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**SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR**

**THE COLONY AT HEARTLAND CROSSING, SECTION I**

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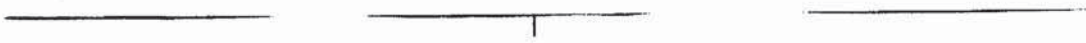
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EXHIBITS:

- "A" - Description of Real Estate
- "B" - Description of Additional Real Estate
- "C" - Building Standards and Association Fees

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**SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR**

**THE COLONY AT HEARTLAND CROSSING, SECTION I**

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE COLONY AT HEARTLAND CROSSING, SECTION I (the "Declaration"), is made this 19th day of September, 1997, by CEDAR RUN LIMITED, INC., an Indiana corporation, and

WITNESSES:

WHEREAS, Declarant is the owner of real property described in Exhibit "A" attached hereto and made a part hereof, which real property will be subdivided and known as The Colony at Heartland Crossing, Section I and will be more particularly described on a plat ("Plat") to be recorded in the Office of the Recorder of Hendricks County, Indiana, together with any additions thereto as hereinafter provided are referred to herein collectively as the "Real Estate" or as the "Community";

WHEREAS, Declarant has heretofore caused to be recorded a Declaration of Covenants, Conditions, Easements and Restrictions of Heartland Crossing, recorded on September \_\_\_\_\_, 1997 as Instrument No. \_\_\_\_\_ in the office of the Recorder of Hendricks County, Indiana (hereinafter referred to as the "Master Declaration"), pursuant to which mutual and beneficial covenants, conditions and charges were imposed upon the Community as more particularly described therein;

WHEREAS, pursuant to the Master Declaration, Declarant contemplated that this Supplemental Declaration would be recorded to annex the Real Estate as provided for in the Master Declaration and to set forth specific and particular restrictions affecting the Community which would be in addition to those imposed by the Master Declaration, for the purposes, among other things, of specifying the services to be provided for Owners in the Community by the Community Association (as herein defined), Community Assessments for such services (which are in addition to the assessments levied and collected by the Association (as defined in the Master Declaration) pursuant to the Master Declaration for Common Expenses of the Association) and such other matters as may be peculiar to the Community in relation to the other properties now or hereafter subject to the Master Declaration;

WHEREAS, Declarant intends to sell and convey the Real Estate to C. P. Morgan Communities, L.P. and before doing so desires to subject to and impose upon all real estate within the platted areas of the Community mutual and beneficial covenants, conditions, restrictions, and charges which shall be in addition to those imposed by the Master Declaration, under a general plan

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or scheme of improvement for the benefit and complement of the Lots and lands in the Community and future owners thereof; and

WHEREAS, the Declarant has formed (or intends to form) the Community Association (as defined herein) for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, Declarant, pursuant to the Master Declaration, hereby declares that all of the platted Lots and lands located within the Community as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Master Declaration and this Declaration, 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 Community, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community as a whole and of each of said Lots situated therein. This Declaration shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof, and shall inure to the benefit of successors in title to the Real Estate.

## ARTICLE I

### DEFINITIONS

Section 1.1. Additional Land. Additional Land shall mean and refer to additional real property now owned and described in Exhibit "B" attached hereto or which may in the future be owned by Declarant subject to Declarant's reserved unilateral right to annex the same within and subject to this Declaration as provided elsewhere herein.

Section 1.2. Articles of Incorporation. Articles of Incorporation means and refers to the Articles of Incorporation of the Community Association, as filed with the Secretary of State of the State of Indiana.

Section 1.3. Bylaws. Bylaws shall refer to the Bylaws of the Community Association, as the same may exist and be in effect from time to time.

Section 1.4. Community Assessments. Community Assessments shall mean assessments for such expenses as may be provided for herein or in the Master Declaration which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Lots in the Community and for the purpose of maintaining the properties or providing services for the Owners within the Community, all as may be specifically authorized from time to time by the Board of Directors. The Community Assessments shall be levied equally against Owners of Lots in a Community for such purposes that are authorized by this Declaration or by the Board of Directors from time to time, provided that in the event assessments are levied for exterior maintenance of dwellings, or insurance on dwellings, or replacement reserves which pertain to particular dwellings within a given Community such assessments (that are for the use and benefit of particular Lots) shall be levied upon a pro rata basis among the benefited Owners.

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Section 1.5. Community Association. Community Association shall mean and refer to The Colony at Heartland Crossing Community Association, Inc., or an organization of similar name, formed, or to be formed, as an Indiana nonprofit corporation, its successors and assigns.

Section 1.6. Community Facilities. Community Facilities shall refer to facilities such as a clubhouse, swimming pool, tennis court(s) and related facilities and equipment, if any, to be located within and to be part of the Community only for the use of Owners of Lots in the Community, as determined and provided by Declarant and all real and personal property now or hereafter owned by or subject to an easement in favor of the Community Association only for the use of Owners of Lots in the Community.

Section 1.7. Control Transfer Date. Control Transfer Date shall be the date on which the Declarant is no longer a Class B Member of the Community Association.

Section 1.8. Declarant. Declarant means Cedar Run Limited, Inc., an Indiana corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Cedar Run Limited, Inc., as developer of the Community, as a matter of law or as evidenced by a written instrument of transfer to such effect.

Section 1.9. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Community Association as herein and in the Bylaws provided.

Section 1.10. Eligible Votes. Eligible Votes shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 1.11. Lot. Lot shall mean a portion of the Community other than the Community Facilities and Common Area (as defined in the Master Declaration) intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plats and Plans filed with this Declaration and amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 1.12. Member. Member shall mean and refer to a person or entity entitled to membership in the Community Association, as provided herein.

Section 1.13. Mortgage. Mortgage means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.14. Owner. Owner shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Community, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant (but pursuant to Section 8.10 no assessments are payable by Declarant as an Owner except as specifically described therein).

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Section 1.15. Plats and Plans. Plats and Plans shall collectively mean those plats or plans of all or any portion of the Community making reference hereto which have been or hereafter may be recorded in the office of the Recorder of Hendricks County, Indiana, as the same may be amended or supplemented by replats or otherwise.

Section 1.16. Quorum. Quorum shall mean the percent of Eligible Votes entitled to be cast on a matter at any meeting of Members as specified in the Bylaws.

Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned thereto in the Master Declaration unless the context otherwise requires.

## ARTICLE II

### PROPERTY RIGHTS, BUILDING STANDARDS AND COVENANTS

Section 2.1. Rules and Regulations. The Board of Directors of the Community Association may establish reasonable rules and regulations concerning the use of the Community Facilities and individual Lots in the Community, as appropriate. Copies of such regulations and amendments thereto shall be furnished by the Community Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, canceled, or modified by the Board of Directors of the Community Association or the Community Association in a regular or special meeting by the vote of two-thirds (2/3) of all Eligible Votes and with the written approval of the Class B Member prior to the Control Transfer Date. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure, as provided in Article VIII. In addition, the Community Association, through the Board, may, by contract or other agreement, enforce county ordinances or permit Hendricks County to enforce ordinances affecting the Development for the benefit of the Community Association and its Members.

Section 2.2. Use. Without the prior written consent of the Board of Directors, nothing shall be done or kept on any Lot or any Community Facilities or any part thereof to increase the rate of insurance on the Community or any part thereof over what the Community Association, but for such activity, would pay. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or any Community Facilities or any part thereof, and the Community Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 2.3. Building Materials; Roof; Architectural Standards; and Design Guidelines. The residence constructed on any Lot must meet the requirements of the Master Declaration and this Declaration and shall be subject to the standards as outlined in Exhibit "C" attached hereto and made a part hereof.



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ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Community Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. Classes of Membership. The Community Association shall have two (2) classes of Members consisting of Class A Members and the Class B Member.

