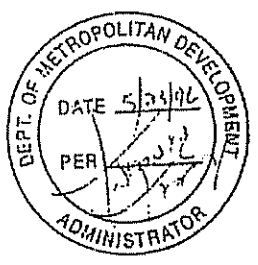


(41)

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



Dated: May 15 , 199 6

FILED
MAY 17 1996
LAWRENCE TOWNSHIP
ASSESSOR

25 04:59 17:58 PM TOWN H. ROMERTL MARION CTY RECORDER JRC 90-60 PAGES: 41

Inst # 1996-0069779

1

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. DEFINITIONS	2
Section 1.1 Additional Land	2
Section 1.2 Articles of Incorporation	2
Section 1.3 Bylaws	2
Section 1.4 Community Assessments	2
Section 1.5 Community Association	3
Section 1.6 Community Facilities	3
Section 1.7 Control Transfer Date	3
Section 1.8 Declarant	3
Section 1.9 Eligible Mortgage Holder	3
Section 1.10 Eligible Votes	3
Section 1.11 Lot	3
Section 1.12 Member	3
Section 1.13 Mortgage	3
Section 1.14 Owner	3
Section 1.15 Plats and Plans	4
Section 1.16 Quorum	4
ARTICLE II PROPERTY RIGHTS	4
Section 2.1 Rules and Regulations	4
Section 2.2 Use	4
Section 2.3 Construction and Improvements	4
ARTICLE III MEMBERSHIP AND VOTING RIGHTS	5
Section 3.1 Membership	5
Section 3.2 Classes of Membership	5
Section 3.3 Board of Directors	6
Section 3.4 Professional Management	6
Section 3.5 Responsibilities of the Community Association	6
Section 3.6 Control and Transfer of Control of Community Association	6
ARTICLE IV MAINTENANCE	7
Section 4.1 Maintenance	7

ARTICLE V INSURANCE	8
Section 5.1 Insurance	8
Section 5.2 Disbursement of Proceeds	10
Section 5.3 Damage and Destruction	10
Section 5.4 Repair and Reconstruction	11
ARTICLE VI. ANNEXATION OF ADDITIONAL PROPERTY	11
Section 6.1 Annexation without Approval of Owners	11
Section 6.2 Acquisition of Additional Community Facilities	12
Section 6.3 Amendment	12
Section 6.4 Existing Homes	12
ARTICLE VII RIGHTS AND OBLIGATIONS OF THE COMMUNITY ASSOCIATION	12
Section 7.1 Community Facilities	12
Section 7.2 Services	12
Section 7.3 Personal Property and Real Property for Common Use	13
Section 7.4 Implied Rights	13
Section 7.5 Self-Help	13
Section 7.6 Right of Entry	13
ARTICLE VIII COMMUNITY ASSESSMENTS	13
Section 8.1 Purpose of Community Assessment	13
Section 8.2 Creation of Community Assessments	13
Section 8.3 Computation of Assessments	14
Section 8.4 Special Assessments	15
Section 8.5 Lien for Assessments	15
Section 8.6 Effect of Nonpayment of Assessments: Remedies of the Community Association	16
Section 8.7 Capital Budget and Contribution	17
Section 8.8 Subordination of the Lien to First Deeds of Trust and First Mortgage	17
Section 8.9 Capitalization of Community Association	17
Section 8.10 Date of Commencement of Annual Assessments	17
Section 8.11 Assessments by Declarant	18
ARTICLE IX. MORTGAGEE RIGHTS	18
Section 9.1 Notices of Action	18

ARTICLE X GENERAL PROVISIONS	19
Section 10.1 Duration	19
Section 10.2 Amendment	19
Section 10.3 Indemnification	21
Section 10.4 Gender and Grammar	21
Section 10.5 Severability	21
Section 10.6 Captions	21
Section 10.7 Perpetuities	22
ARTICLE XI ENFORCEMENT	22
Section 11.1 In General	22
Section 11.2 Government Enforcement	22
Section 11.3 Delay or Failure to Enforce	22
ARTICLE XII PRIVATE AMENITIES AND SERVICES	22
Section 12.1 Private Amenities and Services	22
ARTICLE XIII LIMITATION ON DECLARANT'S LIABILITY	23
Section 13.1 Limitation on Declarant's Liability	23

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

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TIMBERLINE (the "Declaration"), is made this 15th day of May, 1996, by THE PRESERVE AT FALL CREEK, LLC, an Indiana limited liability company, 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 Timberline and will be more particularly described on the plat thereof ("Plat") recorded in the Office of the Recorder of Marion County, Indiana (Timberline 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 The Preserve at Fall Creek, recorded on May 24th, 1996 as Instrument No 96006777B in the office of the Recorder of Marion 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 Lots situated within the platted areas of the Community 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 provisions of Section 8.1 of 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 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 Timberline 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 swimming pool, bath houses, pavilions 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 The Preserve at Fall Creek, LLC, an Indiana limited liability company, or any other person, firm, corporation or partnership which succeeds to the interest of The Preserve at Fall Creek, LLC, 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 8.11 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 Marion 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

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, cancelled, 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 Marion 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 Construction and Improvements. Construction upon and improvement of any Lot shall be conducted in accordance with the Guidelines for Architectural Approval

attached hereto as Exhibit B. The mailbox for each Lot shall be constructed by Declarant with materials supplied by Declarant and in accordance with the specifications established by Declarant.

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. In the event that a Membership stands of record in the names of at least two (2) persons or entities, then 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 four (4) votes per Lot that it owns 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 twenty-five percent (25%) of the Lots in the Community,
 - (ii) When the Class B Member voluntarily surrenders its Class B membership, or

- (iii) Five (5) 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

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.

