

89014219

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR STONEYBROOK SPRINGS

THIS DECLARATION made this 30 day of October, 1989, by THE C.P. MORGAN CO., INC., an Indiana Corporation ("Developer"),

WITNESSETH:

WHEREAS, Developer is the purchaser and owner of all of the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided for development of Stoneybrook Springs, a single family housing development in Greenwood, Indiana (the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the Office of the Recorder of Johnson County, Indiana (the "Plats"); and

WHEREAS, Developer is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges contained herein and as set forth in the Plats (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof:

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Developer and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development. Developer specifically reserves unto itself the right and privilege to exclude any real estate from the Development, or to include additional real estate in the Development including real estate adjacent to the Development.

1. Definitions. The following are the definitions of the terms as they are used in this Declaration:

A. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of paragraph 5 hereof.

B. "Association" shall mean the Stoneybrook Springs Homeowners' Association, Inc., an Indiana not-for-profit corporation formed or to be formed under the Indiana Not-For-Profit Corporation Act of 1971, as amended.

C. "Board" shall mean the Board of Directors of the Association.

D. "Committee" shall mean the Development Control Committee, composed of three (3) members of the Association appointed by the Board. The members of the Committee shall serve for one (1) year terms, but are subject to removal by the Board at any time with or without cause. Any vacancies on the Committee from time to time existing shall be filled by appointment by the Board. Notwithstanding anything herein to the contrary, Developer shall have the powers and authority of the Committee during the Development Period.

E. "Common Area(s)" shall mean those areas and all improvements located thereon set aside for recreation areas, theme structures or landscaped areas or mounds at the street entrances at Lake Pointe Lakes North and at West Main Street and Stonybrook Drive, lights, park areas, street landscaping, the Lakes, as defined herein, the shoreline area of the Lakes as may be shown on the Plats, or on the plat or plats of other adjacent real estate, and any other areas so designated on the Plats, or on the plat or plats of other adjacent real estate.

F. "Common Expenses" shall mean the actual and estimated cost to the Association of its proportionate share of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

G. "Development Period" shall mean the period of time during which Developer owns at least one (1) Lot as defined herein.

H. "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lake(s) and common area portion of the shoreline area as may be shown on the Plats which serves or may serve as part of the storm and surface water drainage system serving the Development, as such may in the future be more particularly described on the Plats, or on the plat or plats of other adjacent real estate. Notwithstanding anything herein to the contrary, the Lakes are not included in the lands contained in the area shown on Exhibit "A" and, as of the date hereof, do not constitute a part of the platted areas of the Development.

I. "Limited Common Area" may appear upon the Plats designated by block letter and further identified as a "cul-de-loop" which is created for the exclusive use and enjoyment of those particular lots having public street access therefrom. Each such owner shall have an easement for ingress and egress in common with the other adjacent owners to the public street across such area. Such cul-de-loop may further have a landscaped island as may be shown on the Plats therein adjacent to the public right-of-way and such Limited Common Area shall be owned and maintained by equal undivided interests as tenants in common of the lots abutting thereon and using the cul-de-loop as a means of ingress and egress to the public street. Such maintenance and repair shall be undertaken by a determination in writing of a majority of the lot owners having an undivided interest in the Limited Common Area, and upon the failure of any such lot owner to pay his equal contributive share for such maintenance or repair, the remaining lot owners or any one of them may advance the defaulting lot owner's contributive share upon thirty (30) days' written notice and such advancement shall constitute a lien upon the lot of the defaulting lot owner enforceable in the same manner and under the same terms as made and provided under the provisions of the Mechanics Lien Laws of the State of Indiana, Chapter 116 of the Acts of the 1909 Indiana General Assembly as amended to date, I.C. 32-8-3-1 et seq. Any such lien shall be subordinate to the lien of any first mortgage and any first mortgagee taking title to a lot by foreclosure or deed in lieu thereof shall take title free and clear of any such assessments for work performed prior to such mortgagee's taking title.

J. "Lot" or "Lots" shall mean any parcel(s) of real estate, whether residential or otherwise, described by one of the Plats.

K. "Member" shall mean any person or entity holding membership in the Association as provided in this Declaration.

L. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a Lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. Organization and Duties of Association,

A. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding anything herein to the contrary, during the Development Period, all actions of the Association shall require the prior written approval of the Developer.

B. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with paragraph 11 of this Declaration.

D. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

... shall be treated as a single lot for the purpose of determining the Assessment and for applying these Restrictions to said Lots, so long as such Lots remain improved with one single dwelling.