- (a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Except as otherwise provided herein or in the Articles of Incorporation, each Owner shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised by the person whom the collective Members with respect to such Lot may designate. If a Membership stands of record in the names of at least two (2) persons or entities, if one person or entity votes, the vote binds all persons. In no event shall such vote be split into fractional votes and in no event shall more than one vote be cast with respect to any Lot. Each vote cast with respect to a Lot shall presumptively be valid, but if such vote is questioned by any Member holding any interest in such Lot and if all such Members holding an interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted. In addition, the Community Association may reject a vote, consent, waiver or proxy appointment if there is a reasonable basis to doubt the validity of a signature or the signatory's authority.
  
- (b) Class B. The Declarant shall be the sole Class B Member. The Class B Member shall be entitled to 1,000 votes for so long as it shall own any Lot or other real estate in the Community, or until the Declarant's Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be converted to a Class A membership on the happening of the first to occur of the following events:
  - (i) When the Class B Member owns less than ten percent (10%) of the Lots in the Community,
  - (ii) When the Class B Member voluntarily surrenders its Class B membership, or
  - (iii) Twelve (12) years after the first Lot is conveyed to an Owner in any portion of the Community.

Section 3.3. Board of Directors. Subsequent to the Control Transfer Date, the Owners shall elect a Board of Directors (the "Board of Directors" or the "Board") of the Community Association

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as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Community Association. The initial Board of Directors shall be appointed by Declarant and shall manage the affairs of the Community Association until the Control Transfer Date.

Section 3.4. Professional Management. No contract or agreement for professional management of the Community Association by Declarant nor any other contract between the Community Association and Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

Section 3.5. Responsibilities of the Community Association. The Community 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 Community Facilities, the determination of Community Assessments, the collection of Community Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Community Association shall also bill for and collect the amount for Common Expenses and Special Assessments pursuant to the Master Declaration, and upon receipt, deliver said amount to the Association, as provided for in the Master Declaration. The Community 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 this Declaration. Neither the Community 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. The Community Association shall procure and maintain insurance in accordance with the provisions of Article V hereof. The Community Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Community Association deems necessary or advisable.

Section 3.6. Control and Transfer of Control of Community Association. Until the Control Transfer Date, the Board of Directors of the Community Association shall consist of persons appointed by Declarant.

#### ARTICLE IV

#### MAINTENANCE

##### Section 4.1. Maintenance.

- (a) The Community Association shall maintain and keep in good repair the Community Facilities. The maintenance of the Community Facilities shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Community Association's sole cost and

expense as Community Assessments, of all trees, fences, shrubs, grass, Community Facilities, walks, the accent or special effect lighting system and other improvements situated upon the Community Facilities.

- (b) In the event that the Board of Directors of the Community Association determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Community Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Community Association, except in the event of an emergency situation, shall give the Owner written notice of the Community Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within three (3) days from the date of such notice; provided, however, that if the same is not capable of completion within the three (3) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Community Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

ARTICLE V

INSURANCE

Section 5.1. Insurance.

- (a) The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Community Facilities against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.
- (b) The Board shall also obtain a public liability policy covering the Community Facilities, the Community Association and its Members for all damage or injury caused by the negligence of the Community Association or any of its Members or agents. The public liability policy shall have at least a Five Hundred Thousand Dollar (\$500,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and a Two Hundred Fifty Thousand Dollar (\$250,000) minimum property damage limit. Premiums for all insurance on the

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Community Facilities shall be a cost paid by Community Assessments. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(c) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Community Association as Trustee for the respective benefited parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

- (i) All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.
- (ii) All policies on the Community Facilities shall be for the benefit of the Lot Owners and their mortgagees as their interests may appear.
- (iii) Exclusive authority to adjust losses under policies in force on the Community Facilities obtained by the Community Association shall be vested in the Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (iv) In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.
- (v) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Appropriate Indiana County area.
- (vi) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (1) a waiver of subrogation by the insurer as to any claims against the Community Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
  - (2) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

- (3) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;
  - (4) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Community Association or its duly authorized manager without prior demand in writing delivered to the Community Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Community Association, its manager, any Owner, or mortgagee;
  - (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
  - (6) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Community Association.
- (d) In addition to the other insurance required by this Section, the Board shall obtain, as a Community expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Community Association's funds. The amount of fidelity coverage shall be determined in the Board's best business judgment, but may not be less than three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Community Association.

Section 5.2. Disbursement of Proceeds. Proceeds of insurance policies written in the name of the Community Association shall be disbursed as follows:

- (a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Community or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Community Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.
- (b) If it is determined that the damage or destruction to the Community Facilities for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 5.2(a).

Section 5.3. Damage and Destruction.

- (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Community Facilities covered by insurance written in the name of the Community Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Community Facilities. Repair or reconstruction, as used in this paragraph means repairing or restoring the Community Facilities to substantially the same condition in which it existed prior to the fire or other casualty.
- (b) Any damage or destruction to the Community Facilities shall be repaired or reconstructed unless the Class B Member and at least seventy-five (75%) per cent of the Eligible Votes shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Community Association within said period, then the Period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Community Facilities damage or destruction shall be repaired or reconstructed.
- (c) In the event that it should be determined by the Community Association in the manner described above that the damage or destruction of the Community Facilities shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portion of the Community Facilities shall be restored to its natural state and maintained as an undeveloped portion of the Community Facilities by the Community Association in a neat and attractive condition.

Section 5.4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment as permitted in Section 8.4.

ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTY

Section 6.1. Annexation without Approval of Owners.

- (a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Community Association all or any portion of the real property described in Exhibit "B",

attached hereto and by reference made a part hereof, and any other real estate adjacent thereto or to the Community as the same exists from time to time whether in fee simple or leasehold, by filing in the Recorder's Office of Hendricks County, Indiana, an amendment to this Declaration annexing such property. Such amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.

- (b) Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.
- (c) The rights reserved unto Declarant to subject Additional Land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such Additional Land to this Declaration or to the jurisdiction of the Community Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such Additional Land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose covenants and restrictions similar to those contained herein upon such Additional Land, nor shall such rights in any manner limit or restrict the use to which such Additional Land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 6.2. Acquisition of Additional Community Facilities. Declarant may convey to the Community Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Community Association and thereafter shall be maintained by the Community Association as an expense for the benefit of all Owners.

Section 6.3. Amendment. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" or Exhibit "B" attached hereto.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THE COMMUNITY ASSOCIATION

Section 7.1. Community Facilities. The Community Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Facilities and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.



Section 7.2. Services. The Community Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Community Association shall determine to be necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Community Association or by any person or entity with whom or with which it contracts. The Community Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration.

Section 7.3. Personal Property and Real Property for Common Use. The Community Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Community Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" or Exhibit "B" attached hereto or hereafter annexed into the Community and conveyed to it by the Declarant.

Section 7.4. Implied Rights. The Community Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation or the Bylaws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 7.5. Self-Help. In addition to any other remedies provided for herein, the Community Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Community Facilities to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner five (5) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees and paraprofessional fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 7.6. Right of Entry. The Community Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into structures and upon Lots for emergency, security, or safety purposes, which right may be exercised by the Community Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant of the Lot.

ARTICLE VIII

COMMUNITY ASSESSMENTS

Section 8.1. Purpose of Community Assessment. The Community Assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare,



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common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 8.2. Creation of Community Assessments.

- (a) Community Assessments, together with interest, costs, and reasonable attorney's fees and paraprofessional fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessments arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Community Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, all assessments shall be paid quarterly. In addition to collection of Community Assessments, the Board shall collect the assessments set forth in the Master Declaration in the amounts and at the times set forth by the Association's Board of Directors and the Association, and upon receipt shall immediately deliver such amounts to the Association. The Association may, at any time and from time to time, invoice the Owner directly for the assessments due under the Master Declaration, and, in such event, the Owners shall pay such amounts directly to the Association, and not to the Community Association.

Section 8.3. Computation of Assessments.