- (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 Marion 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 cancelled, invalidated, or suspended on account of any one or more individual Owners;
 - (4) that no policy may be cancelled, 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 cancelled 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 cancelled 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 5.3(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 C and/or Exhibit D, 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 Marion 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 C attached hereto.

Section 6.4 Existing Homes There are two (2) homes currently existing on the property described in Exhibit D. The owners thereof shall be entitled to become members of the Community Association and shall enjoy the benefits of the amenities and common areas thereof, provided that such owners shall pay the dues and fees assessed by the Community Association the same as other Owners, without the necessity of the Exhibit D property being annexed.

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 them 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 C 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 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 annually. 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 total Community Assessments per Lot per year shall not exceed Zero and 00/100 Dollars (\$0.00).

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 Fifty Dollars (\$50.00) 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 Marion County, Indiana, 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 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 Capitalization of Community Association Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Community Association an amount equal to twenty-five percent (25%) of the amount of the annual Community Assessments. All such amounts shall be set aside as capital replacement/working capital reserve, and shall not be utilized by Declarant or the Community Association until after the Control Transfer Date.

Section 8.10 Date of Commencement of Annual Assessments The annual assessments provided for herein shall commence as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to an Owner (other than a commercial builder), or by an Owner who is a commercial builder to an Owner who is an end-user, 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. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to an 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 Marion 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 8.11 Assessments by 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
- (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 Marion 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 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 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 Marion 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 are 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 Department of Metropolitan Development of Marion 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 Department of Metropolitan Development of Marion 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) of 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 Circuit Court of Marion 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)

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first above-written

THE PRESERVE AT FALL CREEK, LLC

By: 
Sol C. Miller, Member

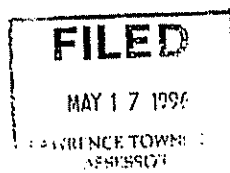
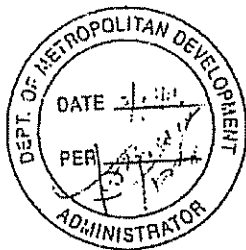


EXHIBIT A

LAND DESCRIPTION
Timberline Section I
of The Preserve At Fall Creek

Part of the Southwest Quarter of the Southeast Quarter of Section 19 and part of the North Half of Section 30, both in Township 17 North, Range 5 East of the Second Principal Meridian in Lawrence Township, Marion County, Indiana more particularly described as follows:

Beginning at the northwest corner of the northeast quarter of said Section 30; thence on an assumed bearing North 89°21'31" East 585.00 feet along the north line of said Section 30; thence North 62°12'12" East 263.00 feet; thence North 80°22'37" East 505.00 feet to the east line of the northwest quarter of the northeast quarter of said Section 19; thence South 00°15'25" West 198.90 feet along said line to the northeast corner of the northwest quarter of the northeast quarter of said section 30; thence South 00°00'00" East 150.23 feet along the east line of the northwest quarter of the northeast quarter of said Section 30 to a non-tangent curve concave southerly, having a central angle of 6°42'54" and a radius of 512.00 feet; thence Northeasterly and Easterly along said curve an arc distance of 60.01 feet (said arc being subtended by a chord which bears North 68°13'24" East 59.97 feet) to a non-tangent line; thence South 18°25'06" East 216.85 feet; thence North 87°28'40" East 246.14 feet; thence South 79°03'23" East 509.09 feet to the centerline of Fall Creek Road; thence along said centerline for the next four courses: (1) South 27°34'00" West 92.42 feet; (2) South 24°52'07" West 128.75 feet; (3) South 22°49'19" West 115.26 feet; (4) South 21°58'00" West 74.33 feet; thence North 63°18'44" West 509.71 feet to a non-tangent curve concave northerly, having a central angle of 12°42'02" and a radius of 112.00 feet; thence Westerly along said curve an arc distance of 24.83 feet (said arc being subtended by a chord which bears North 82°44'36" West 24.78 feet) to the point of tangency thereof; thence North 76°23'35" West 159.16 feet to a curve concave northeasterly, having a central angle of 19°24'42" and a radius of 177.00 feet; thence Westerly and Northwesterly along said curve an arc distance of 59.97 feet (said arc being subtended by a chord which bears North 66°41'14" West 59.68 feet) to a non-tangent line; thence South 52°39'48" West 209.92 feet; thence North 26°25'41" West 29.87 feet; thence South 67°24'04" West 241.05 feet; thence North 22°35'48" West 332.92 feet; thence South 69°53'05" West 50.93 feet; thence North 70°22'11" West 297.98 feet; thence South 46°17'14" West 84.15 feet; thence South 56°52'07" West 153.26 feet; thence South 86°33'05" West 84.81 feet; thence North 56°30'21" West 104.83 feet to a non-tangent curve concave easterly, having a central angle of 4°19'30" and a radius of 308.00 feet; thence Southerly along said curve an arc distance of 23.25 feet (said arc being subtended by a chord which bears South 17°18'39" West 23.24 feet) to a non-tangent line; thence North 67°42'13" West 177.11 feet; thence North 03°49'57" East 280.00 feet; thence North 35°50'28" East 77.45 feet to the point of beginning; containing 22.51 acres, more or less