4. Remedies.

A. In General. Any party to whose benefit these Restrictions inure, including Developer, any Owner, the Association, or the Code Enforcement Division of the Department of Metropolitan Development, or other applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but Developer or the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

2. Organization and Duties of Association.

A. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding anything herein to the contrary, during the Development Period, all actions of the Association shall require the prior written approval of the Developer.

B. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with paragraph 11 of this Declaration.

D. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors' insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be cancelled or substantially modified for any reason.

E. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

F. Transfer of Control of the Association. Developer shall transfer control of the Association to the Owners prior to the expiration of the Development Period.

G. Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

3. Powers of Committee.

A. In General. No dwelling, building structure, fencing, exterior painting (excluding repainting in the same color) or exterior improvement of any type or kind (excluding landscaping) shall be constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application requesting authorization has been made to the Committee by the Owner of the Lot. Such written application shall be in the manner and form prescribed from time to time by the Committee, and the Committee may require a set of plans and specifications for any such proposed construction or improvement. The Committee may require that such plans include plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated. The Committee may also require that such plans and specifications set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. Notwithstanding anything herein to the contrary, approval of the Committee will not be required for improvements, fencing or structures placed on a Lot by the Developer, for fences not extending beyond the furthest back front corner of the residence on the Lot and not exceeding four (4) feet in height, or playground facilities, decks, patios or similar items not patently visible from the street. Chain link fences must have a black or brown factory finish. Wood fences shall be painted or stained in a color compatible with the residence.

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

(1) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these Restrictions;

(2) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Development in general;

(3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners.

C. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been received. A copy of submitted materials 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. The Committee shall further affix its signature of approval upon two (2) site plans for purposes of obtaining an Improvement Location Permit, or similar permit, from the Permits Section of the Department of Metropolitan Development, or other applicable governmental authority, if such are required.

D. Liability of Committee. Neither the Committee nor any agent or member thereof, nor Developer during the Development Period or thereafter, 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.

E. Inspection. The Committee or its designated agent may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

F. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Owner, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, 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 shall be treated as a single Lot for the purpose of determining the Assessment and for applying these Restrictions to said Lots, so long as such Lots remain improved with one single dwelling.

4. Remedies.

A. In General. Any party to whose benefit these Restrictions inure, including Developer, any Owner, the Association, or the Code Enforcement Division of the Department of Metropolitan Development, or other applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but Developer or the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

5. Covenants for Maintenance Assessments.

A. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

B. Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

C. Pro-rata Share. The Pro-rata Share of each Owner for purposes of this paragraph 5 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development ("Pro-rata Share"), except, as provided in Paragraph 3F herein.

D. Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

E. Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

F. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. At the election of the Developer, the annual Assessments of each Lot in each section of the Development shall

commence on the first day of the second month following the month in which Developer first conveys ownership of any Lot in such section to an Owner. The first annual Assessment within each section of the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

G. Duties of the Association.

(i) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(ii) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(iii) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

H. Non-payment of Assessments; Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph ii hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment

and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

I. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

6. Effect of Becoming an Owner. The Owners of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer with respect to these Restrictions and also for themselves, their heirs, personal representatives, successors and assigns. Such Owners covenant and agree and consent to and with Developer and to and with the Owners and subsequent owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

7. Control of the Lakes and Common Areas.

A. Control by the Board. The Board shall regulate and control the use of the Common Areas, and if such become a part of the Common Areas of the Development, the Lakes, and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas.

B. Conditions. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

8. Restrictions, Covenants and Regulations.

A. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots, the Common Areas and the Lakes, if such become a part of the Common Areas, shall be in addition to any other covenants or restrictions contained herein or in the Plats 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 Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any of 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) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(b) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

(c) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Lakes and the Common Areas, 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 Lakes and the Common Areas.

(d) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Lakes or the Common Areas, except with express permission from the Board.

(e) The Lakes and the 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 are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. 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 the Lakes, except the Association 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 shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Properties which extend into, or to within twenty-five (25) feet from the shoreline of the Lakes.

8. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in subparagraph A of this paragraph 8 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lakes and Common Areas to the extent the application thereof could or might

hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Lakes and Common Areas.

