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Van Deman Subdivision

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
VAN DEMAN SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VAN DEMAN SUBDIVISION ("Declaration"), made this 12 day of April, 1999, by Van Deman Builders, Inc. , an Indiana Corporation (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, Declarant intends to subdivide Real Estate into 10 residential Lots as generally shown on the Plat for Van Deman Subdivision as hereinafter recorded in the Office of the Recorder of Johnson County, Indiana; and

WHEREAS, Declarant intends to develop the Real Estate, by constructing residential facilities, which development shall be known as "Van Deman Subdivision"; and

WHEREAS, the Real Estate has been subdivided, platted and recorded by Declarant as the Van Deman Subdivision on the 14th day of May, 1999, as Instrument No. 1999-015117 in the Office of the Recorder of Johnson County, Indiana, in Plat Book D Page 201A+B; and

WHEREAS, Declarant intends to sell and convey the residential facilities and Lots within Van Deman Subdivision and desires to subject the Real Estate to certain terms, covenants, conditions and restrictions ("Covenants") in order to ensure that development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate; and

WHEREAS, Declarant desires to provide for maintenance of the Drainage System located on the Real Estate which is of common benefit to the Owners of the various Lots within said Van Deman Subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Van Deman Subdivision;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following terms, covenants, conditions and restrictions. All of the Covenants shall run with the Real Estate and shall be binding upon the 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 the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

1 GENERAL PURPOSE OF THIS DECLARATION

The Real Estate is hereby subjected to the covenants, conditions, and restrictions ("Covenants") herein to ensure proper development of the Real Estate, to provide for adequate and proper maintenance of the Drainage System on the Real Estate, so as to meet the requirements of certain governmental agencies, all for the purpose of benefitting all Lots within Van Deman Subdivision and to ensure desired high standards of maintenance of the Real Estate.

2 DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Section 2:

2.1 Architectural Control Committee. The Architectural Control Committee, or "ACC," means the Architectural Control Committee for Van Deman Subdivision to be appointed in accordance with this Declaration.

2.2 Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot as determined and levied pursuant to the provisions of this Declaration.

2.3 Association. "Association" means Van Deman Subdivision Homeowners' Association, Inc., a nonprofit Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

2.4 Board of Directors. "Board of Directors" means the Board of Directors of the Association elected pursuant to the Articles and Bylaws of the Association.

2.5 Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of the Drainage System and any other cost or expense incurred by the Association for the benefit and perpetuation of the Drainage System.

2.6 Covenants. "Covenants" means those covenants, conditions and restrictions affecting the Real Estate as established by Declarant in this Declaration.

2.7 Declarant. "Declarant" means Van Deman Builders, Inc., an Indiana Corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Van Deman Builders, Inc. as Developer of Van Deman Subdivision.

2.8 Van Deman Subdivision. "Van Deman Subdivision" means the Real Estate as it has been platted and recorded by Declarant in accordance with the provisions of this Declaration.

2.9 Drainage Easements. "Drainage Easements" refer to those areas (referenced VAR DE, SSE, & DU.E, and DUE) reserved as easements for drainage facilities as shown on the Plat or Plats of Van Deman Subdivision, as the same may be recorded from time to time.

2.10 Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures and Drainage Easement areas, and/or all structures, fixtures, properties, equipment and facilities located in, upon, or under the Drainage Easements or Streets and associated with or related to the drainage of surface and subsurface waters from, over, and across Van Deman Subdivision.

2.11 Lot. "Lot" means any of the separate and individual parcels created, numbered and identified on the Plat or Plats of Van Deman Subdivision, as the same may be recorded from time to time.

2.12 Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

2.13 Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

2.14 Plat. "Plat" means the final Plat or Plats of Van Deman Subdivision as the same may be recorded from time to time in the Office of the Recorder of Johnson County, Indiana.

2.15 Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of Van Deman Subdivision, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

3 EXEMPTIONS APPLICABLE TO LOT TEN (10)

3.1 Sections Containing Exemptions. Lot Number Ten (10) and the existing home on that Lot shall be exempt from the provisions of Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.21, 4.22, 4.24, 4.26 and 4.27.

4 GENERAL LOT DEVELOPMENT AND USE RESTRICTIONS

4.1 Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owner shall maintain his Lot and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

4.1.1 Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

4.1.2 Cut down and remove dead trees.

4.1.3 Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

4.1.4 Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or Van Deman Subdivision.