METHOD OF PLAN APPROVAL

**THE PRESERVE AT FALL CREEK
DEVELOPMENT CONTROL COMMITTEE GUIDELINES
FOR TIMBERLINE**

CHECKLIST OF COMPLIANCE

EXHIBIT B

THE PRESERVE AT FALL CREEK DEVELOPMENT CONTROL
COMMITTEE
GUIDELINES FOR ARCHITECTURAL APPROVAL
FOR TIMBERLINE

INTRODUCTION

Pursuant to the Declaration of Covenants, Conditions, Easements and Restrictions of The Preserve at Fall Creek as amended and supplemented (herein referred to as the "Declaration"). The Preserve at Fall Creek Development Control Committee (herein referred to as the "Committee") is charged with the responsibility of preserving and enhancing the values of properties subject to the Declaration, of maintaining a harmonious relationship among structures and the natural vegetation and topography of said properties, and of providing for the proper functioning of the storm drainage system for said properties. For these purposes, the Committee has the right to promulgate and enforce rules, regulations and guidelines to regulate the exterior design, appearance, use, location and maintenance of lands, and improvements thereon, subject to the Declaration. In order to satisfy this responsibility, the Committee has the right to take the following actions:

- (a) Approve or disapprove plans and specifications for all proposed construction on land subject to the Declaration, and
- (b) Approve or disapprove plans and specifications for all improvements of property on land subject to the Declaration.

The following guidelines for all construction on and improvement of the land subject to the Declaration and located within the subdivision known as "Timberline" are hereby adopted by the Committee for guidance to property owners in preparing and submitting plans and specifications to the Committee for its consideration. These guidelines may be changed, modified and amended by the Committee at any time, in accordance with the procedure therefore set forth in the Declaration.

NOTE: NO NEW CONSTRUCTION OR IMPROVEMENT TO AN EXISTING STRUCTURE MAY BE INITIATED WITHOUT PRIOR WRITTEN APPROVAL FROM THE COMMITTEE.

While the Committee shall have up to fifteen (15) days for the approval or rejection of submitted plans, every effort will be made to complete the review process in a shorter period when necessary to accommodate the needs of property owners.

I. CONSTRUCTION APPROVAL

In order to create and maintain a high quality residential development on the subject property, certain criteria for all construction has been established by the Committee

1. GENERAL REQUIREMENTS FOR CONSTRUCTION

While detailed construction requirements may vary by specific areas or sections of the property, the general requirements are set forth below.

- (a) Square Footage. The minimum square footage of all single family residences constructed on the lots shall be in conformity with the zoning ordinance applicable to that particular section of the Development, and the Supplemental Declaration for the applicable Subdivision.
- (b) Tree Preservation. No existing trees shall be removed from any lot except for those which lie within the actual space to be occupied by the primary structure or any appurtenances thereto. Tree removal shall also be permitted within an area 15' by parallel lines from any portion of the primary structure or any appurtenances thereto (the "Buffer Zone"). Any trees outside the Buffer Zone whose drip line extends back into the Buffer Zone may be trimmed back such that construction may reasonably proceed; provided, however, that such trees may not be removed unless deemed unsafe or unlikely to survive the trimming process.
- (c) Construction Trash. All builders will be required to utilize a thirty (30) cubic yard trash receptacle for each home during periods of construction in order to properly dispose of debris.
- (d) Temporary and Permanent Driveway. Each builder is required to install and maintain a temporary stone drive on each lot. Such temporary drive shall consist of #2 and/or #53 stone and shall provide for construction access to the building area from commencement of house construction until completion of a permanent drive. The permanent driveway on each lot shall be hard surfaced.
- (e) Builder's Deposit. To further preserve the overall appearance of the Community during home construction, a \$1,000.00 refundable deposit shall be collected prior to plan approval. Such deposit shall be utilized to procure the necessary help to remedy any cited violation which continues to exist for two (2) calendar days after citation by Developer. Labor and materials required to effect such remedy will be billed against the deposit charging ten percent (10%) for administrative and coordinating costs. Said deposit will be refunded at such time as landscaping is completed.
- (f) Colors and Materials of Homes. Materials used on the exterior of homes and improvements are subject to the approval of the Committee, and all exterior colors are, generally, to be subdued, earthen tones or white and compatible with other structures in or planned for the immediate area.

- (g) Yards By applicable zoning ordinance, the "front yard" of a lot is considered to be that area between the street frontage and the house regardless of how the house is faced. The homes constructed on the lots shall have a minimum setback from the edge of the curb of 25' unless otherwise indicated on the final recorded plat for said section. Sideyards shall have an aggregate of no less than 13' with a minimum setback from the edge of the property line of 5' unless otherwise indicated on the final recorded plat for the section.
- (h) Erosion Control and Tree Protection Measures During periods of construction of a home or improvements on a lot, the builder shall provide adequate physical barriers such as straw bales or snow fencing in order to protect trees from damage by construction equipment and related activities. In addition, builders shall be required to exercise erosion and sediment control measures at each building lot at commencement of site work through establishment of vegetation, in order to prevent silt transportation to the main drainage ways. Vegetation shall be established and maintained on areas surrounding lot pads upon completion of pad grading to prevent erosion and sediment runoff. Builders shall provide appropriate temporary seeding of disturbed earth areas and temporary wood or straw bale dams to restrict silt-sediment transportation. All erosion and sediment control plans shall be approved by the Department of Capital Asset Management ("DCAM") and the Soil Conservation Service prior to commencement of construction. The owner or owners of a lot shall be responsible for the performance of all requirements of these guidelines by builders and contractors employed or engaged by or through such owner or owners. No disturbance of or excavation within the ravines that are identified as preservation shall be permitted without written permission of the Director of DCAM or his designee within the DCAM Permit Division (a construction plan approval letter shall constitute such required written permission).
- (i) Storm Water Drainage To aid in the efficient operation of the storm water drainage system of the entire property subject to the Declaration, all water discharged from improvements on all such lots including, but not limited to, water discharged from or through roofs, downspouts, gravity drains, water treatment and geothermal devices, patios, pool decks and tennis courts, shall be directed into existing storm drainage facilities or an alternative route as approved by DCAM. All sump pumps shall be discharged to the street under drains as requested by DCAM. Energy dissipation methods or structures shall be applied to all stormwater drainage discharge points in conjunction with the installation of reinforced silt fencing to prevent sediment runoff, subject to approval of the DCAM Permit Compliance Staff. The site plan or plot plan for a lot submitted

to the Committee for its approval shall reflect compliance with the foregoing provisions