- (a) It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Community Association during the coming year. The budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. Each Owner covenants and agrees to pay to the Community Association his or her share of Community Assessments. The Board shall cause a copy of the budget, the amount of the assessments to be levied against each Lot for the following year and a description of the method used in determining the assessments to be delivered to each Owner at least fifteen (15) days prior to the meeting. Each segment of the budget including, without limitation, the Community Assessments, shall become effective unless disapproved at a meeting by a vote of at least two-thirds (2/3) of a Quorum of the Members.
- (b) Notwithstanding the foregoing, however, in the event that (i) the proposed budget or Community Assessments are disapproved in accordance with 8.3 (a) or (ii) the Board fails for any reason to determine the budget for the succeeding year, then and until such

time as a budget (or such portion thereof or assessments as shall have been disapproved in accordance with the foregoing) shall have been determined as provided herein, the budget (or applicable portion thereof or assessments) in effect for the then current year shall continue for the succeeding year.

- (c) In the event that the amounts actually expended by the Community Association for Community Assessments in any fiscal year exceed the amounts budgeted and assessed for Community Assessments 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, except that so long as the Declarant controls the Community Association, Declarant may, but shall be under no obligation, to fund such deficit; provided, however, that Declarant shall be reimbursed by the Community Association for any deficits so funded, together with interest at ten percent (10%) per annum until so reimbursed, from available surpluses in later years or through Special Assessments. Thereafter, 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 Community Association. In the event that the amounts budgeted and assessed for Community Assessments in any fiscal year exceed the amount actually expended by the Community Association for Community Assessments for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessment due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid, with interest, as required above before such excess shall be so credited to Owners.
- (d) During the first year following the date of recordation of this Declaration, the monthly Community Association Fee shall be the amount listed on Exhibit "C" attached. This monthly fee shall be subject to annual review and adjustment.

Section 8.4. Special Assessments. In addition to the other assessments authorized herein, the Community Association may levy Special Assessments in any year. So long as the total amount of Special Assessments allocable to each Lot does not exceed Twenty Percent (20%) of the Monthly Community Assessment in any one fiscal year, the Board may impose the Special Assessment. Any Special Assessment which would cause the amount of Special Assessments allocable to any Lot to exceed this limitation shall be effective only if approved by two-thirds (2/3) of a Quorum of the Members. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

Section 8.5. Lien for Assessments.

- (a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees and paraprofessional fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Community Association. Such lien shall be superior to all other liens and encumbrances

on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the Appropriate Indiana County and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

- (b) All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 8.6. Effect of Nonpayment of Assessments: Remedies of the Community Association.

- (a) Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Community Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Community Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Community Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Community Association and shall be for the benefit of all other Owners. The Community Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.
- (b) All payments shall be applied first to costs and attorneys' and paraprofessional fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Section 8.7. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost for items of a capital nature within the Community. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Community Association as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Community Assessments, as provided in Section 8.3. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 8.8. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees and paraprofessional fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Community Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Community Assessments by the Community Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Community Assessments shall be deemed to be Community Assessments collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 8.9. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to Lots generally in January, 1998, and as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to a Builder and/or Owner and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year and billed to the Builder in the Closing Statement between the Builder and the Developer. The Developer shall pay the assessment collected from the Builder to the Association. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to a Builder and/or Owner; provided, however, that Declarant may, in its sole and absolute discretion delay the starting date for assessments for as long as Declarant shall deem appropriate in its sole and absolute discretion but assessments shall in all events be payable commencing on the first day of the first month following the date the Lot is occupied for the residential purposes or is suitable for such occupancy as evidenced, for example, by the appropriate official of Hendricks County, Indiana or an architect issuing a certificate of occupancy or its equivalent stating that the residential structure on such Lot is substantially complete and available for occupancy.

Section 8.10. Assessments Due From Declarant.

- (a) Declarant covenants and agrees to pay the full amount of the annual assessment for each Lot occupied for residential purposes that it owns; notwithstanding anything

contained herein to the contrary, the Declarant shall not be required to pay any assessments for any Lots not occupied for residential purposes (other than completed vacant apartment units held for rental in the ordinary course of business) that it owns, including but not limited to model homes.

- (b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Community Association agree as to the value of any contribution, the value shall be as agreed. If the Community Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Community Association with a detailed explanation of the service performed and material furnished, and the Community Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Community Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

ARTICLE IX

MORTGAGEE RIGHTS

Section 9.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Community Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an Eligible Mortgage Holder), will, upon payment of the reasonable expense of the Community Association associated therewith, be entitled to timely written notice of:

- (a) any proposed termination of the Community Association;
- (b) condemnation, damage or destruction to the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Community Association; or

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- (e) any proposed action which would require the consent of Eligible Mortgage Holders.

ARTICLE X

GENERAL PROVISIONS

Section 10.1. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, so long as Indiana law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law, for successive periods not to exceed the period permitted by such law, provided such renewal or extension is approved by at least two thirds (2/3) of all Eligible Votes. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of the Recorder of Hendricks County, Indiana, on or before the effective date thereof an instrument executed by the President and Secretary of the Community Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved by the Owners. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 10.2. Amendment.

- (a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Community Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant owns any property in the Community or capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect, in the opinion of Declarant, the substantive rights of any Lot Owner or mortgagee hereunder.

- (b) In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Eligible Votes and the consent of the Declarant, so long as Declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the Hendricks County, Indiana records, unless a later effective date is specified therein.
  
- (c) Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving Mortgages, so long as Declarant owns any Lots within the Development or to enable reasonable development of and construction on the Lots; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any mortgagee, nor which substantially impairs in the reasonable opinion of the Declarant, the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. Declarant further reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, which amendment shall be fully effective in accordance with its terms:
  - (i) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Declaration; or
  - (ii) to insert such provisions clarifying matters or questions arising under this Declaration as are necessary or desirable and are not contrary to or inconsistent with this Declaration as theretofore in effect; or
  - (iii) to amend or modify this Declaration in any manner which in the reasonable opinion of the Declarant does not adversely affect in any material respect the rights of any Mortgagee or Owner, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 10.3. Indemnification. The Community Association shall indemnify every officer and director against any and all expenses, including attorney's fees and paraprofessional fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Community Association (except to the extent that such officers or directors

may also be Members of the Community Association), and the Community Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Community Association may, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 10.4. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 10.5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable. If any of the provisions hereof 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 provisions hereof.

Section 10.6. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 10.7. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

ARTICLE XI

ENFORCEMENT

Section 11.1. In General. Any party to whose benefit the restrictions herein contained inure, including Declarant and the Community Association, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration at the sole cost and expense of the party violating this Declaration (which cost and expense shall become a lien on the violating Owner's Lot subject to foreclosure in the manner provided in Article VIII), but neither Declarant nor Community Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.



Section 11.2. Government Enforcement. The Hendricks County Plan Commission of Hendricks County, Indiana, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Hendricks County Plan Commission of Hendricks County, Indiana.

Section 11.3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of this Declaration 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 this Declaration.

ARTICLE XII

PRIVATE AMENITIES AND SERVICES

Section 12.1. Private Amenities and Services. The Community Facilities shall be owned and maintained by the Community Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or liquidation, dissolution or winding up of the affairs of the Community Association, the Community Association shall, after paying or making provision for the payment of all the liabilities of the Community Association, distribute all the assets of the Community Association exclusively for the purposes of the Community Association in such manner, or to such organization or organizations as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed by the Judge of the Superior Court of Hendricks County, Indiana, exclusively for such purposes or to such organization or organizations, as such Court shall determine, which are organized and operated exclusively for such purpose.

ARTICLE XIII

LIMITATION ON DECLARANT'S LIABILITY

Section 13.1. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to the Community Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Community Association. If any judgment is ever levied against Declarant (or its assignee), the same is hereby agreed to be limited to the extent of Declarant's (or such assignee's) interest in the Community; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon any other assets of Declarant (or its assignee).



