

9124638

CORRECTION OF FIRST AMENDMENT TO PLAT COVENANTS OF  
SPRINGMILL PONDS SECTIONS I AND II

This Correction of the First Amendment to the Plat Covenants of Springmill Ponds Sections I and II which First Amendment was recorded as Instrument No. 91-09000 in the Office of the Recorder of Hamilton County, Indiana is hereby amended as follows:

The introductory paragraph of the First Amendment shall be corrected to read:

"This First Amendment to the Plat Covenants of Springmill Ponds Sections I and II recorded as Instrument No. 90-24843 and Instrument No. 90-24844 respectively, in the Office of the Recorder of Hamilton County, Indiana and corrected by Surveyor's Certificate of Correction dated November 30, 1990 and recorded as Instrument Nos. 90-29698 and 90-29699 are hereby amended as follows."

All other terms and conditions of the First Amendment to Plat Covenants of Springmill Ponds Sections I and II not amended by this Correction shall remain in full force and effect and are incorporated as if fully set forth herein.

IN WITNESS WHEREOF, the undersigned, as owner of the above-described real estate, has executed this Correction of the First Amendment to Plat Covenants of Springmill Ponds Sections I and II this 17<sup>th</sup> day of September, 1991.

DART DEVELOPMENT, INC.

By: David J. Freiburger  
David J. Freiburger, President

STATE OF INDIANA )  
COUNTY OF Hamilton ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David J. Freiburger, the President of DART DEVELOPMENT, INC., an Indiana corporation, who acknowledged the execution of this instrument as his voluntary act and deed as such officer for and on behalf of said corporation for the uses and purposes therein set forth.

Witness my signature and Notary Seal this 17 day of September, 1991.

My Commission Expires: 5-29-95  
My County of Residence: Hamilton

LISA A. M...  
Notary Public  
(Printed Name)

This instrument Recorded 9-18 1991  
Sharon K. Cherry, Recorder, Hamilton County, Indiana

This instrument was prepared by T. Jay Curtis, COOTS, HENKE & WHEELER, 255 East Carmel Drive, Carmel, Indiana 46032.

m:edo/dart.c

INSTR #

9124638

SECOND AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS  
OF SPRINGMILL PONDS

This Second Amendment made this 17<sup>th</sup> day of September, 1991 by Springmill Ponds Homeowners Association, Inc. ("Corporation"), an Indiana not-for-profit corporation, witnesses the following:

WHEREAS, Dart Development, Inc. ("Declarant"), an Indiana corporation, recorded the Declaration of Covenants and Restrictions of Springmill Ponds on the 1st day of October, 1990, as Instrument No. 90-24115 in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Corporation recorded the First Amendment to Declaration of Covenants and Restrictions of Springmill Ponds on the 19th day of April, 1991, as Instrument No. 91-08999 in the office of Recorder of Hamilton County, Indiana; and

WHEREAS, the Declarant recorded the Plat Covenants of Springmill Ponds Sections I and II as Instrument Nos. 90-24843 and 90-24844 respectively, in the Office of the Recorder of Hamilton County, Indiana and corrected by Surveyor's Certificate of Correction dated November 30, 1990, and recorded as Instrument Nos. 90-29698 and 90-29699, respectively, in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Corporation desires to amend certain provisions of the Declaration of Covenants and Restrictions ("Declarations") pursuant to said Declarations and the By-Laws of the Corporation.

NOW, THEREFORE, the Declarations are amended as follows:

1. Article VIII, Section 3, Paragraph A, regarding minimum living space areas is amended to read as follows:

"A. Minimum Living Space Areas. The minimum square footage of living space of Dwelling Units constructed on the Lots shall be as specified in any recorded subdivision plats of the Real Estate. Additionally, the minimum width of any house built on any Lot must be at least 55 feet in width, including the attached garage and excluding any fireplaces, porches, terraces, bay windows or other appurtenances."

2. Article VIII, Section 3, Paragraph E, regarding the construction of garages is amended to read as follows:

"E. Heating Plants and Garages. Every Dwelling Unit located on the Real Estate must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-around human habitation of the Dwelling Unit. Every Dwelling Unit located on the Real Estate must have at least a two (2) car attached garage, of the same architectural design and materials as the Dwelling Unit. Additionally, an attached side-load garage cannot extend past the front line of the principal residence, excluding porches, terraces, and bay windows, into the front yard more than 14 feet for a two (2) car garage or more than 19 feet for a three (3) car garage. An attached front-load garage cannot extend past the front line of the principal residence, excluding porches, terraces, and bay windows, into the front yard more than 14 feet."

3. Article VIII, Section 3, is amended to include a new paragraph J, regarding fences to read as follows:

"J. Fences, Walls, and Screening Structure. In order to aid in the preservation of the aesthetic appearance within the real estate and to help maintain an open view of the natural surroundings, the following restrictions and limitations will apply to rear yard or side yard fences, walls or screening structures:

The Instrument Recorded  
Dawn K. Cherry, Recorder, Hamilton County, Indiana  
9-18-91

INSR # 9124639

(i) No rear yard or side yard fence, wall or screening structure may exceed 48 inches in height on any Lot, except on Lots abutting or adjoining the common area surrounding the four ponds, which includes Lots numbered 1, 2, 3, 4, 5, 40, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 113, 114, 115, 116, 117, 139, 140, 141, 142, 143, 144, 166, 167, 168, 169, 170, 171, 172, 173, 174 and 175 in Sections 1 thru 6 as platted in Springmill Ponds subdivision; which fence, wall or screening structure may not exceed 42 inches in height. In both cases, an exception will be made if required by statute or ordinance in conjunction with a specified use of the property.

(ii) The material and style used for rear yard or side yard fences or screening structures on Lots abutting or adjoining the common area surrounding the four ponds, which includes Lots numbered 1, 2, 3, 4, 5, 40, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 113, 114, 115, 116, 117, 139, 140, 141, 142, 143, 144, 166, 167, 168, 169, 170, 171, 172, 173, 174 and 175 in Sections 1 thru 6 as platted in Springmill Ponds subdivision shall be limited to a see through material (i.e. vinyl coated chain link [green, brown or black color] including rails and posts, split rail, ornamental iron or aluminum [black color], or "Cape Cod" or vertical spaced wood picket). The material and style used for rear yard or side yard fences or screening structures on all other Lots, shall be limited to: vinyl coated chain link [green, brown or black color] including rails and posts, split rail, ornamental iron or aluminum [black color], "Cape Cod" or vertical spaced wood picket, vertical wood shadow box, and vertical wood picket. Hidden electronic fencing will be allowed on any Lot. No stockade, ox-bow, basket weave, horizontal wood, galvanized chain link, wire, solid aluminum, or PVC fences or screening structures will be allowed on any Lot and no portable or modular kennel or kennel systems will be allowed on any Lot.