- (j) Utilities All utilities shall be installed underground unless otherwise required by the utility provider
- (k) Garages Each home shall have an attached garage for at least two (2) automobiles

2. PLANS AND SPECIFICATIONS

In order to properly review proposed construction, the Committee has established the following drawings as a minimum for submittal to the Committee. Submittal for approval shall include all items below. Clarification drawings and details may be requested by the Committee prior to approval if adequate details are not included in the plans

- (a) Site Plan The site plan shall include location of all tree clearing limits, proposed structure, driveways, walks, terraces, decks, pools, fences, air conditioning units, etc., and shall include information on specific erosion control measures to be taken during the construction process
- (b) Grading and Utility Plan The grading and utility plan shall include all existing and proposed contours, finished floor elevations, proposed and existing utilities, downspout collection system and discharge point.
- (c) Foundation Plan
- (d) Floor Plan(s) For all levels
- (e) Elevations Front, rear, sides
- (f) Details Exterior
- (g) Specifications For all exterior building colors, finishes and materials

All site related plans shall be drawn at a scale of not less than 1" = 20'. All architectural related plans are to be drawn at a scale of not less than 1/4" = 1'. All plans shall be fully dimensioned and presented in duplicate (two sets) on a 24" x 36" sheet size format

3. METHOD OF APPROVAL

The owner of any lot seeking construction approval shall submit a "New Construction Plan Submittal Form" or an "Existing Lot Improvement Plan Submittal Form" in the form attached hereto:

The Committee shall review plans within fifteen (15) days of submittal. A "Checklist of Compliance," attached to these Guidelines, shall be returned with one (1) set of plans stamped "Approved, The Preserve at Fall Creek Development Control Committee", By: _____, Date: _____. The Committee shall retain one (1) set of plans with the Checklist for its files. If the Committee disapproves the plans, written notice of such shall be given to the lot owner and shall specify the reason or reasons for such disapproval. Construction may not start until all plans have received "Approval" from the Committee.

4. RESUBMITTAL

If the Committee has disapproved any of the submitted plans it is the responsibility of the owner to see that corrections or modifications are made in compliance with the Committee comments. One set of corrected plans shall then be resubmitted with changes "noted." The Committee will make every effort to review and approve the plans as quickly as possible.

II. ARCHITECTURAL GUIDELINES

The Committee has established the following guidelines for specific types of construction and improvements on land subject to the Declaration. Any addition, exterior alteration or change to an existing building shall be compatible with the design character or the original building. Any new detached structure (if permitted) shall be compatible with the existing structure.

1. FENCES, WALLS, AND SCREENING

Fencing, walls and screening will be designed and installed to be as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Committee when reviewing for approval. Fences in general shall not be located any closer to the front of the home than the rear foundation line of the home. Dog run fencing will be allowed only if an electronic "invisible" fence is used. The Committee discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. The Committee shall have the right to require additional landscaping on the exterior side of all solid fencing on a lot (i.e. on the sides of such fencing facing away from the house).

on such lot) Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review

(a) Height Restriction The Committee is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Committee, therefore, will approve fences up to four (4) feet in height which otherwise meet these guidelines. The Committee will give consideration, however, to a variance in this height limit where clearly unique circumstances exist. The use of six (6) foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area will be permitted. The specific fence height restrictions are as follows:

- (1) Property fencing and walls above grade shall not exceed four (4) feet above grade unless otherwise approved by the Committee
- (2) The Committee will not approve any proposed fence which exceeds four (4) feet in height unless the rear line of that lot offers some circumstance clearly unique to that lot.
- (3) Patio screens/privacy fences shall not exceed six (6) feet in height.

(b) Materials and Finish

- (1) Wood fencing or screening will be approved if the design is in conformity with the architectural design of the community, subject to the Committee's right to require landscaping on the exterior sides thereof.
- (2) The Committee will not approve an application for the installation of a chain link or other galvanized metal fencing unless it is vinyl coated or covered with similar coating material and black in color
- (3) All fencing or screening should preferably have finished material on both sides. If only one side has finished materials, that side must face the public side or adjoining property.
- (4) Walls above grade should be constructed of natural stone, masonry or attractive timber. (Railroad ties will not be allowed.)

2. **LANDSCAPE MATERIALS**

All new plant materials will conform to the current issue of the American Standard for Nursery Stocks published by the American Association of Nurserymen. The "landscape plan" for each lot must be implemented and completed at time of closing on the sale of each completed house. If poor soil conditions exist, the builder or owner shall be responsible for providing topsoil for backfilling of all proposed trees, shrubs and grading of the lot to establish a quality lawn. Each home will have a minimum planting requirement for the front and side yard:

1 Specimen shade tree	3/4"-4" caliper
2 Deciduous shade trees	2"-2 1/2" caliper
1 Flowering tree	1"-1 1/2" caliper
3 Conifer trees	8'-10' height
8 Shrubs	3'-4' height
12 Shrubs	18"-24" spread

However, should three (3) or more existing shade trees on the lot in the front and side yards be preserved, the shade tree minimum requirements herein set out shall not apply.

3. **LAWNS**

All yards are to be seeded as the minimum requirement. All established lawns will be required, by the owner, to be fertilized and weeded as necessary to insure a quality lawn appearance at all times.