**LOTS AND COMMUNITY FACILITIES**

Real Estate covered by the following Land Description:

A part of the Southeast Quarter of Section 20, Township 14 North, Range 2 East of the Second Principal Meridian, Guilford Township, Hendricks County, Indiana, being described as follows:

Commencing at the Southeast corner of said Quarter Section, said point being marked by a Harrison Monument; thence North 00 degrees 17 minutes 51 seconds East (assumed bearing) along the East line of said Quarter Section a distance of 1116.21 feet to the Point of Beginning; thence North 89 degrees 42 minutes 09 seconds West perpendicular to said East line a distance of 30.00 feet; thence North 79 degrees 57 minutes 23 seconds West a distance of 110.21 feet; thence North 65 degrees 12 minutes 35 seconds West a distance of 349.07 feet; thence North 60 degrees 35 minutes 03 seconds West a distance of 580.00 feet; thence North 29 degrees 24 minutes 57 seconds East a distance of 544.45 feet to the point of curvature of a curve to the right having a radius of 25.00 feet, the radius point of which bears South 60 degrees 35 minutes 03 seconds East; thence northeasterly along said curve an arc distance of 39.27 feet to a point which bears North 29 degrees 24 minutes 57 seconds East from said radius point; thence South 60 degrees 35 minutes 03 seconds East a distance of 468.79 feet to the point of curvature of a curve to the left having a radius of 1545.00 feet, the radius point of which bears North 29 degrees 24 minutes 57 seconds East; thence southeasterly along said curve an arc distance of 253.08 feet to the point of reverse curvature of a curve to the right having a radius of 25.00 feet, the radius point of which bears South 20 degrees 01 minutes 50 seconds West; thence southeasterly and southerly along said curve an arc distance of 38.31 feet to a point which bears South 72 degrees 09 minutes 41 seconds East from said radius point; thence South 65 degrees 17 minutes 13 seconds East a distance of 9.80 feet to the East line of said Quarter Section; thence South 00 degrees 17 minutes 51 seconds West along said East line a distance of 563.15 feet to the Point of Beginning, containing 12.08 acres, more or less.

Subject to all restrictions, easements and legal rights of way of record.

**EXHIBIT "A"**

**The Colony at Heartland Crossing, Section I - Supplemental Declaration**  
3COL@HLCISUPEXHA

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**ADDITIONAL LAND**

Real Estate per the following Legal Description less the acreage per Exhibit "A" (The Colony at Heartland Crossing, Section I):

Part of the Southeast Quarter of Section 20, Township 14 North, Range 2 East of the Second Principle Meridian in Guilford Township, Hendricks County, Indiana, being more particularly described as follows:

Beginning at the Southeast corner of said Southeast Quarter Section; thence along the South line thereof, South 88 degrees 54 minutes 06 seconds West (assumed bearing) 1155.00 feet; thence North 01 degrees 05 minutes 54 seconds West 980.29 feet to the point of curvature of a curve concave Easterly having central angle of 30 degrees 30 minutes 54 seconds and a radius of 1000.00 feet; thence Northerly and Northeasterly along said curve an arc distance of 532.59 feet (said arc being subtended by a chord bearing North 14 degrees 09 minutes 33 seconds East having a length of 526.31 feet); thence North 29 degrees 24 minutes 57 seconds East 693.62 feet; thence South 61 degrees 46 minutes 06 seconds East 523.90 feet to the point of curvature of a curve concave Northeasterly having central angle of 10 degrees 16 minutes 40 seconds and a radius of 1540.00 feet; thence Southeasterly along said curve an arc distance of 276.24 feet (said arc being subtended by a chord bearing South 65 degrees 43 minutes 23 seconds East having a length of 275.87 feet); thence South 00 degrees 17 minutes 52 seconds West 1711.26 feet to the POINT OF BEGINNING of this description, containing 48.46 acres, more or less; subject to any easements, rights-of-way and restrictions of record.

**EXHIBIT "B"**

The Colony at Heartland Crossing, Section I - Supplemental Declaration  
3COL@HLC\SUPEXHB



**ADDITIONAL LAND**

Real Estate per the following Legal Description:

Part of the Southwest Quarter of Section 21, Township 14 North, Range 2 East of the Second Principal Meridian, Decatur Township, Marion County, Indiana, being more particularly described as follows:

Commencing at the southwest corner of said Southwest Quarter of said Section 21; THENCE North 00 degrees 17 minutes 51 seconds East along the west line of said Southwest Quarter a distance of 952.88 feet to the Point of Beginning of this description; THENCE continue North 00 degrees 17 minutes 51 seconds East along the west line of said Southwest Quarter a distance of 800.72 feet to a point of curvature on a curve concave Northerly, a radial from said point bears North 19 degrees 39 minutes 37 seconds East; THENCE Easterly 142.44 feet along an arc of said curve having a radius of 1,500.00 feet and a central angle of 05 degrees 26 minutes 27 seconds to a point of tangency; THENCE South 75 degrees 46 minutes 50 seconds East a distance of 348.63 feet to a point on a tangent curve concave Southwesterly, a radial from said point bears South 14 degrees 13 minutes 10 seconds West; THENCE Southeasterly 476.76 feet along an arc of said curve having a radius of 750.00 feet and a central angle of 36 degrees 25 minutes 19 seconds to a point of tangency; THENCE South 39 degrees 21 minutes 31 seconds East a distance of 166.53 feet; THENCE South 24 degrees 53 minutes 10 seconds West a distance of 305.40 feet; THENCE South 88 degrees 53 minutes 47 seconds West a distance of 851.24 feet to the Point of Beginning, containing 13.529 acres of land, more or less.

**EXHIBIT "B"**

**The Colony at Heartland Crossing, Section I - Supplemental Declaration**

3COL@HLC\SUPEXHB



**BUILDING STANDARDS AND ASSOCIATION FEES**

**EXHIBIT "C"**

**The Colony at Heartland Crossing, Section I - Supplemental Declaration**  
3COL@HLCASUPEXHC

**BUILDING STANDARDS AND ASSOCIATION FEES**

COMMUNITY: The Colony at Heartland Crossing, Section I

BUILDING STANDARDS:

Type of Residence:	Single Family Home
No. of Lots:	66
Lot Size:	Per the Hendricks County PUD approval.
Set Backs:	Per the Hendricks County PUD approval.
Min. Square Feet (sft.):	Per the Hendricks County PUD approval.
Garages:	Per the Hendricks County PUD approval.

1. All signage and all sign locations, including any sign to advertise the source of mortgages, shall be in good taste and shall be approved by the Developer prior to installation.
2. Builder shall install Committee-approved and Post Office-approved curb side rural mailboxes during original construction of the Dwelling Units. Builder shall supply mail boxes.  
  
Street lights shall be leased as a part of the association fee.
3. All roofs will be Weatherwood by Owenings-Corning or the same color manufactured by a different supplier.
4. Developer to specify fence requirements in Covenants.
5. Each Lot shall receive the following minimum landscaping which must be approved by the Committee for specs, size, and location.
  - A. At least one (1) deciduous shade (overstory) trees, two (2) inches caliper, (one in the front yard and one in the back yard) shall be planted. Builder may choose among red oak, hard maple, seedless ash, or pear for the required two deciduous shade trees.
  - B. Front and side yards (half way back along the Dwelling Unit) and street frontage on corner lots shall be sodded.
6. All driveways shall be of concrete or asphalt.  
  
Driveways shall be not more than twelve (12) inches wider than the outside walls of the garage door or doors it serves.

**EXHIBIT "C"**

The Colony at Heartland Crossing, Section I - Supplemental Declaration  
3COL@HLC\$UPEXHC

The width of the driveway shall be no less than the outer edge of the garage door or doors it serves.

- 7. Builder shall finish grade lots to conform with the grading plan approved by the Drainage Board of Hendricks County. Of critical importance is the grading of side yard and rear swales. Builder shall have the right to enter upon adjacent undeveloped lots to grade side yard and rear swales to meet approved plan grade; however, Builder must return the Lots to their original condition. Builder shall maintain all rear swales to the line and grade as shown on the approved plans after acceptance of the Drainage System by the Drainage Board of Hendricks County.
- 8. Subject to Act of God, casualty, weather and other causes beyond Builder's control, homes shall be completed within six (6) months of commencement of construction by Builder of footings.
- 9. No above ground pools, storage sheds, dog runs, or satellite dishes over one meter in diameter.
- 10. The Owners and Lots in the Community are subject to the Master Declaration which is referred to on page one (1) of this Declaration. Both Declarations must be adhered to in order to be in compliance with covenants, conditions and restrictions of the Community. If there is a section addressing the same subject in both Declarations, the more restrictive section shall apply.

