

Inst. # 1995-0025820
1995-0025821

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DECLARATION OF COVENANTS AND RESTRICTIONS
THE HAWTHORNES AT THE CROSSING

This Declaration, made as of the 13th day of February, 1995, by HAWTHORNES AT THE CROSSING, INC., an Indiana Corporation ("Declarant"),

WITNESSETH :

WHEREAS, the following facts are true:

A. Declarant is the owner of the real estate located in Marion County, Indiana, described in Exhibit "A", but is not obligated, to develop a residential community to be known as The Hawthornes at the Crossing.

B. Declarant intends, but is not obligated, to develop within The Hawthornes at the Crossing four (4) residential subdivisions to be known as Sections I, II, III and IV.

C. Declarant intends, but is not obligated, to construct certain improvements and amenities in The Hawthornes at the Crossing, which shall constitute Community Area.

D. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in The Hawthornes at the Crossing and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in The Hawthornes at the Crossing, to create an agency to which may be delegated and assigned the powers of owning, maintaining, and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in The Hawthornes at the Crossing.

F. Declarant has incorporated under the laws of the State of Indiana, a not-for-profit corporation known as The Hawthornes at the Crossing Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto as may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each

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of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Declarant and its successors in title to the Tract or any part or parts thereof.

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

"Applicable Date" means the earlier of (i) the date when all Lots in the Development Area have been improved by the construction thereon of Residences, or (ii) December 31, 1997.

"Architectural Control Assessment" means the assessment levied by the Corporation pursuant to Paragraph 13(e).

"Architectural Review Board" means that entity established pursuant to Paragraph 14 of this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

"Berm" means the dirt mound along and as depicted on a Plat.

"Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Common Dock" means any boat docks extending into a Lake from a Dock Area which are intended for use by some, but not necessarily all, of the Owners.

"Community Area" means (i) the Dock Area, (ii) the Common Dock, (iii) the Lake, (iv) the Entry Ways, (v) the Community Center, (vi) the Berm, (vii) the Commons, (viii) the Drainage System, (ix) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, and (x) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Community Area Access Easement" means the area designated on a Plat as a means of access to a Community Area.

"Community Area Initial Assessment" means the initial assessment for the Reserve for Replacements required by Paragraph 13(c).

"Commons" means land denoted on a Plat as "Commons" or land designated as "Commons" in any recorded instrument executed by Declarant.

"Community Center" means the land depicted on the General Plan of Development as a site for possible development of recreational and other community facilities or, if such site is so developed, the land designated on a Plat as the "Community Center" together with all improvements thereto and structures and facilities thereon.

"Corporation" means The Hawthornes at the Crossing Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

"Declarant" means HAWTHORNES AT THE CROSSING, INC., its successors and assigns to its interest in the Tract other than Owners purchasing lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Development Area" means the land described in Exhibit "A", together with any additional land added to the Tract pursuant to Paragraph 3 of this Declaration.

"Dock Area" means an area adjacent to Lake 1 designated on a Plat as a site which may be used for the storage of boats, as a means of access to the Lake and for such other purposes as may be specified in the Declaration or any Supplemental Declaration.

"Drainage Board" means the Department of Public Works, Marion County, Indiana, its successor, and assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities (excluding the Lake) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including, but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Department of Public Works.

"Entry Ways" means the structures constructed as an entrance to The Hawthornes at the Crossing or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as a designated Block on a Plat and any other

traffic islands dividing a roadway providing access to The Hawthornes at the Crossing or a part thereof, and the grassy area surrounding such structures.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"Hawthornes Section I and II" means that part of The Hawthornes at the Crossing so designated on the General Plan of Development.

"Instrument of Designation" means the instrument by which Declarant has designated a Common Dock as appurtenant to a Lot. A deed from Declarant conveying title to a Lot and designating a Common Dock as appurtenant to such Lot shall constitute an Instrument of Designation for the purposes of this Declaration.

"Landscape Easement" means a portion of a Lot denoted on a Plat as an area to be landscaped and maintained by the Corporation.

"Lake" means any lake located in the Development Area and depicted on the General Plan of Development and "Lake" means all of such Lake. A numerically designated Lake means the Lake so designated by such number on the General Plan of Development or a Plat.