Failure to comply shall warrant the Declarant or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

4.2 **Unimproved Lots.** Lots and yards shall be kept mowed regardless of whether a dwelling has been constructed on the Lot. Owners of Lots without dwellings shall be held responsible for the trash, weeds, and general condition of the Lots.

4.3 **Residential Use.** No Lot shall be used except for residential purposes and no building shall be erected, altered, or placed on any Lot, other than one (1) attached Residential Unit not to exceed two stories in height with a private attached garage for not less than two (2) cars.

4.4 **Minimum Living Space.** The minimum square footage of living space of dwellings within Van Deman Subdivision, exclusive of porches, garages or basements shall be no less than:

4.4.1 One thousand two hundred (1,200) square feet for single story dwellings; and one thousand eight hundred (1,800) square feet for two story dwellings.

4.4.2 Nine hundred (900) square feet for the ground floor of two story dwellings.

4.5 **Set-Back Requirements.** No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded Plat. The minimum side yard set back shall be ten feet (10') and the minimum aggregate of the side yards on any Lot shall be twenty-five feet (25'). The minimum rear yard set back shall be twenty feet (20'). For the purposes of these Covenants, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

4.6 **Brick.** At a minimum, the first story of each dwelling, exclusive of windows

and doors, shall be constructed of twenty-five percent (25%) brick.

- 4.7 **Siding.** Aluminum siding is not permitted except for soffits.
- 4.8 **Roof Pitch.** No dwelling shall have a roof pitch of less than six (6) to twelve (12) (6 inches rise to 12 inches horizontal).
- 4.9 **Parking.** Parking vehicles on the Street is prohibited.
- 4.10 **Offensive Activity.** Noxious or offensive activity shall not be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, including extremely audible music or activities.
- 4.11 **Accessory Buildings.** No detached garages, sheds, barns, shacks or tents shall be maintained on any Lot. Storage buildings may be approved by the ACC with strict adherence to the ACC standards, specifications and requirements which shall include, but are not limited to, the requirement that the roof and siding and/or trim color schemes match the dwelling on the Lot.
- 4.12 **Swimming Pools.** No above ground swimming pools shall be permitted within the subdivision. Any pool, pool house, or fencing for a pool shall have a written approval of the ACC.
- 4.13 **Signs.** No sign of any kind shall be displayed to the public view on any Lot, except one (1) professionally manufactured sign of not more than five (5) square feet, used by a builder, realtor, or Owner to advertise the property during the construction and sale period.
- 4.14 **Mining Operations.** No oil drillings, oil development operations, oil refining, quarries, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot.
- 4.15 **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose and are housed within the dwelling.
- 4.16 **Inoperative or Unlicensed Vehicles.** Any motor vehicle, which is inoperative or unlicensed and not being used for normal transportation, will not be permitted to remain on any Lot, Street or Easement unless kept entirely within a garage.
- 4.17 **Trucks, Boats, Recreational Vehicles.** No semi-trucks, trailers, boats or trailers, mobile homes, campers or recreational vehicles of any kind may not be stored or parked on any Lot, Street or Easement unless kept entirely within a garage.

4.18 **Outdoor Storage**. No large volume of materials or supplies, large machinery or equipment shall be permitted to be kept or stored on any Lot unless kept entirely within a garage.

4.19 **Childcare Services**. No pre-school, baby-sitting business or such childcare services for more than six (6) children shall be allowed to operate upon any Lot.

4.20 **Rubbish, Trash and Garbage**. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the Street, except on collection day.

4.21 **Corner Lot**. No fence, wall, hedge, or shrub planting which obstructs the sitelines at elevations between two feet (2') and ten feet (10') above the centerline grades of intersecting streets shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points thirty-five feet (35') from the intersection of the street right-of-way lines extended, or in the case of rounded property corner, for the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

4.22 **Driveways and Carports**. All driveways must be paved with concrete, asphalt or other all-weather surface excluding gravel. No carports are permitted.

4.23 **Communication Devices**. Satellite dishes, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited, except antennas attached to the dwelling which do not rise above the peak of the roof.

4.24 **Wells and Septic Tanks**. No individual water supply system or sewage system shall be permitted on any Lot.

4.25 **Construction, Earth-Moving, Excavating**. No construction significant earth-moving, or excavating work of any nature may be conducted on any Lot.