4. **SWIMMING POOLS**

Swimming pools must have the approval of the Committee before any work is undertaken. No above ground pools shall be allowed. Permanent backyard pools will be approved by the Committee only after careful consideration of the potential effect of such a pool in neighboring properties. An application for the construction of a swimming pool will not be considered unless the application is accompanied by an application for acceptable fence and landscape design approval. The design of such fence shall conform to county or municipal regulations for such fencing. Use of plantings in the vicinity of the proposed pool will be required to soften the effect of sound and required pool fencing on adjacent properties.

5. **TENNIS COURTS, RACQUETBALL COURTS, PADDLE BALL COURTS, BASKETBALL GOALS, ETC.**

Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities will be approved by the Committee only after thorough consideration of the potential effect of such a structure or use in neighboring properties.

The Committee will not approve non-baffled lighted courts or facilities. An application for the construction of any such facility will not be considered unless the application is accompanied by an application for an acceptable fence and landscape design approval. It is recommended by the Committee that any such fencing be of an open composition in order to blend in with the surrounding properties and soften the effect on adjacent properties.

Backboards of all basketball goals shall be translucent fiberglass with a black pole (or an approved equal). The Committee reserves the right to approve or disapprove the location of all basketball goals.

6. PLAY EQUIPMENT

Children's play equipment such as sandboxes, temporary swimming pools, swing and slide, playhouses and tents shall not require approval by the Committee provided such equipment is not more than six (6) feet high, maintained by the lot owner in good repair (including painting) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view of adjacent lot owners. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Committee.

7. RETAINING WALLS

Retaining walls must be architecturally compatible with the exterior of the home (i.e. stone, brick or timber). Railroad tie retaining walls will not be approved.

8. GUTTERS AND DOWNSPOUTS

All homes are required to collect runoff by the use of gutters and downspouts, that are architecturally compatible in color with the exterior of the home. The builder (homeowner) is responsible for directing all downspouts to the designated runoff relief station unless otherwise approved by the Committee.

9. GARAGES

The location and orientation of all garages and garage doors will be planned in such a manner as to not infringe on the privacy of the adjoining property. The site and landscape plans of the home submitted for approval and the home on the adjoining property will be taken into consideration by the Committee.

10. DRIVEWAYS

All driveways must be asphalt, concrete or an acceptable alternate as approved by the Committee. Extensions, widening or re-routing of existing driveways must have the approval of the Committee prior to construction

11. SIDEWALKS

The owner/builder is responsible for providing all sidewalks on subject lot as shown within the construction plans. Plans are available from the Committee upon request.

12. AIR COOLING UNITS

Air cooling units or other like utilities that are outside of the residential structure must be located at the side or rear of the home and screened from view by the use of architectural or landscape materials. Architectural screens must be compatible with the exterior of the home and constructed at a minimum height equal to the height of the unit in place.

13. SOLAR HEATING SYSTEMS

The Committee acknowledges the increased use of residential solar heating systems which utilize solar heating panels and related equipment. The Committee will carefully review solar heating plans to insure that their use and location have a minimum detrimental effect on adjoining properties (See Air Cooling Units)

14. ANTENNAES

Unless specifically authorized by the Committee, no television, radio or other antennas may be erected by any lot owner on the exterior of a house or on a lot with the exception of a satellite receiving dish not to exceed 18" in diameter

15. SIGNAGE

No signs of any type shall be erected, or permitted to remain on the Development, other than signage approved by the Committee.

16. MISCELLANEOUS

(a) All construction trades performing work on any structure or other improvement on any lot in the property subject to the Declaration will be expected to do their work in a professional manner, and in accordance with all standards published by the recognized trade councils of their respective industries, and it shall be understood that all work performed in such property shall be of the highest

quality known to the trade. It is not the duty or the responsibility of the Committee to supervise or inspect the quality of construction performed by the construction trades, but should the Committee discover what it considers "low quality work" or work being performed which is not in accordance with the plans approved by the Committee, the owner of the lot and the holder of the building permit for the work in question (if known) may be notified and the work shall be corrected to a professional standard and made to conform to the approved plans.

- (b) Should the determination of the Committee in this regard be challenged by the owner of the lot or the holder of the building permit, such challenge shall be in writing and served upon the Committee accompanied by a certified letter from an architect registered to practice in the State of Indiana and bearing his signed seal stating that, in his professional opinion, the work in question is in accordance with the plans approved by the Committee and meets the quality standards herein required.
- (c) Should the Committee still disagree and feel the work is substandard or not in accordance with the approved plans, a panel of three architects will be chosen to review the work and their majority vote shall constitute the final determination as to what, if any, action is required. Should such panel of architects rule the work substandard or not in accordance with the approved plans, then the work shall be re-executed to professional standards and in accordance with the approved plans within thirty (30) days. In any case in which such a panel of architects is to make a determination hereunder, one such architect shall be selected by the Committee, one by the owner of the lot (or his builder), and the third by the two so selected. If either party fails to select its architect and advise the other of such selection within five (5) days after the date upon which the Committee notifies the owner of the lot or the holder of the building permit that the Committee still feels the work is substandard or not in accordance with the approved plans, then the single architect selected by one of the parties shall serve alone as the panel of architects to make such final determination. The costs and expenses of the architectural review panel selected to determine any such dispute shall be borne and paid in equal shares, one-half (1/2) by The Preserve at Fall Creek Homeowners Association (the "Association") and one-half (1/2) by the owner of the affected lot.
- (d) Neither the developer of the property subject to the Declaration nor any member of the Committee shall at any time have any liability whatsoever to the owner of any lot in such property or to any holder of a building permit for any improvements to be located thereon nor to any other person for any determination or decision made by the Committee in the exercise of its duties and responsibilities or for any actions taken or attempts made by the developer or the Committee to enforce quality construction practices in the subject property.