"Lake Access Easement" means the area designated on a Plat as a means of access to a Lake.

"Lot" means a platted lot as shown on a Plat.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plan, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including, but not limited to, the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation, or improvement of the facility.

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Mortgagee" means the holder of a first mortgage on a Residence.

"Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Part of the Development Area" means any part of the Development Area not included in the Tract.

"Parcel" means each of The Hawthornes at the Crossing Section I and II, and any other platted subdivision within the Development Area that is subject to the same Supplemental Declaration or is declared by Declarant to constitute a "Parcel".

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Marion County, Indiana.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means a structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Section" means that portion of the Development Area that is depicted on a Plat.

"Supplemental Declaration" means the Supplemental Declarations of Covenants and Restrictions for each of Section I and II, and any Plat or other supplementary declaration of covenants, conditions, or restrictions which may be recorded and which extends

the provisions of this Declaration or any previously recorded Supplemental Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit "C" and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Zoning Authority" with respect to any action means the Director of the Department of Metropolitan Development of the City of Indianapolis, or where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Director.

2. Declaration. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. Additions to the Tract. Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. The Lake.

(a) Development. Lake One (1) will be developed by Declarant substantially as depicted on the General Plan of Development attached hereto as Exhibit "B". Declarant reserves the right subsequent to commencement of development of Lake 1, to determine the size and configuration (which may vary from that depicted on the General Plan of Development).

(b) Title and Maintenance. Declarant shall convey title to the Lake to the Corporation. The Corporation shall be responsible for maintaining the Lake. The Maintenance Costs of the Lake shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot that abuts the Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of the Lake abutting his Lot free of debris and otherwise in reasonably clean condition.

(c) Use. No boats shall be permitted upon any part of the Lake except if and to the extent authorized by the Board of Directors and then subject to such rules and regulations as may be adopted by the Board of Directors. Except for Common Dock installed by Declarant or the Corporation, no dock, pier, wall or other structure may be extended into a Lake. No swimming will be permitted in any Lake except if and to the extent authorized by the Board of Directors. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to a Lake, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

5. The Commons. Declarant shall convey title to the Commons to the Corporation. The Corporation shall be responsible for maintaining the Commons and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Except for underground utility facilities, no permanent improvements shall be made to or installed on the Commons other than lighting, seating, walkways, planting structures and fountains or other non-recreational water features unless such Commons is designated as a Dock Area, in which event such Commons may be improved as the Board of Directors deems appropriate for its use as a Dock Area. The use of the Commons shall be subject to rules and regulations adopted by the Board of Directors which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration.

6. Dock Area and Common Dock.

(a) Designation of Dock Area. Declarant may, but is not obligated to, designate certain of the Commons adjacent to Lake 1 as Dock Area if the Board of Directors determines to permit boating on Lake 1. Designation of any such Commons as a Dock Area shall be made on a Plat, but such designation shall not, unless otherwise noted on such Plat or in a Supplemental Declaration, restrict the use of such Commons to a means of access to Common Dock, but such Commons may be used for such additional purposes as Declarant may specify on the Plat or in any Supplemental Declaration.

(b) Common Dock. To the extent it is lawful for Declarant to do so and if the Board of Directors determines to permit boating on Lake 1, Declarant may, but shall not be obligated to, install a Common Dock, title to which shall vest in the Corporation upon completion of such installation. The Corporation shall be responsible for maintenance of the Common Dock and the Maintenance

Costs thereof shall be assessed as a General Assessment against only such Lots as are owned by Owners who have the right to use the Common Dock.

(c) Regulation. The Board of Directors may adopt reasonable rules with respect to the use of Common Dock by Owners, but no such rules shall impair the reasonable use thereof or impose any cost or expense on such Owner other than Maintenance Costs reasonably allocable to such Owners as provided in subparagraph (b).