9. Additional Covenants and Restrictions; Additional Assessments. In addition to the covenants, conditions and restrictions contained herein, the Lots may in the future become subject to certain additional covenants and restrictions and additional assessments as may be contained in a master declaration of covenants, conditions and restrictions of Stoneybrook Development which Developer, or another developer, may hereafter record in the Office of the Recorder of Johnson County, Indiana (the "Master Declaration"), providing for the maintenance, upkeep, repair, operation and administration by an Indiana not-for-profit corporation which has heretofore or shall hereafter be incorporated by Developer or its designee under the name "Stoneybrook Development Owners' Association, Inc.", or a name similar thereto (the "Master Association"), of the Lakes and certain common areas, as may be defined in the Master Declaration and as may be shown on the plat or plats of other adjacent real estate, as may be more particularly described in the Master Declaration, and for the sharing of an amount to be determined of the costs associated therewith by the owners of the Lakes and subject further to all of the rights, powers, duties and obligations of the Master Association, as may be set forth in the Master Declaration; provided, that, the Owners, as defined herein, shall have the sole responsibility for the costs associated with the maintenance, repair and improvements of the entry-ways into the Development, and all improvements located thereon, located at the intersection of West Main Street and Stoneybrook Drive, and at the intersection of Lake Point Lane North and Stoneybrook Grove Drive. If there is any irreconcilable conflict between any of the covenants and restrictions contained in this Declaration and any of the covenants and restrictions contained in the Master Declaration, the conflicting covenant or restriction contained in this Declaration shall govern and control to the extent only of the irreconcilable conflict, it being the intent hereof that all such covenants and restrictions shall be applicable to the Lots to the greatest extent possible.

10. Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period commencing on the date this Declaration is recorded and expiring December 31, 2013, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Changes or amendments in these covenants, conditions and restrictions may be made by Owners in accordance with paragraph 10 hereof.

11. Amendment of Declaration.

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

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

(iv) 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; provided, however, that during the Development Period, any amendment to this Declaration shall require the prior written approval of Developer. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

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

B. Amendments by Developer Alone. Notwithstanding the foregoing or anything elsewhere contained herein, the Developer shall have and hereby reserves the right and power acting alone, and without the consent or approval of any other of the Owners, the Association, the Board of Directors, any mortgagees or any other person, to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with 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, 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, (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) for any purpose if such amendment or supplement is recorded prior to the earlier of (i) the date on which Developer has sold fifty percent (50%) of the Lots in the Development, or (ii) two (2) years after the date of recordation of this Declaration. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Developer to vote in favor of, make, or consent to any amendments described in this subparagraph B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this subparagraph B shall terminate upon the completion of the Development Period.

12. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants, Conditions and Restrictions for Stoneybrook Springs to be executed this 30 day of October, 1989.

THE C. P. MORGAN CO., INC.

By: William B. Blake
William B. Blake, Executive
Vice-President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared William B. Blake, the Executive Vice-President of C.P. Morgan Co., Inc., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Stoneybrook Springs on behalf of such corporation, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 30 day of October, 1989.

Deana H. Guyton
Deana H. Guyton Notary Public



My Commission Expires:

12/4/92

My County of Residence is:

Marion

This Instrument was prepared by Lewis E. Willis, Jr., Attorney at Law.

X:\G11\819.doc

EXHIBIT A

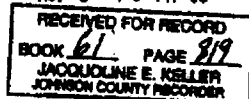
Land Description

Part of the East Half of the Northwest Quarter of Section 36, Township 14 North, Range 3 East of the Second Principal Meridian in Johnson County, Indiana being described as follows:

Beginning at a PK nail at the southeast corner of said half-quarter; thence on a bearing of South 89 degrees 55 minutes 40 seconds West along the south line thereof (bearing is from Deed Record 250, Page 625, Office of the Johnson County Recorder) a distance of 156.11 feet; thence North 00 degrees 54 minutes 40 seconds East parallel with the east line of said half-quarter a distance of 115.01 feet; thence North 53 degrees 08 minutes 29 seconds West a distance of 114.56 feet; thence North 00 degrees 54 minutes 40 seconds East parallel with the east line of said half-quarter a distance of 114.03 feet; thence thence North 43 degrees 11 minutes 01 seconds West a distance of 4.62 feet to a point on the east shore line of a lake; thence meandering said shore line the following nine courses, North 59 degrees 34 minutes 20 seconds West 41.11 feet; thence North 39 degrees 49 minutes 38 seconds West 49.54 feet; thence North 39 degrees 45 minutes 49 seconds West 87.34 feet; thence North 39 degrees 54 minutes 33 seconds West 94.45 feet; thence North 40 degrees 13 minutes 17 seconds West 90.63 feet; thence North 35 degrees 31 minutes 31 seconds West 46.63 feet; thence North 20 degrees 19 minutes 28 seconds West 24.44 feet; thence North 11 degrees 29 minutes 04 seconds West 71.07 feet; thence North 17 degrees 28 minutes 21 seconds West 19.08 feet; thence leaving said shoreline North 04 degrees 27 minutes 14 seconds West a distance of 12.00 feet to the south corner of a 0.076 acre tract of land described in a deed from F. Luke C. ... Venture Capital Group, Inc. and Ennis Company (dated May 24, 1989); thence North 04 degrees 30 minutes 15 seconds East along the west line of said Venture tract a distance of 12.00 feet to the northwest corner thereof; thence North 85 degrees 35 minutes 31 seconds East along the north line of said Venture tract a distance of 44.97 feet to the northeast corner thereof; thence continuing North 85 degrees 35 minutes 31 seconds East along the easterly extension of said north line a distance of 88.06 feet; thence North 77 degrees 18 minutes 40 seconds East a distance of 151.90 feet; thence North 63 degrees 08 minutes 01 seconds East a distance of 163.39 feet; thence South 89 degrees 05 minutes 20 seconds East a distance of 135.59 feet to the east line of the half-quarter section; thence South 00 degrees 54 minutes 40 seconds West along said east line a distance of 992.19 feet to the Point of Beginning. Containing 8.423 acres, more or less.

THIS SUBDIVISION CONSISTS OF 37 LOTS, NUMBERED 1 THROUGH 37, TOGETHER WITH COMMON AREAS, STREETS AND EASEMENTS AS SHOWN ON THE WITHIN PLAT. [Plat Cabinez C, Pages 422A and 422B].

Nov 2 4 02 PM '89



89014218

FIRST AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS
AS SHOWN ON THE PLAT
FOR STONEYBROOK SPRINGS SECTION I

THIS FIRST AMENDMENT, dated as of the 30 day of October, 1989 by THE C. P. MORGAN CO., INC. ("Developer"), as owner of the real estate described in Exhibit "A" attached hereto and by reference made a part hereof (the "Real Estate"),

WITNESSES:

WHEREAS, Developer has heretofore recorded certain covenants, conditions and restrictions contained in the plat of the Real Estate dated June 16, 1989 and recorded June 22, 1989 in the Office of the Recorder of Johnson County, Indiana in Plat Cabinet C, Pages 422A and 422B as Instrument No. 89007406 (the "Plat Restrictions"); and

WHEREAS, Developer desires to amend the Plat Restrictions as herein described:

NOW, THEREFORE, Developer hereby amends the Plat Restrictions as follows:

1. The paragraphs of the Plat Restrictions entitled "Nonexclusive Easement" and "Patio Easements" are hereby deleted in their entirety, and are replaced by the following paragraphs:

Nonexclusive Easement: Whenever a building is constructed so as to be substantially contiguous with a side lot line, then to the extent necessary, the owner of such lot is hereby granted a three (3) foot access easement upon the adjoining lot for maintenance and the encroachments by walls, eaves, roof overhang, gutters and the like. Said nonexclusive easement is hereby granted, as necessary or appropriate, for underground utility lines and utility service within said three (3) foot easement and said nonexclusive easement shall run in favor of the owners of said lot and to all public, private, and municipal utility companies (including cable television and the like); provided, there shall be maintained a minimum distance between buildings of 10', and a minimum distance between buildings backing up to each other of 20'.

Patio Easements and Patio Fences: Certain lots within Stoneybrook Springs may be improved with a residential unit constructed approximately contiguous to (within eleven (11) feet) a side lot line ("Patio Home"). In such event, the side wall of the residence adjacent to the side wall of the Patio Home (which residence may also be a Patio Home) and facing such Patio Home shall be constructed without windows below a point which is seven (7) feet above the finished floor elevation. The owners from time to time of a Patio Home shall have an exclusive easement of use of the area extending from the exterior side wall of their Patio Home to the exterior side wall of the adjacent residence which faces said area and running the length of such exterior side wall of such adjacent unit ("Patio Area"). The owner of the Patio Home benefitted by the Patio Area shall maintain said Patio Area (excluding the exterior side wall of the adjacent unit which shall be maintained by the owner of the adjacent unit). In the event the owner of the

Patio Home fails to maintain said Patio Area, the owner of the adjacent unit shall have the right and easement to enter such area as necessary to maintain any portion of his lot within such easement area. No fences shall be erected in said Patio Area without the written consent of both owners and of the Committee; provided that on adjacent lots where two Patio Areas face each other, a privacy fence shall be installed approximately on the lot line between the adjacent units and each owner shall be responsible for one-half of the cost of maintaining such privacy fence.