4.26 **Fences, Walls, Barriers**. All fences, walls, barriers or like structures must be approved in writing by the ACC prior to their construction. No such structures shall exceed six feet (6') in height. No such structure shall be placed closer to the front Lot line than the front building setback line. No aluminum fences or wood fences are permitted.

4.27 **Structures**. No decorative structure, statue or other structure may be placed on the Lot closer to the front Lot line than the front building setback line.

4.28 Enforcement. Violation of any of the covenants or restrictions of this Plat or of those contained in the Declaration for the Van Deman Subdivision Association, referenced herein, shall be subject to liquidated damages in the sum of Fifty Dollars (\$50.00) per day for each day the violation continues and to all other remedies, including injunction, provided by law or in equity and all costs and expenses incurred by the Declarant or property owners, including attorneys fees, in litigation or other procedures required to remedy such violations shall be paid by the Owner(s) of the Lot or Lots found to be in violation. By acceptance of a deed for title to any Lot within this Plat, the grantee acknowledges the provisions of this document and agrees to be bound thereby and to pay the costs and expenses described in this paragraph where applicable. The right to enforce these provisions by injunction, together with the right to cause the removal, by due process of the law, of any structure or part thereof, is hereby dedicated to public and reserved to the several Owners of the several Lots in this subdivision and to their heirs and assigns. Enforcement shall be by proceedings at law or in equity against the person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenants shall not be considered as a waiver of the right to enforce any covenant herein, thereafter.

5 YAN DEMAN SUBDIVISION ARCHITECTURAL CONTROL COMMITTEE

5.1 Architectural Control Committee (ACC). The Board of Directors of the Association, or Declarant, so long as Declarant owns at least one (1) Lot, shall appoint an ACC to be composed of three (3) members.

5.2 Builder Approval. The Declarant, through the ACC, shall establish a set of builder standards to apply to all persons or entities intending to provide construction services for the construction of a residential dwelling upon a Lot. All builders must be pre-approved by the ACC prior to construction activities on the Lot and shall be obligated to follow all rules and regulations established by the ACC pursuant to this provision, throughout the course of such construction.

5.3 Construction Approvals. No construction of any building or structure of any kind, including additions or remodeling involving exterior changes, alterations, fences, screens and walls shall begin within Van Deman Subdivision until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the ACC. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location, and plot plan by the ACC may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the ACC.

The plans and specifications submitted to the ACC shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the

ACC. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit. The destruction of trees and vegetation and any other such matter as may affect the environment and ecology of Van Deman Subdivision area shall be the proper concern of the ACC.

5.4 **Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons. Neither the ACC members nor the designated representatives shall be entitled to compensation for services performed pursuant to this Declaration.

5.5 **Liability of Committee.** Neither the ACC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

5.6 **Inspection.** The ACC or its agent may inspect work being performed to assure compliance with the approved plans and this Declaration.

6 **DRAINAGE SYSTEM RESTRICTIONS.**

6.1 **Drainage Systems.** Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the appropriate governmental authorities. Owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the appropriate governmental authorities. Any Owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, the appropriate governmental authorities may cause said repairs to be accomplished and the bill for said repairs will be sent to the affected Owner for immediate payment. Failure to pay will result in a lien against the Owner's Lot.

6.2 **Field Tiles.** Any field tile or underground drain which is encountered in construction or any improvement within Van Deman Subdivision shall be perpetuated and all Owners and their successors shall comply with the Indiana Drainage Code of 1965 as amended.

7 **COVENANTS FOR MAINTENANCE ASSESSMENTS**

7.1 **Assessments for Drainage System.** The Assessments levied by the Association shall be used for the purpose of maintenance, repairs, and upkeep of the Drainage

Easements and appurtenances existing as a part of the Drainage System within Van Deman Subdivision, as the same may be platted from time to time, including, but not limited to, the payment of any necessary insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Drainage System; provided that the Association shall not be responsible for the replacement, repair or maintenance of any part of the Drainage System which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

7.1.1 A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.

7.1.2 A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

7.2 **Common Expenses.** Maintenance, repairs and upkeep of the Drainage System shall be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

7.2.1 Notwithstanding any obligation or duty of the Association to maintain any of the Drainage System, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, lessee, invitee or other occupant or visitor of such Owner, damage shall be caused to the Drainage System, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

7.2.2 The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance only, or repairs of or to the Drainage System, including, but not limited to, access of any easements reserved by the Plat of any portion of the Real Estate for such purpose.