7. Community Center. Declarant intends, but is not obligated, to construct in the area designated on the General Plan of Development as the Community Center a bath house, swimming pool, tennis courts and other recreational and community facilities if development of the Development Area should, in the sole judgment of Declarant, justify such construction. If Declarant undertakes the development of the Community Center or any part thereof, Declarant intends upon completion of construction to convey the same to the Corporation free and clear of all financial encumbrances and other liens securing indebtedness of Declarant but subject to the right of Declarant to use the Community center as provided in Paragraph 18. The Corporation shall be responsible for maintenance of the Community Center and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Board of Directors may adopt such rules and regulations with respect to the use of the Community Center as it deems appropriate and may charge reasonable fees for the use thereof, but no rule, regulation or charge shall be inconsistent with the provisions of this Declaration or any Supplement Declaration.

8. Drainage System. The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area and maintaining the water level in the Lake. The Corporation shall maintain the Drainage System to the extent not maintained by the Department of Public Works and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment served by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Department of Public Works.

9. Berm. The Corporation shall maintain the top of the Berm and the portion thereof facing Cooper Road or Lafayette Road, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. The Owner of each Lot which abuts the Berm shall maintain the portion of the Berm fronting on the Owner's Lot unless the Corporation assumes responsibility for such maintenance pursuant to action by the Board of Directors. In the event the Board of Directors determines to cause the Corporation to maintain the entire Berm, then all Maintenance Costs associated therewith shall be assessed as a General Assessment against all Lots subject to assessment. The Person or Persons responsible for maintenance of all or any part of the Berm shall maintain the Berm in a clean, orderly and sightly condition.

10. Maintenance of Entry Ways and Landscape Easements. The Corporation shall maintain the Entry Ways and the Landscape Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings

located on an Entry Way or a Landscape Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to The Hawthornes at the Crossing or a part thereof or a planting area within The Hawthornes at the Crossing. All entrance signs located on an Entry Way shall be maintained at all times in good and slightly condition appropriate to a first-class residential subdivision.

11. The Hawthornes at the Crossing Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

(c) Classes of Members. The Corporation shall have a single class of members.

(d) Voting and Other Rights of Members. The voting and other rights of Members shall be as specified in the Articles and By-Laws.

(e) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repair, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(f) Limitations on Action by the Corporation. Unless at least two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 15(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or

omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or, (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration or any Supplemental Declaration.

(g) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

12. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) the Community Area Initial Assessment, (3) annual and special Parcel Assessments, (4) Architectural Control Assessments (to the extent levied) and (5) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Community Area.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed on the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by

the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(1) Change of Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration and all Supplemental Declarations upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Certain of the costs of maintaining, operating, restoring or replacing the Community Area have been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Community Area Initial Assessment. On the earlier of (i) the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), (ii) the date a Residence constructed on the Lot has been certified for occupancy by the Zoning Authority or (iii) the date a Residence on the Lot is first occupied by an Owner upon completion of construction thereof, there shall be due and payable to the Corporation by the Owner of such Lot the sum of Five Hundred Dollars (\$500.00) which shall be deposited in the Reserve for Replacements maintained by the Corporation.

(d) Parcel Assessments.

(i) Purpose of Assessments. Parcel Assessments shall be used for such purposes as are authorized by the Supplemental Declaration for such Parcel.

(ii) Method of Assessment. An annual Parcel Assessment shall be levied by the Corporation against Lots in a Parcel using the basis set forth in the Supplemental Declaration for such Parcel, and collected and disbursed by the Corporation. The Board shall fix in accordance with the By-Laws and the provisions of any Supplemental Declaration, the annual parcel assessment for each Parcel, the date(s) such Assessment shall become due, and the manner in which it shall be paid.

(iii) Special Assessments. In addition to the annual Parcel Assessment, the Corporation may levy in any fiscal year a special Parcel Assessment against one or more of the Lots in a Parcel for the purpose of (A) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Parcel, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of a majority of the Owners of Lots in the Parcel who are voting in person or by proxy at a meeting of such Owners duly called for this purpose or (B) defraying any Maintenance Costs incurred in satisfying any requirements imposed on the Corporation by a Supplemental Declaration relating to a Parcel.

(e) Architectural Control Assessment. If any Owner fails to comply with the requirements of the first two sentences of Paragraph 4(n) of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of Paragraph 14(c) of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner, or (ii) Five Thousand Dollars (\$5,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.