- (c) The streets in the Development shall remain private streets, unless otherwise specifically dedicated to the public. The deeds conveying each lot in the Development shall recite a notice of assessment for maintenance and use of the private streets to be collected and enforced by the Association.

The manufacturer's printed instruction and directions for the application or installation of their products shall always constitute the minimum standard for the application or installation of that product

119485 4

4

9

Cross Reference: 96-0069779

MARTIN A. BONIACKS
07213 DEC 28 8

12/30/99 11:07AM MARION COUNTY RECORDER
Inst # 1999-0243554

FIRST AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TIMBERLINE

THIS FIRST AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TIMBERLINE ("First Amendment") is made and entered into on this 19th day of November, 1999, by THE PRESERVE AT FALL CREEK, L.L.C, an Indiana limited liability company ("Declarant").

RECITALS:

- A. Declarant has previously filed a Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for Timberline, recorded May 24, 1996, as Instrument No. 96-0069779 in the office of the Recorder of Marion County, Indiana (the "Original Declaration").
- B. Declarant, pursuant to the provisions of Article X, Section 10.2 of the Original Declaration, hereby amends the Original Declaration, as follows:

i Definitions.

- a. Community Assessments. The Original Declaration is hereby amended by adding the following sentence after the first sentence in Section 1.4:

Community Assessments shall not include assessments for Common Expenses as that term is defined in the Master Declaration.

- b. Community Facilities. The definition of "Community Facilities" in Section 1.6 of the Original Declaration is hereby deleted in its entirety.

- c. DCC. Article I of the Original Declaration is hereby amended by adding a new definition for "DCC" which is to read as follows:

DCC shall mean and refer to the Development Control Committee established pursuant to the provisions contained herein.

122899
[Signature]

FILED
DEC 30 1999
LAWRENCE TOWNSHIP
ASSESSOR

2. References to "Community Facilities".

- a. All references to "Community Facilities" in the Original Declaration are hereby deleted.

3. Property Rights.

- a. Construction and Improvements. The first sentence of Section 2.3 of the Original Declaration is hereby deleted in its entirety and is replaced by the following language:

Construction upon and improvement of any Lot shall be conducted in accordance with the Amended and Restated Timberline Development Control Committee Guidelines for Architectural Approval for Timberline attached hereto as Exhibit B.

- b. Character of Development. Article II of the Original Declaration is hereby amended by adding a new Section 2.4 which shall read as follows:

Section 2.4. Character of Development.

- i. Prohibition of Used Structures. All structures constructed or placed on any Lot in the Community, including play structures, shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot without the prior written approval of the DCC.
- ii. Nuisances. No outside toilets shall be permitted on any Lot in the Community (except during a period of construction and then only with the consent of the DCC).
- iii. Pets. No doghouses or other pet enclosures shall be constructed or located on any Lot without the prior written approval of the DCC.
- iv. Utility Services. No utility services will be installed under any paved areas in the Community, except by jacking, drilling, or boring, unless specifically approved by the DCC.

- v. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots in the Community without the approval of the DCC.

4. Maintenance. Section 4.1(a) of the Original Declaration is hereby deleted in its entirety.

5. Insurance. Sections 5.1(a), 5.1(b), 5.1(c), 5.2, 5.3 and 5.4 of the Original Declaration are hereby deleted in their entirety.

6. Annexation of Additional Property.

- a. Acquisition of Additional Community Facilities. The current language of Section 6.2 of the Original Declaration is hereby deleted in its entirety and is amended to read as follows:

Acquisition of Additional Real Estate. 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.

7. Rights and Obligations of the Community Association.

- a. Community Facilities. Section 7.1 of the Original Declaration is hereby deleted in its entirety.

8. Community Assessments.

- a. Purpose of Community Assessments. The Original Declaration is hereby amended by adding the following sentence to the end of the paragraph in Section 8.1:

Community Assessments will not be used for Common Area expenses.

- b. Creation of Community Assessments. The Original Declaration is hereby amended by deleting the last two sentences of Section 8.2(a).

- c. Computation of Assessments. The Original Declaration is hereby amended by adding the following sentence after the first sentence in Section 8.3(a):

Common Expenses are paid by the Association and are not to be included in the Community Association's budget.

- d. Effect of Nonpayment of Assessments: Remedies of Association. The first five sentences of Section 8.6 of the Original Declaration are hereby deleted and replaced with the following language:

Any assessments which are not paid when due shall be delinquent. Any assessment remaining unpaid for a period of more than ten (10) days after it becomes delinquent shall incur a late fee in an amount of twenty dollars (\$20.00). An additional late fee of twenty dollars (\$20.00) will be charged for each thirty (30) day period after the assessment becomes delinquent. 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 of the notice, the Community Association may, in its discretion, bring an action at law against the Member personally obligated to pay the assessment and/or attach a lien to the Member's home. The Member shall be liable for accrued late charges, interest, not to exceed the maximum legal rate, on the principal amount due, all other 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 sixty (60) days after its due date, the Community Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien.

