning, containing 45.699 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

Exhibit "A"

METES/20800COV