(f) Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community

Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(g) Date of Commencement of Assessments. The General Assessment and Parcel Assessments shall commence with respect to assessable Lots within a Parcel on the first day of the month following conveyance of the first Lot in the Parcel to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment.

(h) Effort of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(i) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(j) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(k) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

13. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as provided in the By-Laws shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate

the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to another Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, other building, fence, wall, swimming pool, tennis court, patio, or other structure on a lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no Residence, other building, fence, wall, swimming pool, tennis court, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot development Plan relating to such construction, erection, alteration, or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Hawthornes, and no Owner shall undertake any construction activity within Hawthornes unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs, or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, subsequent to the Applicable Date, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and

reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) Design Consultants. The Architectural Review Board may utilize the services of architects, engineers and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the first two sentences of Paragraph 4(h) of a Supplemental Declaration relating to the Parcel in which such Owner's Lot is located and/or the provisions of subparagraph (c) of this Paragraph 14, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements or landscaping constructed and/or installed prior to the submission of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement or landscaping is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of Paragraph 4 of a Supplemental Declaration or Paragraph 14 of this Declaration. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated Paragraph 4 of a Supplemental Declaration or Paragraph 14 of this Declaration and such violation remains uncured.

(i) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) Liability of Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does

not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

14. Community Area.

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and, except as otherwise provided herein or in a Supplemental Declaration, shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of this Declaration or any Supplement Declaration. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Paths, the Community Center and the Commons subject to the reserved rights of Declarant and the Corporation. The Owners of Lots abutting a Lake may use such Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Subject to restrictions on points of access, Lake 1 may be used by all Owners, but only for fishing and such other purposes as may be authorized by the Board of Directors. No Owner whose Lot does not abut a Lake shall have any right of access to a Lake over any Lot, but only such right of access over the Community Area as may be designated on a Plat or by the Board of Directors for such purpose. The Common Dock may be used only by such Persons as are designated by declarant or, if no such designation is made by Declarant, as are authorized by the Board of Directors to use the Common Dock pursuant to rules, regulations and procedures adopted by the Board of Directors.

(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community

Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Community Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration:

(ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Paths, the Lake, the Community Center, the Commons or a Common Dock derives from such Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Paths, the Lake, the Community Center, the Commons or a Common Dock for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

(iv) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon (exclusive of the Common Dock) for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area (exclusive of the Common Dock) to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and

(vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area located in a Section to (a) Owners of Residences located in such Section or (b) to other Owners of less than all of the Lots in the Tract.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owners.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Lake, the Community Center and the Commons to the Corporation, free and clear of all liens and financial encumbrances except as otherwise provided herein, not later than two (2) years from the date such Community Area or portion thereof is subjected to this Declaration. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

15. Use of Tract.

(a) Protective Covenants.

(i) Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Hawthornes than the number of original Lots depicted on the Plats. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(ii) Nuisances. No nuisance shall be permitted to exist or operate upon any Lot so as to be

detrimental to any other Lot in the vicinity thereof or to its occupants.

(iii) Other Restrictions. The Architectural Review Board may adopt general rules and regulations to implement the purposes set forth in Paragraph 14(b) and to supplement any covenants or restrictions set forth in a Supplemental Declaration, including but not limited to rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Parcel, which rules and regulations may vary among Parcels. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the Applicable Date, any such amendment may be made only after a public hearing for which due notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

(iv) Exceptions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (iii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Tract. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots owned by him, and all improvements therein or thereof, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

15. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration or in a Supplemental

Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Marion County, Indiana. Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, lake access easements, community area access easements, pathway easements, berm easements and non-access easements, either separately or in any combination thereof, as shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, and Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Hawthornes and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easements be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Hawthornes for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements (UE) are created for the use of Declarant, the Corporation and all public or municipal utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Access Easements (LAE) are created

for the use of declarant, the Corporation, the Drainage Board and the City of Indianapolis for the purposes of gaining access to the Lake in the course of maintenance, repair or replacement of any thereof.