IN WITNESS WHEREOF, the Corporation has executed this Amendment as of the date first above written.

SPRINGMILL PONDS HOMEOWNERS  
ASSOCIATION, INC.

By: David J. Freiburger  
David J. Freiburger, President

ATTEST:

By: John Jeffrey Kennedy  
John Jeffrey Kennedy,  
Secretary/Treasurer

912 4639

STATE OF INDIANA )  
COUNTY OF Hamilton ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David J. Freiburger, President and John Jeffrey Kennally, Secretary/Treasurer, of SPRINGMILL PONDS ECUMENICAL ASSOCIATION, INC., an Indiana corporation, who acknowledged the execution of this instrument as their voluntary act and deed as such officer for and on behalf of said corporation for the uses and purposes therein set forth.

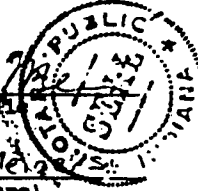
Witness my signature and Notary Seal this 17 day of September, 1991.

My Commission Expires:

5-29-95

My County of Residence:

Hamilton

  
Lisa A. Metz  
Notary Public  
LISA A. METZ  
(Printed Name)

This Instrument Prepared 9-18 1991  
Sharon K. Chery, Recorder, Hamilton County, Indiana

SEP 18 AM 11:22

9124639  
This instrument was prepared by E. Davis Coots, COOTS, HENKE & WHEELER, 255 East Carmel Drive, Carmel, Indiana 46032.

m:edc/dart.e

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FIRST AMENDMENT TO  
DECLARATION OF COVENANTS AND RESTRICTIONS  
OF SPRINGMILL PONDS

RECEIVED  
HAMILTON CO. REC'D  
APR 19 1991  
3:30 PM

This Amendment made this 19 day of April, 1991  
by Springmill Ponds Homeowners Association, Inc. ("Corporation"), an  
Indiana not-for-profit corporation, witnesses the following:

WHEREAS, Dart Development, Inc. ("Declarant"), an Indiana corporation, recorded the Declaration of Covenants and Restrictions of Springmill Ponds on the 1st day of October, 1990, as Instrument No. 90-24115 in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Declarant recorded the Plat Covenants of Springmill Ponds Sections I and II as Instrument No. 90-24844 in the Office of the Recorder of Hamilton County, Indiana and corrected by Surveyor's Certificate of Correction dated November 30, 1990 and recorded as Instrument No. 90-29698 and 90-29699, in the Office of the Recorder of Hamilton County, Indiana; and

WHEREAS, the Corporation desires to amend certain provisions of the Declaration of Covenants and Restrictions ("Declarations") pursuant to said Declarations and the By-Laws of the Corporation.

NOW, THEREFORE, the Covenants are amended as follows:

Article V, Section 6, regarding duties of the Board of Directors is amended to read as follows:

Section 6. 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 Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the 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:

- (a) protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

This Instrument Recorded 4-19 1991  
Susan K. Cherry, Recorder, Hamilton County, IN

INSTR. # 9108999

- (b) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies) and snow removal from the Street; streets within the Real Estate (if the appropriate governmental authority exercising jurisdiction over such streets is unable or unwilling to provide such snow removal);
- (c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;
- (d) assignment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (e) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
- (f) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (g) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (h) procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (i) paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas;
- (j) procuring weekly trash removal services for the benefit of the Owners for which services the Owners may be billed directly; and
- (k) all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws, the Act, or any recorded subdivision plat of the Real Estate, whether heretofore or hereafter recorded.

Article VIII, Section 3, paragraph B, subparagraph (vii) is deleted from the Covenants. Therefore, Article VIII, Section 3, paragraph B is amended to read as follows:

**B. Maintenance of Lots and Improvements.** The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds and, in any event, not less frequently than once each month during the months of April through October, inclusive, of each year;

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- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iv) Cut down and remove dead trees;
- (v) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

Article XIII, Section 1, paragraph (j) is amended to read as follows:

- (j) Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the lakes or ponds to be installed on the Real Estate, as shown on the Site plan, are and will be an integral part of the storm water drainage system serving the Real Estate and are intended to be used for such purpose and primarily as visual and aesthetic amenities and not as recreational amenities. Accordingly, no use shall be made of such lakes or ponds which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing or ice skating shall be permitted in or on said lakes or ponds. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lakes or ponds except the Corporation may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shores of such lake or ponds adjacent to an Owner's Lot by the Owner thereof and his invitee guests and family shall be permitted subject to obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. The Corporation shall be responsible for the maintenance of the lakes or ponds and the banks of the lakes or ponds above the water level to the lot lines. The maintenance costs of the lakes or ponds and such banks shall be assessed as an assessment against all Lots subject to assessment as part of the Common Expenses. Except for the right of the Declarant to build a wood deck and pier on what is identified on the primary plat of Springmill Ponds as Pond No. 4, between what is identified as Lot No. 113 to the south and Lot No. 166 to the north, adjacent to the pool and tennis court area; no dock, pier, wall or other structure may be extended into the lakes or ponds. Except for such loss or damage as may result from the action of natural forces, the Corporation or its agents in the course of maintaining the lakes or ponds and the adjoining banks, each Owner of a Lot abutting the lakes or ponds shall indemnify and hold harmless the Corporation and each other Owner against all loss or damage incurred as a result of injury to any person or damage to any property, or as a result of any other cause, arising from or related to use of, or access to, the lakes or ponds by any person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any person with respect to any damage to any Lot resulting from the lakes or ponds or the proximity of a Lot thereto, including loss or damage from erosion.

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IN WITNESS WHEREOF, the Corporation has executed this Amendment as of the date first above written.

SPRINGHILL PONDS HOMEOWNERS ASSOCIATION, INC.

By: David J. Freiburger  
David J. Freiburger, President

ATTEST:

John Jeffrey Kennelly  
John Jeffrey Kennelly,  
Secretary/Treasurer

STATE OF INDIANA )  
COUNTY OF Hendricks ) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David J. Freiburger, President and John Jeffrey Kennelly, Secretary/Treasurer, of SPRINGHILL PONDS HOMEOWNERS ASSOCIATION, INC., an Indiana corporation, who acknowledged the execution of this instrument as their voluntary act and deed as such officers for and on behalf of said corporation for the uses and purposes therein set forth.

Witness my signature and Notary Seal this 19th day of April, 1991.