COMMUNITY FEE:\*                      \$12 per month covers common area maintenance and street lights of the community. Lot Owners are responsible for yard care, trash removal, maintenance and insurance on residence.

MASTER ASSOCIATION FEE:\*                      \$18 per month covers common area and facilities maintenance costs in Heartland Crossing and access to all the TCCD facilities.

\*The fees are estimated amounts and subject to annual adjustment.

**EXHIBIT "C"**

**The Colony at Heartland Crossing, Section I - Supplemental Declaration**

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**MASTER DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS OF  
HEARTLAND CROSSING**

WHEREAS, the MASTER DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF HEARTLAND CROSSING ("Master Declaration") dated September 19, 1997 was recorded on September 24, 1997 as Instrument No. 9700020156 in the office of the Hendricks County Recorder;

*Bk 26  
Pg 1589*

WHEREAS, the Master Declaration encumbered certain real estate to be known as The Colony at Heartland Crossing, Section I consisting of 12.08 acres +/-;

WHEREAS, the Master Declaration further encumbered Additional Land ("Additional Land"), as described therein and consisting of 48.46 acres +/- located in Hendricks County and 13.529 acres +/- located in Marion County, Indiana, which Declarant has the unilateral right, privilege, and option, from time to time at any time to subject to the provisions of the Master Declaration;

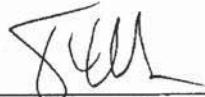
WHEREAS, the attached Exhibit "A", consisting of 14.75 acres +/-, is a portion of the Additional Land, and will be known as The Colony at Heartland Crossing, Section II;

NOW THEREFORE, Declarant hereby declares that all of the real estate described in Exhibit "A" shall be held, sold and conveyed subject to the covenants, conditions, easements, and restrictions of the Master Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of this 23rd day of January, 1998.

9800001996  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 01-28-1998 At 08:30 am.  
COVENANTS 83.00  
Vol. 41 Pg. 1502 - 1538

CEDAR RUN LIMITED, INC.

By:   
Timmy J. Shrout, Vice President

State of Indiana     )  
                                  )     SS:  
County of Marion    )

Before me, a Notary Public in and for said County and State, this 23rd day of January, 1998, personally appeared Timmy J. Shrout, known by me to be a Vice President of Cedar Run Limited, Inc., who executed the foregoing document for and on behalf of said entity.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

  
Notary Public

\_\_\_\_\_  
Name Printed

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_



GREGORY A. BRUZAS, Notary Public  
My Commission Expires: 2-23-98  
Residing in Hendricks County

*27+2*

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**EXHIBIT "A"**

**PARCEL I  
LEGAL DESCRIPTION**

**The Colony at Heartland Crossing, Section 2**

A part of the Southeast Quarter of Section 20, Township 14 North, Range 2 East in Hendricks County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section, said point being marked by a Harrison Monument; thence North 00 degrees 17 minutes 51 seconds East (assumed bearing) along the East line of the said Quarter Section 315.09 feet; thence South 88 degrees 54 minutes 06 seconds West 577.68 feet to the POINT OF BEGINNING; thence continuing South 88 degrees 54 minutes 06 seconds West 555.00 feet; thence North 01 degrees 05 minutes 54 seconds West 665.29 feet to the point of curvature of a curve concave Southeasterly with a central angle of 30 degrees 30 minutes 54 seconds and a radius of 970.00 feet; thence Northeasterly along said curve an arc length of 516.60 feet (said curve being subtended by a chord bearing of North 14 degrees 09 minutes 33 seconds East and a length of 510.52 feet); thence North 29 degrees 24 minutes 57 seconds East 130.00 feet to the south line of a 13.30 acre tract of land described in a Corporate Warranty Deed recorded as Instrument No. 9700020158 in Volume 26, Pages 1681-1683 in the Office of the Recorder of Hendricks County, Indiana; thence South 60 degrees 35 minutes 03 seconds East along said south line 530.00 feet; thence South 29 degrees 24 minutes 57 seconds West 105.00 feet; thence South 60 degrees 35 minutes 03 seconds East 20.74 feet; thence South 29 degrees 24 minutes 57 seconds West 50.00 feet; thence South 21 degrees 39 minutes 21 seconds West 63.71 feet; thence South 13 degrees 52 minutes 07 seconds West 50.37 feet; thence South 06 degrees 59 minutes 35 seconds West 50.37 feet; thence South 00 degrees 20 minutes 03 seconds West 55.38 feet; thence South 01 degrees 05 minutes 54 seconds East 229.00 feet; thence North 88 degrees 54 minutes 06 seconds East 10.00 feet; thence South 01 degrees 05 minutes 54 seconds East 310.00 feet; thence South 88 degrees 54 minutes 06 seconds West 5.00 feet; thence South 01 degrees 05 minutes 54 seconds East 105.00 feet to the POINT OF BEGINNING. Containing 14.75 acres, more or less.

**SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR**

**THE COLONY AT HEARTLAND CROSSING, SECTION II**

Dated: January 23, 1998

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EXHIBITS:

- "A" - Description of Real Estate
- "B" - Description of Additional Real Estate
- "C" - Building Standards and Association Fees



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**SUPPLEMENTAL  
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS FOR**

**THE COLONY AT HEARTLAND CROSSING, SECTION II**

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE COLONY AT HEARTLAND CROSSING, SECTION II (the "Declaration"), is made this 23rd day of January, 1998, by CEDAR RUN LIMITED, INC., an Indiana corporation, and

WITNESSES:

WHEREAS, Declarant is the owner of real property described in Exhibit "A" attached hereto and made a part hereof, which real property will be subdivided and known as The Colony at Heartland Crossing, Section II and will be more particularly described on a plat ("Plat") to be recorded in the Office of the Recorder of Hendricks County, Indiana, together with any additions thereto as hereinafter provided are referred to herein collectively as the "Real Estate" or as the "Community";

WHEREAS, Declarant has previously recorded a Master Declaration of Covenants, Conditions, Easements and Restrictions of Heartland Crossing, recorded on September 24, 1997 as Instrument No. 9700020156 and a Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for the Colony at Heartland Crossing, Section 1, recorded on September 24, 1997 as Instrument No. 9700020157 in the office of the Recorder of Hendricks County, Indiana pursuant to which mutual and beneficial covenants, conditions and charges were imposed upon the Community as more particularly described therein;

WHEREAS, Declarant has heretofore caused to be recorded a Master Declaration of Covenants, Conditions, Easements and Restrictions of Heartland Crossing, recorded on January \_\_\_\_\_, 1998 as Instrument No. \_\_\_\_\_ in the office of the Recorder of Hendricks County, Indiana (hereinafter, along with the above-referenced previously-recorded Master Declaration, referred to as the "Master Declaration"), pursuant to which mutual and beneficial covenants, conditions and charges were imposed upon the Community as more particularly described therein;

WHEREAS, pursuant to the Master Declaration, Declarant contemplated that this Supplemental Declaration would be recorded to annex the Real Estate as provided for in the Master Declaration and to set forth specific and particular restrictions affecting the Community which would be in addition to those imposed by the Master Declaration, for the purposes, among other things, of specifying the services to be provided for Owners in the Community by the Community Association (as herein defined), Community Assessments for such services (which are in addition to the assessments levied and collected by the Association (as defined in the Master Declaration) pursuant

to the Master Declaration for Common Expenses of the Association) and such other matters as may be peculiar to the Community in relation to the other properties now or hereafter subject to the Master Declaration;

WHEREAS, Declarant intends to sell and convey the Real Estate to C. P. Morgan Communities, L.P. and before doing so desires to subject to and impose upon all real estate within the platted areas of the Community mutual and beneficial covenants, conditions, restrictions, and charges which shall be in addition to those imposed by the Master Declaration, under a general plan or scheme of improvement for the benefit and complement of the Lots and lands in the Community and future owners thereof; and

WHEREAS, the Declarant has formed (or intends to form) the Community Association (as defined herein) for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, Declarant, pursuant to the Master Declaration, hereby declares that all of the platted Lots and lands located within the Community as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the Master Declaration and this Declaration, 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 Community, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community as a whole and of each of said Lots situated therein. This Declaration shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof, and shall inure to the benefit of successors in title to the Real Estate.