(vii) Community Area Access Easements (CAE) are created for the use of Declarant and the Corporation for the purpose of gaining access to the Commons in the course of maintenance, repair or replacement thereof and for the use of Owners for the purpose of gaining access to the Commons to enjoy the use thereof to the extent authorized herein.

(viii) Berm Easements (BE) are created for use by Declarant, the Architectural Review Board and the Corporation for the maintenance of the Berm.

(ix) Non-Access Easements (NAE) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Marion County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as well, as is practicable to the condition in which it was found. Sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Declarant prior to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Department of Public Works to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, Paths, Lake Access Easements and Community Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways, Paths, Lake Access Easements or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in a Section, Declarant reserves a blanket easement and right on, over and under the ground within that Section to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

17. Use of Lots During Development.

(a) By Declarant. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole option of Declarant may be reasonable required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices. Declarant specifically reserves the right to maintain a sales office in the Community Center during the period that it is engaged in the sale of Lots in the Hawthornes. Declarant reserves the right to host a "Home Show" in the Hawthornes to promote the sale of any remaining lots.

(b) By Builders. Notwithstanding any provisions to the

contrary contained herein, a builder who has constructed a Residence in the Hawthornes may, with the prior consent of the Board of Directors, use such Residence as "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, Lots adjacent to or in proximity to such model home may be used for parking by visitors to such model home.

18. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

19. Limitations on Rights of the Corporation. Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

20. Approvals by Declarant. Notwithstanding any other provision hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use, and time of payment of the Community Area Initial Assessment.

21. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration any Supplemental Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgagee and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required

and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) Notices to Mortgagees. The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed by subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

22. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the

Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 21, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right prior to the Applicable Date unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Marion County, Indiana no such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 17(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Marion County, Indiana.

23. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

24. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2023, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

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

26. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision

of this Declaration.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

THE HAWTHORNES AT THE CROSSING, INC.

Thomas A. Deal
By: Thomas A. Deal, President



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Thomas A. Deal, President, HAWTHORNES AT THE CROSSING, INC., who acknowledged that the representations made in the foregoing Declaration of Covenants and Restrictions for and on behalf of said Corporation are true and correct to the best of his knowledge and belief, this 13th day of February, 1995.

Mary Ellen Ivancic
Notary Public - MARY ELLEN IVANCIC
Resident of Spencer County

My Commission Expires:
May 28 1995

This instrument prepared by:

Thomas A. Deal
Attorney at Law
THOMAS A. DEAL, P.C.
1404 Main Street
Speedway, Indiana 46224
(317) 741-8219
Attorney No. 4435-49

degrees 12 minutes 47 seconds West a distance of 54.31 feet; thence South 70 degrees 29 minutes 04 seconds West a distance of 281.72 feet; thence South 88 degrees 59 minutes 15 seconds West a distance of 115.00 feet; thence South 01 degrees 00 minutes 45 seconds East a distance of 14.75 feet; thence South 88 degrees 59 minutes 15 seconds West a distance of 270.00 feet to a point on the prolongation of the easterly line of the Real Estate described in Instrument No. 84-19113; thence North 01 degrees 00 minutes 45 seconds West on said easterly line a distance of 70.92 feet to the south line of the Real Estate described in Instrument No. 92-19671; thence continuing North 01 degrees 00 minutes 45 seconds West on said easterly line a distance of 30.00 feet; thence South 88 degrees 57 minutes 05 seconds West parallel with said south line and the prolongation thereof a distance of 553.13 feet, said line also being parallel with the North line of said Northwest Quarter; thence South 47 degrees 00 minutes 36 seconds West a distance of 69.93 feet; thence South 15 degrees 24 minutes 35 seconds West a distance of 199.13 feet to a point in the centerline of Old Lafayette Road; thence continuing South 15 degrees 24 minutes 35 seconds West a distance of 74.24 feet to a point on the easterly right-of-way line of U.S. 32, said point also being on a non-tangent curve concave southwesterly and having a radius of 1969.86 feet; thence northwesterly on said curve a distance of 110.71 feet to the point of beginning; Containing 23.67 acres of land, more or less.