My Commission Expires:  
6-18-93

My County of Residence:  
Hendricks

Sharon A. Tatro  
Notary Public  
Sharon A. Tatro  
(Printed Name)

The instrument recorded 4-19 1991  
Sharon A. Tatro, Notary, Hendricks County, IN

This instrument was prepared by T. Jay Curtis, COOTS, HENKE & WHEELER, 255 East Carmel Drive, Carmel, Indiana 46032.

m:edc/dart.b

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9024115

**DECLARATION OF COVENANTS  
AND RESTRICTIONS  
OF SPRINGHILL PONDS**

This Declaration (hereinafter referred to as "the Declaration" or "this Declaration"), made this 12 day of October, 1999, by BART DEVELOPMENT, INC., an Indiana corporation (hereinafter referred to as "Declarant"),

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of the parcels of real estate in Hamilton County, Indiana which are more particularly described in Exhibit "A" attached hereto and hereby incorporated herein by reference (hereinafter referred to, collectively, as the "Original Tract"); and

**WHEREAS**, Declarant has the right and option to acquire the parcel of real estate in Hamilton County, Indiana which is more particularly described in Exhibit "B" attached hereto and hereby incorporated herein by reference (hereinafter referred to as the "Additional Tract"); and

**WHEREAS**, Declarant intends to create on the Original Tract (and may in the future desire to create on such portions (or all) of the Additional Tract as may be made subject to the terms of this Declaration, as hereinafter provided) a residential community with public streets, private open spaces and landscaped areas, including lakes or ponds, and which community may include certain recreational facilities and amenities, for the benefit of such residential community, to be known as "Springhill Ponds", and

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Original Tract (together with such portions (or all) of the Additional Tract as may hereafter be made subject to the terms of this Declaration, as hereinafter provided) to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Original Tract

DEBT:DECLARATION.SPRINGHILL.PONDS.9.29.99

This instrument recorded 10-1 1999  
Sharon K. Cherry, Recorder, Hamilton County, IN

[together with such portions (or all) of the Additional Tract as may hereinafter be made subject to the terms of this Declaration, as hereinafter provided] and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common areas located on the Real Estate, administering any common areas located on the Real Estate (hereinafter defined), administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name "Springhill Ponds Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

#### ARTICLE I Definitions

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "Act" shall mean and refer to the Indiana Not-for-Profit Corporation Act of 1971, as amended;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- (d) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration;
- (e) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;
- (f) "Committee" shall mean and refer to the "Springmill Ponds Building Control Committee", the same being the committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (g) "Common Areas" shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate, or any part thereof, which are not dedicated to the public and which are not identified as lots on any such plat (such as public streets), whether such plat is heretofore or hereafter recorded, (ii) to the extent hereinafter established, such portions of the Real Estate as are herein declared to be Common Areas even though located on or constituting part of one or more such lots shown on any such plat, and (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the Real Estate which are not Lots, or both;
- (h) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (i) "Corporation" shall mean and refer to Springmill Ponds Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;
- (j) "Declarant" shall mean and refer to Dart Development, Inc., an Indiana corporation, 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 mortgagees acquiring title to any portion of the Real Estate

pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

- (k) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family;
- (l) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit), as designated by Declarant by its deed of the same to another Person. A Lot will not necessarily be the same as any individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, a "Lot" may be (i) any individually numbered parcel of land identified as a lot on such subdivision plat, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the Real Estate constitutes a "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another Person it is agreed between the Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes such a "lot" for purposes of this Declaration shall be made by reference to, and shall mean, such "Lot" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of conveyance so adjusting or changing the description of a "Lot" shall state on its face that it is made for such purpose. Any part of a "Lot" reconveyed to Declarant shall, upon such re-conveyance, lose its character as part of a "Lot" and may thereafter be conveyed by Declarant as part of another "Lot". The foregoing procedures may be used to correct errors in description to adjust boundary lines of "Lots" or for any other reason;
- (m) "Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (n) "Owner" shall mean and refer to (i) the Declarant, as to each Lot owned by it and as to each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate (or any part thereof) of which it is the owner (either as to the entire numbered parcel or any part thereof) which is not a mortgagee, and (ii) the record owner, whether one or more Persons, of the fee simple title to any Lot, provided, however, that Owner shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired

title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;

- (e) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (f) "Real Estate" shall mean and refer to the Original Tract, together with such portions of the Additional Tract as have, from time to time, been subjected to, and are, at any time, subject to this Declaration;
- (g) "Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time; and
- (r) "Site Plan" shall mean and refer to the preliminary plan reflecting Declarant's proposed development of the Original Tract and the Additional Tract (if the entire Additional Tract is subjected to this Declaration), a copy of which is attached hereto as Exhibit "C" and hereby incorporated herein by reference.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

#### ARTICLE II

##### REAL ESTATE SUBJECT TO THIS DECLARATION; DECLARANT'S RIGHT TO SUBJECT ADDITIONAL TRACT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, sold, conveyed and occupied subject to all the Restrictions. As of the date of execution of this Declaration, the Real Estate consists solely of the Original Tract. The Owner of any Lot at any time subject to the Restrictions and this Declaration, (i) by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to all of the Restrictions contained in this Declaration. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Committee and the Corporation with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and

assigns, covenant, agree and consent to and with Declarant, the Committee and the Corporation, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

**Section 2. Declarant's Right of Expansion.** Declarant shall have, and hereby expressly reserves, the right, at any time, and from time to time, on or before the Applicable Date to add to the Real Estate and subject to this Declaration all or any part of the Additional Tract. Any portion of the Additional Tract shall be added to the Real Estate, and therefore and thereby becomes a part of the Real Estate and subject in all respects to this Declaration, when Declarant places of record in Hamilton County, Indiana an instrument so declaring the same to be a part of the Real Estate, which declaration may be made as part of a subdivision plat of any portion of the Additional Tract, or by an amendment or supplement to this Declaration, or by the deed conveying any portion of the Additional Tract to a Person other than Declarant, or otherwise. Upon the recording of any such instrument on or before the Applicable Date, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Real Estate and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Real Estate. No single exercise of Declarant's right and option to add to and expand the Real Estate, as described in this Section 2, as to any part of parts of the Additional Tract shall preclude Declarant from thereafter from time to time further expanding and adding to the Real Estate, to include other portions of the Additional Tract, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portion of the Additional Tract so long as such expansion is accomplished on or before the Applicable Date. Such expansion of the Real Estate is entirely at the discretion of Declarant and nothing contained in this

Declaration or otherwise shall require Declarant to expand the Real Estate beyond the Original Tract, or any other portions of the Additional Tract which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

### ARTICLE III

#### Common Areas: Obligations of Declarant as to Common Areas Declarant's Reserved Rights as to Recreational Facilities

Section 1. The Common Areas. The Common Areas shall consist of the portions of the Real Estate, and improvements thereon or thereto, as defined in Article I, Section 1(g) of this Declaration. Without limiting the generality of the foregoing, the Common Areas shall include the following portions of the Original Tract and the Additional Tract, and improvements thereon or thereto, to the extent the same have been subjected to this Declaration and are part of the Real Estate:

- (a) The storm water detention ponds or lakes shown on the Site Plan, including all land areas surrounding the same which are shown upon the Site Plan as, and may be shown on subdivision plats of the Real Estate as "Common Areas" or "Lake Maintenance Easement", and any other portions of the storm drainage system for the Real Estate which are not established as legal drains subject to the jurisdiction of the Hamilton County Drainage Board and maintained by it;
- (b) the private eyebrow drive or street to be located in the Common Area adjacent to, and which is to serve as a means of access to and from, lots 150, 151 and 152 as shown on the Site Plan;
- (c) landscaping to be installed in "Landscaping Easements" noted or to be noted on subdivision plats of the Real Estate along the perimeter frontages of the Real Estate and 146th Street, in any islands, esplanades, cul-de-sac or cul-de-loop areas within the right-of-way of any streets within the Real Estate, or elsewhere within the Real Estate, including entry way walls, fences or other structures, subdivision identification signs, street signs or directories, landscape irrigation systems, decent lighting systems and other similar items to be installed in "Landscaping Easements" noted or to be noted on subdivision plats of the Real Estate along such perimeter frontages of the Real Estate, or at or in proximity to the street entrances to the Real Estate from Springhill Road and 146th Street; and
- (d) the following improvements (hereinafter referred to, collectively, as the "Recreational Facilities") to be installed in the "Common Area" located between lots 112 and 113 as shown on the Site Plan:
  - (i) two (2) or more tennis courts,

(ii) a swimming pool, and bathhouse and pool maintenance and equipment storage building, and

(iii) an off-street vehicle parking area.

Section 2. Agreement to Construct and Convey Common Areas.

Declarant will, prior to the Applicable Date, construct or provide for the Common Areas described herein to the extent the same are due to be located on portions of the Original Tract or the Additional Tract which are subjected to this Declaration and are part of the Real Estate. Upon final construction or provision of such Common Areas, Declarant covenants to convey all of its right, title and interest in and to said Common Areas to the Corporation and all such right, title and interest in and to said items (whether owned in fee, by leasehold, by contract or in the nature of an easement or license) shall then be the property of the Corporation, whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Areas located entirely or partially on any one or more of the Lots, the Owners of such Lots shall take and hold title thereto subject to an easement for the maintenance of such improvements as Common Areas, and a right and easement in favor of Declarant and the Corporation for access thereto and thereon for purposes of maintaining such Common Areas.

Section 3. Declarant's Reserved Right as to Recreational

Facilities. Declarant shall have, and hereby expressly reserves, the right at any time and from time to time hereafter to grant to the owners from time to time of the following described real estate, to-wit:

The Northeast Quarter of Section 22, Township North, Range 3 East of the Second Principal Meridian, in Hamilton County, Indiana.

(hereinafter referred to as the "West Property")

or any part or parts thereof, whether or not Declarant owns or has any interest in the West Property, the right to use, enjoyment and benefit of the Recreational Facilities which, at any time and from time to time, are located upon or constitute a part of the Common Areas of the Real Estate. Such rights shall be



deemed to granted to the owners from time to time of the West Property (or specified parts thereof) when Declarant has placed of record in the office of the Recorder of Hamilton County, Indiana an instrument executed by Declarant alone, and without the necessity of execution by any other persons or parties, including but not limited to the Owners, the Corporation or the Board of Directors, granting such rights to the owners of the West Property (or specified parts thereof). Upon the placing of such instrument of record, each owner of any portion of the West Property (or the specified parts thereof) shall thereafter, except as otherwise herein provided, have the absolute right, in common with and to the same extent as Owners of Lots within the Real Estate, to the use, enjoyment and benefit of the Recreational Facilities. However, and notwithstanding the foregoing, such reserved right of Declarant and such rights of use, enjoyment and benefit of the Recreational Facilities are subject to the following provisions, conditions and limitations:

- (i) Such rights of use, enjoyment and benefit of the Recreational Facilities by owners of real estate included within the West Property shall be limited to owners of those portions of the West Property developed or to be developed for single family dwelling units;
- (ii) Each owner of real estate included within parts of the West Property to whom such rights have been granted, who desires to exercise such right to the use, enjoyment and benefit of the Recreational Facilities, shall pay to the Corporation an annual fee as hereinafter provided. Such fee shall be an annual fee, payable in full in advance, on or before May 1 of each year. Such fee shall be established by the Board of Directors of the Corporation, on an annual basis on or before April 1 of each year, at an amount calculated to reasonably reflect a proportionate share (on a prorata basis with owners of Lots in the Real Estate) of all costs and expenses incurred or paid to be incurred or paid during said year in connection with the ownership, operation, administration, maintenance, upkeep and repair of the Recreational Facilities, including, but not limited to, taxes and insurance thereon, reserves for replacement thereof and salaries, wages, payroll taxes, worker's compensation contributions and other employee benefit costs of all personnel involved in the operation and maintenance thereof. Such right of use, enjoyment and benefit of the Recreational Facilities shall be available to each owner of portions of the real estate included within the West Property to whom such rights have been granted on an annual basis and the failure of any such owner to avail himself of such right during any year or years or to pay the annual fee for such year or years shall not preclude such owner from thereafter availing himself of such right upon payment of the annual fee for the year of such use. No owner

of any part of the real estate included within the West Property shall have any obligation to pay any such annual fee except as a condition precedent to the use and enjoyment of the Recreational Facilities for the then current year and the failure to pay any such annual fee shall not in any manner be construed to create any charge or lien against any part of the West Property.

(iii) All persons having the right to the use, enjoyment and benefit of the Recreational Facilities, including both the Owners of Lots within the Real Estate and the owners of real estate included in the West Property, shall abide by the rules and regulations, if any, adopted by the Corporation for the use of the Recreational Facilities; provided, however, that all such rules and regulations shall neither discriminate against nor in favor of either the Owners of the Lots within the Real Estate or the owners of the real estate included in the West Property, and shall apply with equal force to both groups. No preference in the use and enjoyment of the Recreational Facilities shall be given to either such group.

#### ARTICLE IV

##### Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

Section 2. Voting Rights. The Corporation shall have the following classes of membership, with the following voting rights:

(a) 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.

(b) **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 five (5) votes for each Lot of which it is the Owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Corporation, (ii) the date Declarant no longer owns any Lots nor any portion of any individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, or (iii) December 31, 1997 (the "Applicable Date"). After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot owned and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.

(c) **Special.** Until the Applicable Date, there shall be three (3) additional Special members of the Corporation, being the persons from time to time appointed by Declarant to serve on the "Initial Board" pursuant to Section 2 of Article V hereof. Persons who are special members shall not be deemed or considered members of the Corporation nor Owners of Lots for any purpose other than to qualify to act as members of the Initial Board. Special members shall have no voting rights on any matters submitted to a vote of the members [unless such Special member is also a Class A member, in which event his voting rights shall be governed by subsection (a) of this Section 2].