2. Except as amended by paragraph 1, above, the Plat Restrictions shall continue in full force and effect as originally recorded.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment as of the date and year first written above.

THE C. P. MORGAN CO., INC.

By: William B. Blake
William B. Blake, Executive
Vice-President

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for such County and State, personally appeared William B. Blake, Executive Vice-President of The C. P. Morgan Co., Inc., who, having been duly sworn, acknowledged the execution of the foregoing First Amendment to Covenants, Conditions and Restrictions for Stoneybrook Springs Section I for and on behalf of such corporation and stated that the representations contained therein are true.

Witness my hand and Notarial Seal this 30 day of OCTOBER 1989.

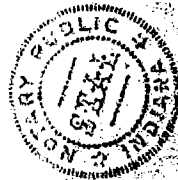
Deana H. Gulyon
DEANA H. GULYON, Notary Public

My Commission Expires:

12/4/92

My County of Residence is:

MARION



This instrument was prepared by Lewis E. Willis, Jr., Attorney-at-Law, 50 South Meridian Street, Suite 700, Indianapolis, Indiana 46204.

X:G11\796:ben

EXHIBIT A

Land Description

Part of the East Half of the Northwest Quarter of Section 36, Township 14 North, Range 3 East of the Second Principal Meridian in Johnson County, Indiana being described as follows:

Beginning at a PK nail at the southeast corner of said half-quarter; thence on a bearing of South 89 degrees 55 minutes 40 seconds West along the south line thereof (bearing is from Deed Record 250, Page 825, Office of the Johnson County Recorder) a distance of 156.13 feet; thence North 00 degrees 54 minutes 40 seconds East parallel with the east line of said half-quarter a distance of 115.01 feet; thence North 53 degrees 08 minutes 29 seconds West a distance of 114.36 feet; thence North 00 degrees 54 minutes 40 seconds East parallel with the east line of said half-quarter a distance of 114.03 feet; thence thence North 43 degrees 11 minutes 01 seconds West a distance of 4.62 feet to a point on the east shore line of a lake; thence meandering said shore line the following nine courses, North 59 degrees 34 minutes 28 seconds West 41.11 feet; thence North 39 degrees 49 minutes 38 seconds West 49.54 feet; thence North 39 degrees 45 minutes 49 seconds West 87.34 feet; thence North 39 degrees 54 minutes 33 seconds West 94.45 feet; thence North 40 degrees 13 minutes 17 seconds West 90.63 feet; thence North 35 degrees 31 minutes 58 seconds West 46.63 feet; thence North 20 degrees 19 minutes 28 seconds West 24.44 feet; thence North 11 degrees 29 minutes 04 seconds West 71.07 feet; thence North 17 degrees 28 minutes 21 seconds West 19.08 feet; thence leaving said shoreline North 04 degrees 27 minutes 14 seconds West a distance of 33.99 feet to the south corner of a 0.076 acre tract of land described in a deed from F. Luke Chin to The Venture Capital Group, Inc. and Ennis Company (dated May 24, 1989); thence North 00 degrees 30 minutes 15 seconds East along the west line of said Venture tract a distance of 125.42 feet to the northwest corner thereof; thence North 85 degrees 35 minutes 31 seconds East along the north line of said Venture tract a distance of 44.97 feet to the northeast corner thereof; thence continuing North 85 degrees 35 minutes 31 seconds East along the easterly extension of said north line a distance of 68.04 feet; thence North 77 degrees 18 minutes 40 seconds East a distance of 151.90 feet; thence North 63 degrees 08 minutes 01 seconds East a distance of 163.59 feet; thence South 89 degrees 05 minutes 20 seconds East a distance of 153.39 feet to the east line of the half-quarter section; thence South 00 degrees 54 minutes 40 seconds West along said east line a distance of 992.19 feet to the Point of Beginning. Containing 8.423 acres, more or less.

THIS SUBDIVISION CONSISTS OF 37 LOTS, NUMBERED 1 THROUGH 37, TOGETHER WITH COMMON AREAS, STREETS AND EASEMENTS AS SHOWN ON THE WITHIN PLAT.

NOV 2 4 03 PM '89