ARTICLE I

DEFINITIONS

Section 1.1. Additional Land. Additional Land shall mean and refer to additional real property now owned and described in Exhibit "B" attached hereto or which may in the future be owned by Declarant subject to Declarant's reserved unilateral right to annex the same within and subject to this Declaration as provided elsewhere herein.

Section 1.2. Articles of Incorporation. Articles of Incorporation means and refers to the Articles of Incorporation of the Community Association, as filed with the Secretary of State of the State of Indiana.

Section 1.3. Bylaws. Bylaws shall refer to the Bylaws of the Community Association, as the same may exist and be in effect from time to time.

Section 1.4. Community Assessments. Community Assessments shall mean assessments for such expenses as may be provided for herein or in the Master Declaration which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment



of the Owners and occupants of the Lots in the Community and for the purpose of maintaining the properties or providing services for the Owners within the Community, all as may be specifically authorized from time to time by the Board of Directors. The Community Assessments shall be levied equally against Owners of Lots in a Community for such purposes that are authorized by this Declaration or by the Board of Directors from time to time, provided that in the event assessments are levied for exterior maintenance of dwellings, or insurance on dwellings, or replacement reserves which pertain to particular dwellings within a given Community such assessments (that are for the use and benefit of particular Lots) shall be levied upon a pro rata basis among the benefited Owners.

Section 1.5. Community Association. Community Association shall mean and refer to The Colony at Heartland Crossing Community Association, Inc., or an organization of similar name, formed, or to be formed, as an Indiana nonprofit corporation, its successors and assigns.

Section 1.6. Community Facilities. Community Facilities shall refer to facilities such as a clubhouse, swimming pool, tennis court(s) and related facilities and equipment, if any, to be located within and to be part of the Community only for the use of Owners of Lots in the Community, as determined and provided by Declarant and all real and personal property now or hereafter owned by or subject to an easement in favor of the Community Association only for the use of Owners of Lots in the Community.

Section 1.7. Control Transfer Date. Control Transfer Date shall be the date on which the Declarant is no longer a Class B Member of the Community Association.

Section 1.8. Declarant. Declarant means Cedar Run Limited, Inc., an Indiana corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Cedar Run Limited, Inc., as developer of the Community, as a matter of law or as evidenced by a written instrument of transfer to such effect.

Section 1.9. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Community Association as herein and in the Bylaws provided.

Section 1.10. Eligible Votes. Eligible Votes shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 1.11. Lot. Lot shall mean a portion of the Community other than the Community Facilities and Common Area (as defined in the Master Declaration) intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plats and Plans filed with this Declaration and amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 1.12. Member. Member shall mean and refer to a person or entity entitled to membership in the Community Association, as provided herein.

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Section 1.13. Mortgage. Mortgage means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.14. Owner. Owner shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Community, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant (but pursuant to Section 8.10 no assessments are payable by Declarant as an Owner except as specifically described therein).

Section 1.15. Plats and Plans. Plats and Plans shall collectively mean those plats or plans of all or any portion of the Community making reference hereto which have been or hereafter may be recorded in the office of the Recorder of Hendricks County, Indiana, as the same may be amended or supplemented by replats or otherwise.

Section 1.16. Quorum. Quorum shall mean the percent of Eligible Votes entitled to be cast on a matter at any meeting of Members as specified in the Bylaws.

Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned thereto in the Master Declaration unless the context otherwise requires.

## ARTICLE II

### PROPERTY RIGHTS, BUILDING STANDARDS AND COVENANTS

Section 2.1. Rules and Regulations. The Board of Directors of the Community Association may establish reasonable rules and regulations concerning the use of the Community Facilities and individual Lots in the Community, as appropriate. Copies of such regulations and amendments thereto shall be furnished by the Community Association to all Owners prior to the rule's effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, canceled, or modified by the Board of Directors of the Community Association or the Community Association in a regular or special meeting by the vote of two-thirds (2/3) of all Eligible Votes and with the written approval of the Class B Member prior to the Control Transfer Date. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure, as provided in Article VIII. In addition, the Community Association, through the Board, may, by contract or other agreement, enforce county ordinances or permit Hendricks County to enforce ordinances affecting the Development for the benefit of the Community Association and its Members.

Section 2.2. Use. Without the prior written consent of the Board of Directors, nothing shall be done or kept on any Lot or any Community Facilities or any part thereof to increase the rate of insurance on the Community or any part thereof over what the Community Association, but for such activity, would pay. Noxious, destructive, or offensive activity, or any activity constituting an

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unreasonable source of annoyance, shall not be conducted on any Lot or any Community Facilities or any part thereof, and the Community Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 2.3. Building Materials; Roof; Architectural Standards; and Design Guidelines. The residence constructed on any Lot must meet the requirements of the Master Declaration and this Declaration and shall be subject to the standards as outlined in Exhibit "C" attached hereto and made a part hereof.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Community Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. Classes of Membership. The Community Association shall have two (2) classes of Members consisting of Class A Members and the Class B Member.

- (a) Class A. Class A Members shall be all Owners with the exception of the Declarant. Except as otherwise provided herein or in the Articles of Incorporation, each Owner shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised by the person whom the collective Members with respect to such Lot may designate. If a Membership stands of record in the names of at least two (2) persons or entities, if one person or entity votes, the vote binds all persons. In no event shall such vote be split into fractional votes and in no event shall more than one vote be cast with respect to any Lot. Each vote cast with respect to a Lot shall presumptively be valid, but if such vote is questioned by any Member holding any interest in such Lot and if all such Members holding an interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted. In addition, the Community Association may reject a vote, consent, waiver or proxy appointment if there is a reasonable basis to doubt the validity of a signature or the signatory's authority.
- (b) Class B. The Declarant shall be the sole Class B Member. The Class B Member shall be entitled to 1,000 votes for so long as it shall own any Lot or other real estate in the Community, or until the Declarant's Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be

converted to a Class A membership on the happening of the first to occur of the following events:

- (i) When the Class B Member owns less than ten percent (10%) of the Lots in the Community,
- (ii) When the Class B Member voluntarily surrenders its Class B membership, or
- (iii) Twelve (12) years after the first Lot is conveyed to an Owner in any portion of the Community.

Section 3.3. Board of Directors. Subsequent to the Control Transfer Date, the Owners shall elect a Board of Directors (the "Board of Directors" or the "Board") of the Community Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Community Association. The initial Board of Directors shall be appointed by Declarant and shall manage the affairs of the Community Association until the Control Transfer Date.

Section 3.4. Professional Management. No contract or agreement for professional management of the Community Association by Declarant nor any other contract between the Community Association and Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

Section 3.5. Responsibilities of the Community Association. The Community 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 Community Facilities, the determination of Community Assessments, the collection of Community Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Community Association shall also bill for and collect the amount for Common Expenses and Special Assessments pursuant to the Master Declaration, and upon receipt, deliver said amount to the Association, as provided for in the Master Declaration. The Community 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 this Declaration. Neither the Community 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. The Community Association shall procure and maintain insurance in accordance with the provisions of Article V hereof. The Community Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Community Association deems necessary or advisable.

Section 3.6. Control and Transfer of Control of Community Association. Until the Control Transfer Date, the Board of Directors of the Community Association shall consist of persons appointed by Declarant.

ARTICLE IV

MAINTENANCE

Section 4.1. Maintenance.

- (a) The Community Association shall maintain and keep in good repair the Community Facilities. The maintenance of the Community Facilities shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Community Association's sole cost and expense as Community Assessments, of all trees, fences, shrubs, grass, Community Facilities, walks, the accent or special effect lighting system and other improvements situated upon the Community Facilities.
- (b) In the event that the Board of Directors of the Community Association determines that
  - (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or
  - (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Community Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Community Association, except in the event of an emergency situation, shall give the Owner written notice of the Community Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within three (3) days from the date of such notice; provided, however, that if the same is not capable of completion within the three (3) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Community Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

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ARTICLE V

INSURANCE

Section 5.1. Insurance.