**Section 1. Functions.** The Corporation has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration or under any recorded subdivision plat of the Real Estate, whether heretofore or hereafter recorded.

ARTICLE V

Board of Directors

Section 1. 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 is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated in the Articles, to-wit: David J. Fraiburger, John Jeffrey Donnelly and Thomas Mitchel (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the first meeting of the members of the Corporation occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, 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 By-Laws, the Act 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 special 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 is actually the Owner of a Lot and thereby a member of the Corporation).

Section 3. 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.

Section 4. Term of Office and Vacancy. Subject to the provisions of Section 2 of this Article V, the entire membership 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 first meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V 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 Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

**Section 5. 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 successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

**Section 6. 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 Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the 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:

- (a) protective, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (b) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies) and snow removal from the Street; streets within the Real Estate (if the appropriate governmental authority exercising jurisdiction over such streets is unable or unwilling to provide such snow removal);
- (c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;

- (d) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;
- (e) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;
- (f) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; if possible, such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (g) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (h) procuring and maintaining for the benefit of the Corporation, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (i) paying taxes and assessments levied and assessed against, and payable with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and
- (j) all duties and obligations imposed upon the Corporation or the Board under this Declaration, the Articles, the By-Laws, the Act, or any recorded subdivision plat of the Real Estate, whether heretofore or hereafter recorded.

**Section 7. 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:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) 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;
- (c) 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;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and to perform all other maintenance, upkeep, repair and replacement duties of the Corporation and the Board;

- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) 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 Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners; and
- (h) to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and service; provided that such easements are located within or are co-extensive with any one or more easements or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

Section 8. 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 \$2,500.00 without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- (b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- (c) 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.

Section 9. Compensation. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.



Section 10. Non-Liability of Directors and Officers. The Directors and officers of the Corporation shall not be liable to the Owners or any other Person; for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and officers, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors and officers 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 and officers shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors and Officers. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, make a party to any action, suit or proceeding by reason of the fact that he is or was a Director or officer of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director or officer is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director or officer was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, no Director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his

duties there, acting in good faith, such Director or officer 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 other 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 or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a Director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Sec. 12. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and any other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 11. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Corporation, until the Applicable Date. Declarant may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

#### ARTICLE VI

#### Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of each Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

#### ARTICLE VII

##### Maintenance, Repairs and Replacements

Section 1. BY OWNERS. Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 2. By the Corporation. Maintenance, repairs, replacements and upkeep of the Common Areas [including, but not limited to, the storm drainage system for the Real Estate (other than portions thereof established as legal drains subject to the jurisdiction of the Hamilton County Drainage Board and maintained by it)] shall (except to the extent provided herein as the obligation of Owners) be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas as herein otherwise defined, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

- (a) those portions of the Real Estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Corporation shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside any perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate;
- (b) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate;
- (c) landscaping and other items installed by Declarant as part of its initial development of the Real Estate or by the Corporation in the right-of-way of any streets within the Real Estate or in any "Landscaping Easements" noted on subdivision plats of the Real Estate; and
- (d) the lakes or ponds shown on the Site Plan, including any equipment (such as water wells, fountains or other aeration equipment) installed by Declarant as an appurtenance to or to aid in the functioning of such lakes or ponds, whether or not located on Lots.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the 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 assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or stated by any subdivision plat of any portion of the Real Estate for such purposes.

#### ARTICLE VIII

##### Springmill Ponds Building Control Committee

Section 1. Creation. There shall be, and hereby is, created and established the "Springmill Ponds Building Control Committee" (the "Committee") to perform the functions provided to be performed by it hereunder or under any subdivision plat of the Real Estate. Until the Applicable Date, the Declarant, or not more than three (3) persons designated by it, shall constitute the Committee. After the Applicable Date, the Committee shall be a standing committee of the Corporation consisting of three (3)

or more Persons as may, from time to time, be provided in the By-Laws. If the By-Laws do not, at any time, provide for the Committee, then the Board shall be and constitute the Committee.

Section 2. Character of the Real Estate.

A. In General. Every Lot in the Real Estate, unless it is otherwise designated by the Declarant, is a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any of said residential lots except a single family dwelling house and such other improvements, appurtenances and facilities as are usual and customary accessory uses to a single family dwelling house.

Prior to the commencement of any construction or demolition activity on a Lot, a delineation of the building area for each Lot shall be submitted to the Committee for approval by the Committee, and all trees outside the building, driving and parking areas shall be designated by type and size and shall not be removed unless approved by the Committee upon proof of unusual hardship in the practical utilization of the Lot and such removal shall not cause a material adverse effect upon the aesthetic values of adjoining lands and rights-of-way. Trees inside the building area shall not be destroyed, but shall be moved to other areas of the Lot, unless they exceed 12" in diameter and cannot be moved.

Unpermitted removal or destruction of trees by an Owner or his successors in title, other than by acts of God or circumstances beyond the Owner's control, shall, within ninety (90) days after notice in writing from the Committee, be replaced by a tree of a type and size established by the Committee, and upon failure to do so, the Committee shall cause such tree to be replaced and the cost of such replacement shall be a lien upon the Lot collectable in any court of law or equity together with reasonable attorney's fees for the enforcement of such lien. For purposes of executing this covenant, an easement for ingress and

gress shall be and hereby is reserved on each Lot for the performance thereof.

Adequate physical barriers, such as straw bales or snow fence, shall be provided by builders to protect trees to be preserved from damage by construction equipment or otherwise in the erection of building improvements. Pruning of trees outside the building line shall be permitted subject to the review and approval of the Committee and shall be undertaken only by qualified persons having adequate equipment to properly protect and preserve such trees.

In addition to individual site plan restrictions and tree preservation administered by the Committee, platted building lines, and minimum front, side and rear building lines shall be as established on any subdivision plats of the Real Estate or portions thereof. All construction upon the Real Estate shall be done in compliance with the requirements of all applicable zoning, building and other governmental laws, ordinances, codes and other regulations.

**B. Residential Use of Accessory Structures Prohibited.** No accessory uses or improvements shall be erected on any of the Lots prior to the erection thereon of a single family Dwelling Unit, and in no event shall any such accessory or any temporary structure which may be constructed upon a Lot subject to these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation.

**C. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties.

**Section 3. Restrictions and Obligations Concerning Size, Placement and Maintenance of Dwelling Units and Other Structures.**

**A. Minimum Living Space Areas.** The minimum square footage

of living space of Dwelling Units constructed on the Lots shall be as specified in any recorded subdivision plats of the Real Estate.

B. Set-Back Requirements. Set-back and yard size requirements for Lots shall be as set forth on any recorded subdivision plats of the Real Estate.