9. Architectural Standards. The Original Declaration is hereby amended by adding Article XIV which shall read as follows:

ARTICLE XIV
ARCHITECTURAL STANDARDS

- a. Architectural Standards Jurisdiction. The Board of Directors shall have the authority and standing, on behalf of the Community Association to enforce in courts of competent jurisdiction decisions of the Development Control Committee established herein. The DCC shall have the right to unilaterally promulgate, modify, and amend at any time and from time to time, on behalf of the Board of Directors and the Community Association, architectural, development and site planning guidelines and standards which shall be binding on all Owners of Lots within the Community as determined in the reasonable discretion of the DCC. Such guidelines and standards will

include requirements and restrictions regarding drainage, landscaping, tree removal, sidewalks, etc., as well as the construction of improvements. Such guidelines and standards and amendments thereto may be recorded in the Office of the Recorder of Marion County, Indiana, by the Community Association. Compliance with these guidelines and standards shall not relieve Owners of their obligation to comply with any and all applicable zoning ordinances, restrictions, development statements, or any other similar requirement.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no planting or removal of plants, trees, or shrubs, fences, walls or other structures shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the DCC has been obtained.

- b. **New Construction.** The DCC shall have exclusive jurisdiction over all original construction on any portion of the Community. The DCC shall prepare and, on behalf of the Board of Directors, shall promulgate design guidelines and application procedures. The standards and procedures shall be those of the Community Association, and the DCC shall have sole and full authority to prepare and to amend the standards and procedures. It shall make both available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Community and who shall conduct their operations strictly in accordance therewith. Until all the real estate included in the Development has been conveyed by Declarant to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the DCC. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors of the Community Association shall appoint the members of the DCC. The DCC shall consist of at least three (3), but no more than five (5), persons.

- c. **Modifications.** The DCC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures thereon and the open space, if any, appurtenant thereto; provided, however, the DCC may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected to this Declaration so

long as the DCC has determined that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the DCC. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired.

- d. Procedures for Approval. As to builders of lots ("Builders"), each such Builder shall submit two (2) complete sets of plans and specifications (meeting the requirements set forth below) for each model of home to be built by Builder in the Community to the DCC for approval. Once a model has been approved, approval is not necessary for any home that is built in compliance with the plans and specifications for such model. For any other construction, approvals required by this Article shall be obtained only after written application has been made to the DCC by the Owner of the Lot requesting authorization (or such Owner's duly authorized representative). Such written application shall be in the manner and form prescribed from time to time by the DCC and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction, improvement or modification. Such plans shall include plot plans showing the location of all improvement existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated, if applicable. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the DCC may require. All plans and drawings required to be submitted to the DCC shall be drawn to such scale as the DCC may require. There shall also be submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for improvement location permit shall bear the stamp or signature of the DCC acknowledging the approval thereof.
- e. Power of Disapproval. The DCC may refuse to grant approvals required under this Article when:
 - (1) The plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or

show the proposed improvements to be in violation of this Declaration;

- (2) The design or color scheme of a proposed repainting, modification or improvement is not in harmony with the general surroundings of the Lot, with adjacent buildings or structures, or with general standards for the Community, all as determined in the sole discretion of the DCC; or
 - (3) The proposed improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the DCC.
- f. **Liability of Committee.** Neither the DCC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other material submitted to it, nor for any defects in any work done according thereto, nor for any damages associated with their approval or disapproval of any matters subject to this Article.
 - g. **Inspection.** The DCC or its duly authorized agents may inspect work being performed with their permission to assure compliance herewith and with any applicable regulations of the Association, and an easement for such inspection is hereby reserved over and upon each and every Lot in the Community.
 - h. **Declarant Improvements.** The DCC shall have no powers with respect to any construction, improvements or modifications undertaken by the Declarant (or any assignee of Declarant if the Declarant has approved the plans therefor) or any improvements approved by Declarant at any time.
 - i. **Remedies for Failure to Obtain Approval.** In the event any construction or modifications are made without first obtaining approval of the DCC as required herein or any construction is being performed other than in accordance with DCC approved plans and architectural guidelines and standards, the Declarant, the Community Association and the DCC shall have the powers of enforcement granted to the Community Association generally for purposes of this Declaration and may require any modifications, construction, changes

or improvements undertaken or installed without or contrary to the approval of the DCC and such architectural guidelines and standards to be removed or renovated by whatever means the Declarant, the Community Association and/or DCC deem appropriate, with the costs thereof, including costs of collection and attorneys fees and paraprofessional fees to become a lien against the defaulting Owner's Lot in the manner described in Section 8.5 hereof.

j. Notwithstanding anything else in this Declaration to the contrary, this Article XIV shall not be amended without the consent of the Declarant as long as Declarant owns at least one (1) Lot in the Community.

10. Private Amenities and Services. The first sentence of Section 12.1 of the Original Declaration is hereby deleted in its entirety.

C. Except as specifically modified hereby, the Original Declaration remains in full force and effect.

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

THE PRESERVE AT FALL CREEK, LLC

By: _____

Sol C. Miller, Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Sol C. Miller, a Member of The Preserve At Fall Creek, L.L.C, and acknowledged execution of the foregoing First Amendment to Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for Timberline in such capacity.

WITNESS my hand and Notarial Seal this 19th day of ^{November}~~October~~, 1999.

Signature Pasha N Wade
Printed PASHA N WADE
NOTARY PUBLIC

My Commission Expires:
7-27-06

County of Residence:
Hamilton

This instrument was prepared by Mark D. Grant, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282; Telephone: (317) 236-2479.
527048.1

MARTHA A WOMACKS
MARION COUNTY RECORDER

2

Cross Reference: 96-0069779; 99-0243554

272185 MAY 24 E

SECOND AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TIMBERLINE

THIS SECOND AMENDMENT TO SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR TIMBERLINE ("Second Amendment") is made and entered into on this 18th day of May, 2001, by THE PRESERVE AT FALL CREEK, LLC, an Indiana limited liability company ("Declarant")

RECITALS:

- A. Declarant has previously filed a Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for Timberline, recorded May 24, 1996, as Instrument No. 96-0069779 in the office of the Recorder of Marion County, Indiana, as amended by that certain First Amendment to Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for Timberline dated November 19, 1999, and recorded as Instrument No. 999-0243554 in the Office of the Recorder of Marion County, Indiana (the "Original Declaration")
- B. Declarant, pursuant to the provisions of Article X, Section 10.2 of the Original Declaration, hereby amends the Original Declaration, as follows:

1. Community Assessments

- a. Ownership of Multiple Contiguous Lots for One Single-Family Residence. Article VIII of the Original Declaration is hereby amended by adding a new Section 8.12 which shall read as follows:

Any Owner of more than one contiguous Lots in the Community, including one Lot and a portion of another Lot, who desires to use more than one of such Lots as the site for one single-family residence, must apply for approval of the same in writing to the DCC (as defined in the Master Declaration), which approval shall be given or withheld by the DCC in the DCC's sole discretion. If the DCC approves such request (the "Multiple Lot Approval"), the multiple Lots constituting the site for such single-family residence shall, for so long as the multiple Lots remain improved with only one single-family residence, be treated as a single Lot for purposes of this Declaration, including without limitation, for purposes of the voting rights set forth in Section 3.2 of this Declaration. In connection with the Owner's desire

05/24/01 04:07PM WANDA MARTIN MARION CTY RECORDER SJK 14.00 PAGES: 2
Inst # 2001-0097186

to use multiple contiguous lots for one single-family residence, each such Owner shall be responsible for obtaining, at its sole expense, all required government approvals, including any required platting or replatting of the affected property. In addition, each Owner shall comply with all applicable laws, regulations and zoning ordinances, including without limitation, all yard setback requirements, in connection with the use of multiple contiguous lots for one single-family residence.

C Except as specifically modified hereby, the Original Declaration remains in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Second Amendment as of the date first written above

THE PRESERVE AT FALL CREEK, LLC

By: [Signature]
Sol C. Miller, Member

STATE OF Indiana)
) SS:
COUNTY OF Hamilton

Before me, a Notary Public in and for said County and State, personally appeared Sol C. Miller, a Member of The Preserve At Fall Creek, LLC, and acknowledged execution of the foregoing Second Amendment to Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for Timberline in such capacity.

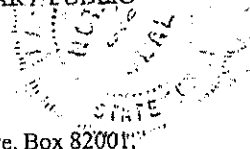
WITNESS my hand and Notarial Seal this 18th day of May, 2001.

Signature: Pasha N. Wade

Printed: PASHA N WADE
NOTARY PUBLIC

My Commission Expires:
7-27-06

County of Residence:
Hamilton



This instrument was prepared by John A. Girod, ICE MILLER, One American Square, Box 82001, Indianapolis, Indiana 46282; Telephone: (317) 236-2255.

H#W_01! WPD

2

JOHN P. VON ARX
DEPUTY COUNTY RECORDER

197290 AUG 25 5

Cross Reference: 96-69778

SUBJECT TO THE APPLICABLE INSTRUMENT
FOR TRANSFER

**THIRD AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS FOR THE PRESERVE AT FALL CREEK**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE PRESERVE AT FALL CREEK ("Third Amendment") is made and entered into on this 9th day of May, 1997, by THE PRESERVE AT FALL CREEK, LLC, an Indiana limited liability company ("Declarant").

RECITALS:

A. Declarant has previously filed a Declaration of Covenants, Conditions, Easements and Restrictions for The Preserve At Fall Creek, dated May 15, 1996 and recorded May 24, 1996 as Instrument No. 96-0069778 in the Office of the Recorder of Marion County, Indiana, which has been amended two (2) prior times (the Declaration, along with all prior amendments, is referred to herein collectively as the "Original Declaration").

B. Declarant, pursuant to the Article XIII of the Original Declaration, wishes to amend the Original Declaration as set forth herein.

NOW, THEREFORE, Declarant, pursuant to the provisions of Article XIII of the Original Declaration, hereby amends the Original Declaration, as follows:

1. Pursuant to Section 13.2 of the Original Declaration, Declarant hereby amends Section 2.6.P of the Original Declaration, and any other applicable portion of the Original Declaration, to provide that no fencing will be allowed on Lots Seventy-Five (75) through Eighty-Four (84), both inclusive, and Lots Eighty-Eight (88) through Ninety-Four (94), both inclusive, in Section 3 of the Woods Edge Community of the Development. *Provided*, the Supplemental Declaration of Covenants, Conditions, Easements and Restrictions for Woods Edge, filed as Instrument No. 96-69780 in the Recorder's Office of Marion County, Indiana on May 24, 1996, may be amended to modify or delete this fencing prohibition without further amendment or modification to the Original Declaration, as amended hereby.

FILED
AUG 07 1997
LAWRENCE TOWNSHIP
ASSESSOR

DEPT. OF METROPOLITAN DEVELOPMENT
DATE 8-21-97
PER [Signature]
ADMINISTRATOR

08/25/97 08:21AM JOHN H. ROBERTS MARION COY RECORDER R/P 12.00 PAGES: 2
Inst # 1997-0116215

2. Except as specifically modified hereby, the Original Declaration remains in full force and effect.

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

THE PRESERVE AT FALL CREEK, LLC

By: [Signature]
Sol C. Miller, Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Sol C. Miller, a Member of The Preserve At Fall Creek, LLC, and acknowledged execution of the foregoing Third Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for The Preserve At Fall Creek in such capacity.

WITNESS my hand and Notarial Seal this 9th day of May, 1997.

Signature [Signature]
Printed Michael B Jett
NOTARY PUBLIC

My Commission Expires:
April 17, 2001

County of Residence:
Hamilton

This instrument was prepared by Mark D. Grant, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282; Telephone: (317) 236-2479.