- (a) The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Community Facilities against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.
- (b) The Board shall also obtain a public liability policy covering the Community Facilities, the Community Association and its Members for all damage or injury caused by the negligence of the Community Association or any of its Members or agents. The public liability policy shall have at least a Five Hundred Thousand Dollar (\$500,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and a Two Hundred Fifty Thousand Dollar (\$250,000) minimum property damage limit. Premiums for all insurance on the Community Facilities shall be a cost paid by Community Assessments. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.
- (c) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Community Association as Trustee for the respective benefited parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:
  - (i) All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.
  - (ii) All policies on the Community Facilities shall be for the benefit of the Lot Owners and their mortgagees as their interests may appear.
  - (iii) Exclusive authority to adjust losses under policies in force on the Community Facilities obtained by the Community Association shall be vested in the Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

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- (iv) In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.
- (v) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Appropriate Indiana County area.
- (vi) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (1) a waiver of subrogation by the insurer as to any claims against the Community Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;
  - (2) a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;
  - (3) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;
  - (4) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Community Association or its duly authorized manager without prior demand in writing delivered to the Community Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Community Association, its manager, any Owner, or mortgagee;
  - (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
  - (6) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Community Association.
- (d) In addition to the other insurance required by this Section, the Board shall obtain, as a Community expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Community Association's funds. The amount of fidelity coverage shall be determined in the Board's best business judgment, but may not be less than three (3) months' assessments plus reserves on hand. Bonds shall



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contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Community Association.

Section 5.2. Disbursement of Proceeds. Proceeds of insurance policies written in the name of the Community Association shall be disbursed as follows:

- (a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Community or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Community Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.
- (b) If it is determined that the damage or destruction to the Community Facilities for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 5.2(a).

Section 5.3. Damage and Destruction.

- (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Community Facilities covered by insurance written in the name of the Community Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Community Facilities. Repair or reconstruction, as used in this paragraph means repairing or restoring the Community Facilities to substantially the same condition in which it existed prior to the fire or other casualty.
- (b) Any damage or destruction to the Community Facilities shall be repaired or reconstructed unless the Class B Member and at least seventy-five (75%) per cent of the Eligible Votes shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Community Association within said period, then the Period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Community Facilities damage or destruction shall be repaired or reconstructed.



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- (c) In the event that it should be determined by the Community Association in the manner described above that the damage or destruction of the Community Facilities shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the damaged portion of the Community Facilities shall be restored to its natural state and maintained as an undeveloped portion of the Community Facilities by the Community Association in a neat and attractive condition.

Section 5.4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment as permitted in Section 8.4.

## ARTICLE VI

### ANNEXATION OF ADDITIONAL PROPERTY

Section 6.1. Annexation without Approval of Owners.

- (a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Community Association all or any portion of the real property described in Exhibit "B", attached hereto and by reference made a part hereof, and any other real estate adjacent thereto or to the Community as the same exists from time to time whether in fee simple or leasehold, by filing in the Recorder's Office of Hendricks County, Indiana, an amendment to this Declaration annexing such property. Such amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.
- (b) Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.
- (c) The rights reserved unto Declarant to subject Additional Land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such Additional Land to this Declaration or to the jurisdiction of the Community Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such Additional Land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose covenants and restrictions similar to those contained herein upon such Additional Land, nor shall such rights in any manner limit or restrict the use to which such

Additional Land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 6.2. Acquisition of Additional Community Facilities. Declarant may convey to the Community Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Community Association and thereafter shall be maintained by the Community Association as an expense for the benefit of all Owners.

Section 6.3. Amendment. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" or Exhibit "B" attached hereto.

ARTICLE VII

RIGHTS AND OBLIGATIONS OF THE COMMUNITY ASSOCIATION

Section 7.1. Community Facilities. The Community Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Facilities and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.

Section 7.2. Services. The Community Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Community Association shall determine to be necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Community Association or by any person or entity with whom or with which it contracts. The Community Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration.

Section 7.3. Personal Property and Real Property for Common Use. The Community Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Community Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" or Exhibit "B" attached hereto or hereafter annexed into the Community and conveyed to it by the Declarant.

Section 7.4. Implied Rights. The Community Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation or the Bylaws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 7.5. Self-Help. In addition to any other remedies provided for herein, the Community Association or its duly authorized agent shall have the power to enter upon a Lot or any

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portion of the Community Facilities to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner five (5) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees and paraprofessional fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 7.6. Right of Entry. The Community Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into structures and upon Lots for emergency, security, or safety purposes, which right may be exercised by the Community Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant of the Lot.

## ARTICLE VIII

### COMMUNITY ASSESSMENTS

Section 8.1. Purpose of Community Assessment. The Community Assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 8.2. Creation of Community Assessments.

- (a) Community Assessments, together with interest, costs, and reasonable attorney's fees and paraprofessional fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessments arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Community Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, all assessments shall be paid quarterly. In addition to collection of Community Assessments, the Board shall collect the assessments set forth in the Master Declaration in the amounts and at the times set forth by the Association's Board of Directors and the Association, and upon receipt shall immediately deliver such amounts to the Association. The Association may, at any time and from time to time, invoice the Owner directly for the assessments due under the Master Declaration, and,

in such event, the Owners shall pay such amounts directly to the Association, and not to the Community Association.

Section 8.3. Computation of Assessments.

- (a) It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Community Association during the coming year. The budget may include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. Each Owner covenants and agrees to pay to the Community Association his or her share of Community Assessments. The Board shall cause a copy of the budget, the amount of the assessments to be levied against each Lot for the following year and a description of the method used in determining the assessments to be delivered to each Owner at least fifteen (15) days prior to the meeting. Each segment of the budget including, without limitation, the Community Assessments, shall become effective unless disapproved at a meeting by a vote of at least two-thirds (2/3) of a Quorum of the Members.
- (b) Notwithstanding the foregoing, however, in the event that (i) the proposed budget or Community Assessments are disapproved in accordance with 8.3 (a) or (ii) the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget (or such portion thereof or assessments as shall have been disapproved in accordance with the foregoing) shall have been determined as provided herein, the budget (or applicable portion thereof or assessments) in effect for the then current year shall continue for the succeeding year.
- (c) In the event that the amounts actually expended by the Community Association for Community Assessments in any fiscal year exceed the amounts budgeted and assessed for Community Assessments 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, except that so long as the Declarant controls the Community Association, Declarant may, but shall be under no obligation, to fund such deficit; provided, however, that Declarant shall be reimbursed by the Community Association for any deficits so funded, together with interest at ten percent (10%) per annum until so reimbursed, from available surpluses in later years or through Special Assessments. Thereafter, 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 Community Association. In the event that the amounts budgeted and assessed for Community Assessments in any fiscal year exceed the amount actually expended by the Community Association for Community Assessments for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessment due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits

previously paid, with interest, as required above before such excess shall be so credited to Owners.

- (d) During the first year following the date of recordation of this Declaration, the monthly Community Association Fee shall be the amount listed on Exhibit "C" attached. This monthly fee shall be subject to annual review and adjustment.

Section 8.4. Special Assessments. In addition to the other assessments authorized herein, the Community Association may levy Special Assessments in any year. So long as the total amount of Special Assessments allocable to each Lot does not exceed Twenty Percent (20%) of the Monthly Community Assessment in any one fiscal year, the Board may impose the Special Assessment. Any Special Assessment which would cause the amount of Special Assessments allocable to any Lot to exceed this limitation shall be effective only if approved by two-thirds (2/3) of a Quorum of the Members. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

Section 8.5. Lien for Assessments.

- (a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees and paraprofessional fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Community Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of the Appropriate Indiana County and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.
- (b) All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 8.6. Effect of Nonpayment of Assessments: Remedies of the Community Association.