C. Mailboxes. In order to aid in the preservation of aesthetic appearances within the Real Estate, any mailbox installed on the Real Estate must be approved by the Committee as to size, location, height and composition before it is installed. A standard mailbox design will be prepared by the Committee, and such design shall be the standard for all mailboxes installed on the Real Estate.

D. Exterior Construction. The finished exterior of every Dwelling Unit and other building constructed or placed on any Lot shall be of material other than aluminum siding, vinyl siding, rollbrick siding or any other similar artificial material. All materials used on the exterior of any Dwelling Unit and any other building improvements on a Lot shall be subject to the approval of the Committee. All driveways must be paved from their point of connection with the abutting street or road to their point of connection with the garage apron.

E. Heating Plants and Garages. Every Dwelling Unit located on the Real Estate must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-around human habitation of the Dwelling Unit. Every Dwelling Unit located on the Real Estate must have at least a two-car attached garage, of the same architectural design and materials as the Dwelling Unit.

F. Diligence in Construction. Unless a delay is caused by strikes, war, court injunction or acts of God, every building whose construction or placement on any Lot is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to



remain in such state for more than two (2) months from the time of such destruction or damage.

G. Prohibition of Used Structures. All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

H. Maintenance of Lots and Improvements. The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds and, in any event, not less frequently than once each month during the months of April through October, inclusive, of each year;
- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iv) Cut down and remove dead trees;
- (v) Where applicable, prevent debris and foreign material from entering drainage areas;
- (vi) Keep the exterior or all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
- (vii) Within sixty (60) days following completion of a Dwelling Unit on a Lot, the Owner shall landscape the Lot, weather permitting.

I. Declarant's and the Corporation's Right to Perform Certain Maintenance. In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded subdivision plats of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Corporation, shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such subdivision

plats. The cost thereof to the Declarant or the Corporation shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Corporation, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

Section 4. Provisions Relating to Disposal of Sanitary Wastes.

A. Nuisances. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

B. Construction of Sanitary Sewage Lines and Disposal Facilities. All sanitary sewage lines and disposal facilities on the Lots shall be designed, constructed, installed and maintained in accordance with the provisions and requirements of Hamilton County, Indiana, any other governmental or quasi-governmental agencies having jurisdiction over public sanitary sewers and these Restrictions.

Section 5. General Prohibitions. In addition to any restrictions or limitations contained elsewhere in this Declaration or in any recorded subdivision plats of the Real Estate, the following limitations, restrictions and prohibitions shall govern the development, use and occupancy of the Real Estate:

A. In General. No noxious or offensive activities shall be carried on on any Lot, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot.

B. Signs. Except as otherwise permitted by any subdivision plats of the Real Estate or the Committee, no signs or advertisements shall be displayed or placed on any Lot or structures without the prior written approval of the Committee.

C. Animals. No animals shall be kept or maintained on any Lot except usual household pets, and, in such cases, such

household pets shall be kept reasonably confined so as not to become a nuisance.

D. Vehicle Parking. No trucks, campers, trailers, recreational vehicles, boats, boat trailers or similar vehicles shall be parked on any street or Lot, unless the same are parked in a garage.

E. Garbage, Trash and Other Refuse. No Owner of a Lot shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted in subparagraph F below. All houses shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building shall be buried below the surface of the ground. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Real Estate at any time, except at the times when refuse collections are being made.

G. Model Homes. No Owner of any Lot shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

H. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot, nor shall any overnight camping be permitted on any Lot.

I. Ditches and Swales. It shall be the duty of every Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subparagraph I.

J. Utility Services. Utility services shall, to the

greatest extent possible, be installed underground and in or adjacent to public rights-of-way to minimize removal of or damage to trees.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots, nor shall any septic tanks or other sewage disposal systems be installed on any of the Lots without the approval of the Committee and of the governing public health agency or other civil authority.

Section 6. Committee's Functions.

A. Statement of Purposes and Powers. The Committee shall regulate the exterior design, appearance, use, location and maintenance of lands subject to these Restrictions, and improvements thereon, in such a manner as to preserve and enhance values, to maintain a harmonious relationship among structures and the natural vegetation and topography, and to provide for the proper functioning of the storm drainage system for the Real Estate. For these purposes, the Committee may, from time to time and at any time, make, amend and modify such rules, regulations and guidelines as it may deem necessary or desirable to guide Owners as to the terms, conditions, procedures and requirements of the Committee for the submission and approval of items to it. Such rules, regulations and guidelines may, in addition, set forth additional specifications to those set forth herein or in any subdivision plats of the Real Estate, so long as the same are not inconsistent with this Declaration or any such subdivision plat.

- (1) Generally. No dwelling, building, structure or other improvement of any type or kind shall be constructed, placed, repaired, remodeled, reconstructed or altered on any Lot, nor shall any work be done on any Lot which alters or changes the grade or elevation thereof, without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction, improvement or other work. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed, placed, repaired, remodeled, reconstructed or altered upon the Lot, each

properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed (and existing) landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4"=1' and all plot plans shall be drawn to a scale of 1"=30', or to such other scale as the Committee shall require. There shall also be submitted, where applicable, such other permits or reports as may be required under this Declaration. The following drawings shall be considered minimum for approval study:

- (a) Site plan which includes complete topographic study, location of all trees, existing and proposed structures, drives, proposed (or existing) sanitary sewage disposal system location, utility service, storm drainage and grading details, terraces and all landscape details (including size of all plantings and type); and
  - (b) Foundation plan, floor plans, cross-sections, exterior elevations, and complete specifications for all materials to be used on the exterior of the house, building, structure or other improvement.
- (ii) Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, or perform other work, when:
- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement or work to be in violation of these Restrictions, the requirements or restrictions of any subdivision plats of the Real Estate, the requirements or restrictions of any applicable zoning ordinances, or any rules, regulations or guidelines adopted by the Committee;
  - (b) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or
  - (c) the proposed improvement, or work, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interests, welfare or rights of all or any of other Owners.
- (iii) Change, Modification or Amendment of Rules, Regulations and Guidelines. Any rules, regulations and guidelines at any time made by the Committee may be changed, modified and amended by the Committee at any time, and from time to time, on a prospective basis; provided, however, that no such change, modification or amendment shall be applied by the Committee retroactively as to any construction theretofore completed nor as to the construction of any improvement which has previously been formally approved by the Committee if such construction has been commenced or is commenced within ninety (90) days after such change, modification or amendment is effective. Any rules, regulations or guidelines adopted and made by the Committee, and any changes, modifications or amendments of any such rules,

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guidelines adopted and made by the Committee, and any changes, modifications or amendments of any such rules, regulations and guidelines at any time made by the Committee, shall be set forth in a written instrument and recorded in the office of the Recorder of Hamilton County, Indiana, and shall be effective upon such recording; provided, however, that the making, adoption, change, modification and amendment of any such rules, regulations or guidelines by the Committee shall not be considered or deemed to be amendments of this Declaration requiring the consent or approval of any Owners, Mortgages or other Persons.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements or other work within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. If the Committee fails to act upon any plans or requests for approval submitted to it for its approval within such fifteen (15) day period, it shall be deemed that the Committee has disapproved such plans or request.