Subject to a blanket-type easement for pipelines in favor of Shell Petroleum Company (Shell Oil Company) dated October 20, 1937, and recorded in Book 996, Page 538 in the Office of the Recorder of Marion County, Indiana.

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

Subject to taxes due and payable May, 1995, and all taxes thereafter.

EXHIBIT "A"

WANTHORNES AT PIKE CROSSING, SECTION TWO

A part of the Northwest Quarter and a part of the Southwest Quarter of Section 16, Township 17 North, Range 2 East of the Second Principal Meridian, Pike Township, Marion County, Indiana, being more particularly described as follows:

COMMENCING at the Southwest corner of the Northwest Quarter of Section 16, Township 17 North, Range 2 East, Pike Township, Marion County, Indiana: thence North 00 degrees 35 minutes 39 seconds West on the west line of said northwest quarter a distance of 148.75 feet to the easterly right-of-way of U.S. Highway 52 as the same was located and improved on January 28, 1947 and shown on Sheet 9 of 21 of the plans for Indiana State Highway Commission Federal Aid Project No. 40, Sec. A2, dated (1936), said point also being on a curve concave southwesterly and having a radius of 1969.86 feet; thence southeasterly on said curve and on said easterly right-of-way of U.S. 52 a distance of 221.26 feet; thence North 16 degrees 13 minutes 53 seconds East a distance of 64.02 feet to a cut cross, said point also being on the centerline of Old Lafayette Road (as located prior to the year 1934 and evidenced by the physical centerline of the concrete pavement as existed September, 1980) and on the easterly line of the Real Estate described in Instrument No. 81-14727 in the Office of the Recorder of Marion County; thence following the three courses on the easterly line of said Real Estate: (1) continuing North 16 degrees 13 minutes 53 seconds East 347.40 feet; (2) North 58 degrees 54 minutes 24 seconds East 90.90 feet; (3) North 00 degrees 13 minutes 51 seconds East 177.96 feet to the southwest corner of the Real Estate described in Instrument No. 85-39369; thence North 89 degrees 11 minutes 16 seconds East on the south line of said Real Estate a distance of 339.36 feet; thence North 00 degrees 35 minutes 51 seconds West on the east line of said Real Estate a distance of 218.10 feet to a northwesterly corner of the Real Estate described in Instrument No. 92-19671; thence North 88 degrees 57 minutes 07 seconds East on the North line of said Real Estate and the prolongation thereof a distance of 608.53 feet to the West line of the East Half of said Northwest Quarter; thence North 00 degrees 17 minutes 49 seconds West on the West line of said East Half a distance of 176.43 feet to a point which bears South 00 degrees 17 minutes 49 seconds East 1444.75 feet from the Northwest corner of the East Half of said Northwest Quarter; thence North 89 degrees 42 minutes 11 seconds East a distance of 332.23 feet to the POINT OF BEGINNING of the herein described tract; thence North 89 degrees 42 minutes 11 seconds East, 161.85 feet; thence North 62 degrees 49 minutes 17 seconds East, 386.61 feet; thence North 46 degrees 40 minutes 58 seconds East, 390.41 feet; thence North 90 degrees 00 minutes 00 seconds East, 192.38 feet to the East line of said Northwest Quarter; thence South 00 degrees 00 minutes 00 seconds East, 914.27 feet on the East line of said Northwest Quarter; thence South 90 degrees 00 minutes 00 seconds West, 115.38 feet; thence North 80 degrees 37 minutes 25 seconds West, 549.68 feet; thence North 74 degrees 42 minutes 50 seconds West, 101.89 feet; thence North 31 degrees 50 minutes 17 seconds West, 178.46 feet; thence South 58 degrees 09 minutes 43 seconds West, 6.00 feet; thence North 31 degrees 50 minutes 17 seconds West 240.34 feet to the POINT OF BEGINNING; Containing 12.97 acres of land, more or less.

Subject to a blanket-type easement for pipelines in favor of Shell Petroleum Company (Shell Oil Company) dated October 20, 1937, and recorded in Book 996, Page 533 in the Office of the Recorder of Marion County, Indiana.

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

Subject to taxes due and payable May, 1995, and all taxes thereafter.