- (a) Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Community Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount

due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Community Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Community Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Community Association and shall be for the benefit of all other Owners. The Community Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

- (b) All payments shall be applied first to costs and attorneys' and paraprofessional fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

**Section 8.7. Capital Budget and Contribution.** The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost for items of a capital nature within the Community. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Community Association as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Community Assessments, as provided in Section 8.3. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 8.8. Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the assessments, including interest, late charges, costs (including attorneys' fees and paraprofessional fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Community Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Community Assessments by the Community Association chargeable to such Lot which became due prior to the acquisition of title to

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such Lot by such acquirer. Such unpaid share of Community Assessments shall be deemed to be Community Assessments collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 8.9. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to Lots generally in January, 1998, and as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to a Builder and/or Owner and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year and billed to the Builder in the Closing Statement between the Builder and the Developer. The Developer shall pay the assessment collected from the Builder to the Association. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to a Builder and/or Owner; provided, however, that Declarant may, in its sole and absolute discretion delay the starting date for assessments for as long as Declarant shall deem appropriate in its sole and absolute discretion but assessments shall in all events be payable commencing on the first day of the first month following the date the Lot is occupied for the residential purposes or is suitable for such occupancy as evidenced, for example, by the appropriate official of Hendricks County, Indiana or an architect issuing a certificate of occupancy or its equivalent stating that the residential structure on such Lot is substantially complete and available for occupancy.

Section 8.10. Assessments Due From Declarant.

- (a) Declarant covenants and agrees to pay the full amount of the annual assessment for each Lot occupied for residential purposes that it owns; notwithstanding anything contained herein to the contrary, the Declarant shall not be required to pay any assessments for any Lots not occupied for residential purposes (other than completed vacant apartment units held for rental in the ordinary course of business) that it owns, including but not limited to model homes.
- (b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money, (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Community Association agree as to the value of any contribution, the value shall be as agreed. If the Community Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Community Association with a detailed explanation of the service performed and material furnished, and the Community Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Community Association and the Declarant are still unable to agree on the value of the contribution,

the value shall be deemed to be the average of the bids received from the independent contractors.

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ARTICLE IX

MORTGAGEE RIGHTS

Section 9.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Community Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), (therefore becoming an Eligible Mortgage Holder), will, upon payment of the reasonable expense of the Community Association associated therewith, be entitled to timely written notice of:

- (a) any proposed termination of the Community Association;
- (b) condemnation, damage or destruction to the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Community Association; or
- (e) any proposed action which would require the consent of Eligible Mortgage Holders.

ARTICLE X

GENERAL PROVISIONS

Section 10.1. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, so long as Indiana law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law, for successive periods not to exceed the period permitted by such law, provided such renewal or extension is approved by at least two thirds (2/3) of all Eligible Votes. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of the Recorder of Hendricks County, Indiana, on or before the effective date thereof an instrument executed by the President and Secretary of the Community Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved by the Owners. Every purchaser or grantee of any



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interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 10.2. Amendment.

- (a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Community Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant owns any property in the Community or capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect, in the opinion of Declarant, the substantive rights of any Lot Owner or mortgagee hereunder.
- (b) In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Eligible Votes and the consent of the Declarant, so long as Declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the Hendricks County, Indiana records, unless a later effective date is specified therein.
- (c) Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving Mortgages, so long as Declarant owns any Lots within the Development or to enable reasonable development of and construction on the Lots; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any mortgagee, nor which substantially impairs in the reasonable opinion of the Declarant, the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. Declarant further reserves the right to make such amendments to this

Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, which amendment shall be fully effective in accordance with its terms:

- (i) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Declaration; or
- (ii) to insert such provisions clarifying matters or questions arising under this Declaration as are necessary or desirable and are not contrary to or inconsistent with this Declaration as theretofore in effect; or
- (iii) to amend or modify this Declaration in any manner which in the reasonable opinion of the Declarant does not adversely affect in any material respect the rights of any Mortgagee or Owner, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 10.3. Indemnification. The Community Association shall indemnify every officer and director against any and all expenses, including attorney's fees and paraprofessional fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Community Association (except to the extent that such officers or directors may also be Members of the Community Association), and the Community Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Community Association may, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 10.4. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 10.5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable. If any of the provisions hereof 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 provisions hereof.

Section 10.6. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 10.7. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

ARTICLE XI

ENFORCEMENT

Section 11.1. In General. Any party to whose benefit the restrictions herein contained inure, including Declarant and the Community Association, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration at the sole cost and expense of the party violating this Declaration (which cost and expense shall become a lien on the violating Owner's Lot subject to foreclosure in the manner provided in Article VIII), but neither Declarant nor Community Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.

Section 11.2. Government Enforcement. The Hendricks County Plan Commission of Hendricks County, Indiana, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Hendricks County Plan Commission of Hendricks County, Indiana.

Section 11.3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of this Declaration 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 this Declaration.

ARTICLE XII

PRIVATE AMENITIES AND SERVICES

Section 12.1. Private Amenities and Services. The Community Facilities shall be owned and maintained by the Community Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or liquidation, dissolution or winding up of the affairs of

the Community Association, the Community Association shall, after paying or making provision for the payment of all the liabilities of the Community Association, distribute all the assets of the Community Association exclusively for the purposes of the Community Association in such manner, or to such organization or organizations as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed by the Judge of the Superior Court of Hendricks County, Indiana, exclusively for such purposes or to such organization or organizations, as such Court shall determine, which are organized and operated exclusively for such purpose.

ARTICLE XIII

LIMITATION ON DECLARANT'S LIABILITY

Section 13.1. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to the Community Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Community Association. If any judgment is ever levied against Declarant (or its assignee), the same is hereby agreed to be limited to the extent of Declarant's (or such assignee's) interest in the Community; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon any other assets of Declarant (or its assignee).

(this area intentionally left blank)



**LOTS AND COMMUNITY FACILITIES**

Real Estate covered by the following Land Description:

A part of the Southeast Quarter of Section 20, Township 14 North, Range 2 East in Hendricks County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section, said point being marked by a Harrison Monument; thence North 00 degrees 17 minutes 51 seconds East (assumed bearing) along the East line of the said Quarter Section 315.09 feet; thence South 88 degrees 54 minutes 06 seconds West 577.68 feet to the POINT OF BEGINNING; thence continuing South 88 degrees 54 minutes 06 seconds West 555.00 feet; thence North 01 degrees 05 minutes 54 seconds West 665.29 feet to the point of curvature of a curve concave Southeasterly with a central angle of 30 degrees 30 minutes 54 seconds and a radius of 970.00 feet; thence Northeasterly along said curve an arc length of 516.60 feet (said curve being subtended by a chord bearing of North 14 degrees 09 minutes 33 seconds East and a length of 510.52 feet); thence North 29 degrees 24 minutes 57 seconds East 130.00 feet to the south line of a 13.30 acre tract of land described in a Corporate Warranty Deed recorded as Instrument No. 9700020158 in Volume 26, Pages 1681-1683 in the Office of the Recorder of Hendricks County, Indiana; thence South 60 degrees 35 minutes 03 seconds East along said south line 530.00 feet; thence South 29 degrees 24 minutes 57 seconds West 105.00 feet; thence South 60 degrees 35 minutes 03 seconds East 20.74 feet; thence South 29 degrees 24 minutes 57 seconds West 50.00 feet; thence South 21 degrees 39 minutes 21 seconds West 63.71 feet; thence South 13 degrees 52 minutes 07 seconds West 50.37 feet; thence South 06 degrees 59 minutes 35 seconds West 50.37 feet; thence South 00 degrees 20 minutes 03 seconds West 55.38 feet; thence South 01 degrees 05 minutes 54 seconds East 229.00 feet; thence North 88 degrees 54 minutes 06 seconds East 10.00 feet; thence South 01 degrees 05 minutes 54 seconds East 310.00 feet; thence South 88 degrees 54 minutes 06 seconds West 5.00 feet; thence South 01 degrees 05 minutes 54 seconds East 105.00 feet to the POINT OF BEGINNING. Containing 14.75 acres, more or less.

Subject to all restrictions, easements and legal rights of way of record.

**EXHIBIT "A"**

**The Colony at Heartland Crossing, Section II - Supplemental Declaration**

3COL@HLC/SUPEXHA2