C. Liability of Committee. Neither the Committee, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto, nor for any action or failure to act with respect to the exercise or non-exercise of its rights, duties authority hereunder. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation nor warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee and the Declarant may inspect work being performed to assure compliance with these Restrictions, the restrictions contained in any subdivision plat of the Real Estate and applicable regulations. However, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the

deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

Section 7. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit.

#### ARTICLE IX

##### Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Corporation at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such meeting is mailed or delivered to each

Owners. The annual budget shall be submitted to the Owners at the designated meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, 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 Owners; provided, however, that in no event shall such 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 Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton County or Marion County, Indiana selected from time to time by the Board. 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 meeting of the Corporation at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the 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.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his 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 the 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 the reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) 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 such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, 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

- (b) 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, whether annual or quarterly, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) or (b) 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 each 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 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 Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his 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 Section 2 of Article X hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to 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. Annual or quarterly (if so determined by the Board) 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.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, 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.

Section 5. Failure of Owner to Pay Assessments.

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and items deemed Common Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assess-

ment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit which are the subject of such action shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby being deemed to have waived) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other debts, dues or charges owed the Corporation, 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 all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly quoted or published by Bank One, Indianapolis, N.A., of Indianapolis, Indiana (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board).

(b) Notwithstanding anything contained in this Section or

elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot and Dwelling Unit 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 the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. So 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 or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meeting of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or

payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to an Owner other than Declarant (either by deed or by installment sale, conditional sale or land contract sale), and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Corporation against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

Section 7. Initial Working Capital and Start-Up Fund. Upon the closing of the initial conveyance of each Lot by Declarant to another Person (either by deed or by installment sale, conditional sale or land contract sale), the purchaser of such Lot shall pay to the Corporation, in addition to any other amounts then owed or due to the Corporation, as a contribution to its working capital and start-up fund, an amount equal to one-sixth (1/6th) of the then current annual Regular Assessment against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any Assessment or other charge owed the Corporation with respect to such Lot. Such working capital and start-up fund shall be held and used by the Corporation for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Corporation for its early period of operation of the Real Estate, to enable the Corporation to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

#### ARTICLE X

##### Mortgages

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgages, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of each such first mortgage,

and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, 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 By-Laws which is not cured within sixty (60) days.

Section 2. 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 Section 3 of Article IX hereof.

#### ARTICLE XI

##### Insurance

Section 1. Casualty Insurance. The Corporation shall

purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Corporation as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty 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. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.



Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation and occupa-

tional disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall insure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice (accompanied by copies of such policies of any changes thereto, or certificates indicating the coverages included therein) shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgage endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made

by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; and any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

**Section 5. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

#### ARTICLE XII

##### Casualty and Restoration

In the event of damage to or destruction of any of the Common Areas 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.

If 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 Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas 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 Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

#### ARTICLE XIII

##### Restrictions, Covenants and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Areas shall be in addition to any other covenants or restrictions contained herein and in any subdivision plats of any part of the Real Estate heretofore or hereafter recorded, 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) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.
- (b) Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Committee unless otherwise expressly authorized herein, or in any recorded subdivision plat, or by the rules, regulations and guidelines of the Committee.
- (e) No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud speakers.
- (f) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate unless and except as otherwise authorized or permitted by any subdivision plats of the Real Estate.
- (h) 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 Areas 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 Areas.

- (1) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board.
- (2) Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the lakes or ponds to be installed on the Real Estate, as shown on the Site plan, are and will be an integral part of the storm water drainage system serving the Real Estate and are intended to be used for such purpose and primarily as visual and aesthetic amenities and not as recreational amenities. Accordingly, no use shall be made of such lakes or ponds which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing or ice skating shall be permitted in or on said lakes or ponds. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lakes or ponds except the Corporation may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shores of such lake or ponds adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. The Corporation shall be responsible for the maintenance of the lakes or ponds and the banks of the lakes or ponds above the water level to the Lot lines. The maintenance costs of the lakes or ponds and such banks shall be assessed as an assessment against all Lots subject to assessment as part of the Common Expenses. No dock, pier, wall or other structure may be extended into the lakes or ponds. Except for such loss or damage as may result from the act or omission of the Corporation or its agents in the course of maintaining the lakes or ponds and the adjoining banks, each Owner of a Lot abutting the lakes or ponds shall indemnify and hold harmless the Corporation and each other Owner against all loss or damage incurred as a result of injury to any person or property, or as a result of any other cause, arising from or related to use of, or access to, the lakes or ponds by any person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any person with respect to any damage to any Lot resulting from the lakes or ponds or the proximity of a Lot thereto, including loss or damage from erosion.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, 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 sale of Lots and the construction of Dwelling Units, or for the conducting of any business or activity attendant thereto, or for the construction and maintenance of Common Areas, including, but not limited to, rental Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. 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 Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

Section 2. Non-applicability to Corporation. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in Section 1 of this Article XIII shall not apply to or be binding upon the Corporation in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Corporation in the performance of its duties, obligations and responsibilities as to the Common Areas.

#### ARTICLE XIV

##### Amendment of Declaration

Section 1. General. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) 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.
- (b) 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.

- (c) **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 By-Laws.
- (d) **Adoption.** Any proposed amendment to this Declaration must be approved 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.
- (e) **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 Article XI of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Article XII of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, 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.
- (f) **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 Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the 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 and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling



Units, (c) to bring this Declaration into compliance with any statutory requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) functions similar to those performed by such agencies or entities, (e) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (f) to implement the rights and options of Declarant (or its nominee) as set forth in Section 2 of Article II hereof and in Section 3 of Article III hereof. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot 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 vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Original Tract or the Additional Tract.

#### ARTICLE XV

##### Assurance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of

occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules, regulations and guidelines, 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 bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

#### ARTICLE XVI

##### Negligence

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

#### ARTICLE XVII

##### Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Hamilton County, Indiana and expiring January 1, 2020, after which time

they shall be automatically extended for successive periods of ten (10) years each, unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same. The failure or delay at any time of Declarant, the Corporation, the Owners, the Committee, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

#### ARTICLE XVIII

##### Miscellaneous

Section 1. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

Section 3. Severability Clause. The invalidity of any covenant restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context

clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs 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.

IN WITNESS WHEREOF, DART DEVELOPMENT, INC., Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

DART DEVELOPMENT, INC.

By:

*David J. Freiburger*  
David J. Freiburger, President

This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

STATE OF INDIANA )  
COUNTY OF HAMILTON ) SS:

Before me, a Notary Public in and for said County and State, personally appeared David J. Freiburger, the President of DART DEVELOPMENT, INC., an Indiana corporation, who acknowledged the execution of the above and foregoing instrument as his voluntary act and deed as such officer for and on behalf of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto affixed my hand and Notarial Seal this 1<sup>st</sup> day of October, 1990.

Notary Seal: N.C.P. Commission Expires: 10/16/1994  
My County of Residence: Hamilton Co.

*James Louis Leona*  
James Louis Leona, Notary Public

This Instrument was prepared by Dixon B. Dann, Attorney-at-Law.

LEGAL DESCRIPTION OF  
ORIGINAL TRACT

Springmill Ponds Section I:

Part of the Northwest Quarter of Section 23, Township 18 North, Range 3 East of the Second Principal Meridian, in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 23; thence North  $00^{\circ}06'05''$  East along the west line of said Northwest Quarter 1728.40 feet to the Point of Beginning; thence continuing North  $00^{\circ}06'05''$  East along said west line 1190.93 feet; thence South  $89^{\circ}53'55''$  East 50.00 feet; thence South  $32^{\circ}49'56''$  East 319.02 feet; thence South  $60^{\circ}57'17''$  East 321.84 feet; thence North  $30^{\circ}06'05''$  East 53.62 feet; thence South  $57^{\circ}02'31''$  East 132.08 feet; thence North  $30^{\circ}06'05''$  East 22.41 feet; thence South  $59^{\circ}53'55''$  East 162.00 feet; thence North  $67^{\circ}18'01''$  East 93.93 feet; thence South  $09^{\circ}34'56''$  East 157.67 feet; thence South  $11^{\circ}18'18''$  East 70.04 feet to a point on a non-tangent curve concave northerly having a central angle of  $08^{\circ}54'24''$  and a radius of 325.00 feet; thence westerly along said curve an arc distance of 50.52 feet (said curve also being subtended by a chord having a bearing of South  $85^{\circ}16'09''$  West and a length of 50.47 feet); thence South  $89^{\circ}43'21''$  West 56.58 feet; thence South  $03^{\circ}13'42''$  East 147.55 feet; thence North  $84^{\circ}07'52''$  West 144.75 feet; thence South  $50^{\circ}21'34''$  West 363.27 feet; thence South  $00^{\circ}06'05''$  West 200.00 feet; thence North  $89^{\circ}53'55''$  West 185.00 feet; thence North  $00^{\circ}06'05''$  East 56.73 feet; thence North  $89^{\circ}53'55''$  West 210.00 feet to the Point of Beginning containing 14.10 acres, more or less.

AND:

Springmill Ponds Section II:

Part of the Northwest Quarter of Section 23, Township 18 North, Range 3 East of the Second Principal Meridian, in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 23; thence North  $00^{\circ}06'05''$  East along the west line of said Northwest Quarter 1728.40 feet; thence South  $89^{\circ}53'55''$  East 210.00 feet; thence South  $00^{\circ}06'05''$  West 56.73 feet; thence South  $89^{\circ}53'55''$  East 185.00 feet; thence North  $00^{\circ}06'05''$  East 200.00 feet; thence North  $50^{\circ}21'34''$  East 363.27 feet; thence South  $84^{\circ}07'52''$  East 144.75 feet; thence North  $03^{\circ}13'42''$  West 147.55 feet; thence North  $89^{\circ}43'21''$  East 56.58 feet to a curve concave northerly having a central angle of  $08^{\circ}54'24''$  and a radius of 325.00 feet; thence easterly along said curve an arc distance of 50.52 feet (said curve being subtended by a chord having a bearing of North  $85^{\circ}16'09''$  East and a length of 50.47 feet); thence North  $11^{\circ}18'18''$  West 50.04 feet; thence North  $09^{\circ}34'56''$  West 157.67 feet; thence North  $29^{\circ}51'29''$  East 201.83 feet; thence South  $77^{\circ}09'56''$  East 171.59 feet to a point on a non-tangent curve concave easterly, having a central angle of  $02^{\circ}22'44''$ , and a radius of 175.00 feet; thence southerly, along said curve an arc distance of 7.27 feet (said curve being subtended by a chord having a bearing of South  $11^{\circ}38'42''$  West, and a length of 7.27 feet); thence South  $79^{\circ}32'41''$  East 50.00 feet; thence South  $10^{\circ}27'19''$  West 64.49 feet; thence South  $79^{\circ}32'40''$  East 147.00 feet to a point on the east line of the southwest quarter of the northwest quarter of said Section 23; thence South  $00^{\circ}03'39''$  West along the east line of said Quarter Quarter 1260.68 feet to the southeast corner of the southwest quarter of the northwest quarter of said Section 23; thence South  $88^{\circ}59'52''$  West along the north line of the southwest quarter of said Section 23 a distance of 1329.66 feet to the Point of Beginning, containing 27.75 acres, more or less.

Exhibit "A"

072090/cathy/exhibit.a.springmill

9024115

LEGAL DESCRIPTION OF  
ADDITIONAL TRACT

Part of the Northwest Quarter of Section 23, Township 18 North, Range 3 East of the Second Principal Meridian, in Hamilton County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of said Northwest Quarter of Section 23; thence North  $89^{\circ}05'25''$  East along the north line of said Northwest Quarter 1652.25 feet; thence South  $00^{\circ}09'35''$  East 450.00 feet; thence North  $89^{\circ}05'25''$  East parallel to said north line 340.00 feet; thence North  $00^{\circ}09'35''$  West 450.00 feet to the north line of said Northwest Quarter; thence North  $89^{\circ}05'25''$  East along said north line 663.25 feet to the Northeast corner of the Northwest Quarter of said Section 23; thence South  $00^{\circ}09'35''$  West along the east line of the Northwest Quarter 1117.17 feet to the Southeast corner of the North one half of the Northwest Quarter of said Section 23; thence South  $89^{\circ}03'29''$  West along south line of the North one half of said Northwest Quarter 1329.70 feet to the Northeast corner of the Southwest Quarter of the Northwest Quarter of said Section 23; thence South  $00^{\circ}03'29''$  West along the east line of the Southwest Quarter of said Northwest Quarter 1318.26 feet to the Southeast corner of the Southwest Quarter of said Section 23; thence South  $88^{\circ}59'22''$  West along the South line of the Northwest Quarter of said Section 23, a distance of 1329.66 feet to the Northwest corner of the Southwest Quarter of said Section 23; thence North  $00^{\circ}06'05''$  East along the West line of the Northwest Quarter of said Section 23, a distance of 2638.70 feet to the Point of Beginning, containing 117.11 acres more or less.

EXCEPTING THEREFROM, the Original Tract.

Exhibit "a"

002004/county/sect023/b\_springm11

9024115