7.3 **Liability for Assessments.** Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments

shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

7.4 **Pro-rata Share**. The pro-rata share of each Owner for purposes of this Section shall be the percentage obtained by dividing one by the total number of Lots of Van Deman Subdivision, as the same may be recorded from time to time ("Pro-Rata Share").

7.5 **Basis of Annual Assessments**. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

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

7.7 **Fiscal Year; Date of Commencement of Assessments; Due Dates**. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessments provided for herein shall commence as to all Lots in Van Deman Subdivision on the first day of the month following the Declarant's transfer of control of the Association to the Owners pursuant to Section 9.12 below. Declarant shall not be obligated to pay any assessments prior to said transfer, but shall be obligated to pay all Common Expenses prior to said transfer. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

7.8 **Duties of the Association**.

7.8.1 The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner or duly authorized representative of any Owner at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by

the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

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

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

7.9 Non-payment of Assessments; Remedies of Association.

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

7.9.2 If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at the annual interest rate allowable on judgments rendered in the State of Indiana at the time such Assessment is due, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

7.10 Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special

Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

8 ORGANIZATION AND DUTIES OF ASSOCIATION

8.1 Organization of Association. The Declarant shall establish the Association to be organized as a mutual benefit and nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with The Articles of Incorporation which have been filed by Declarant

8.2 Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Van Deman Subdivision as the same may be platted from time to time, provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes.

8.3 Board Of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Association By-Laws. The Board of Directors shall manage the affairs of the Association.

8.4 General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Drainage System, the determination of Common Expenses, and the collection of annual and special Assessments for the perpetuation of the Drainage System and common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the Covenants contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or 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.

8.5 Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least three-fourths of the Lots and of at least three-fourths of the Mortgagees of the Mortgagees requesting notice of such actions provided, however, that any such amendment of this Declaration shall not bring about any inequitable Assessments on any particular Owner(s). Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County. No such amendment shall substantially alter the Drainage System or effect a modification of any

covenants or commitments undertaken in connection with any platting approvals or zoning without the prior approval of the appropriate government authorities.

8.6 Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with the Drainage System. The Association shall also maintain in force adequate casualty and extended coverage insurance, insuring the Drainage System against casualty, vandalism and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full replacement value of such Drainage System. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured and shall cover claims of one or more insured parties against other insured parties.

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

8.8 Mortgagees' Rights. The mortgagees shall have the right, at their option, jointly or severally, to pay charges which are in default or which may or have become a charge against the Drainage System to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Drainage System and Mortgagees making such payment shall be owed immediate reimbursement from the Association.

9 GENERAL PROVISIONS

9.1 Covenants Run With the Land. The Covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy, or possession of any portion of the Real Estate.

9.2 Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the Covenants contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the Covenants contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

9.3 Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Declaration, or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

9.4 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such Covenant.

9.5 Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. Other provisions herein notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

9.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

9.7 Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe

the scope and intent of the particular sections to which they refer.

9.8 Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to hereinabove; or (b) seventy-two (72) hours after the deposit thereof in any United States mail or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

9.9 Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Covenants for Van Deman Subdivision Drainage System pertaining to the real estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana,"

and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

9.10 Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

9.11 Reservations of Declarant. Other provisions herein notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least one (1) Lot within Van Deman Subdivision without the approval or consent of the Owners or Mortgagees of 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 the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

9.12 Transfer of Control of Owner's Association. Declarant shall transfer control of the Owner's Association to the Owners no later than the earlier of (a) four months after all of the Lots have been conveyed to Lot purchasers or (b) by January 1, 2005, whichever occurs earlier.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on the date first above written.

VAN DEMAN BUILDERS, INC.
an Indiana Corporation

By: *Brian Van Deman*
Brian Van Deman, President

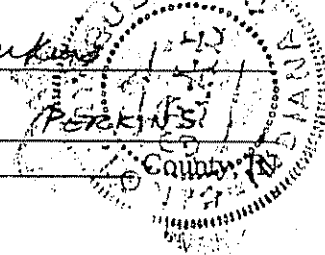
STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

On this 12 day of April, 1999, before me, a Notary Public, personally appeared **Brian Van Deman**, President, on behalf of **Van Deman Builders, Inc.**, an Indiana Corporation, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that she executed the same.

My Commission Expires:

8-29-01

Sandra J Perkins
Notary Public, SANDRA J PERKINS
Resident of MARION



THIS INSTRUMENT PREPARED BY
Joyce A. Tellstrom, Attorney,
VAN VALER LAW FIRM,
299 West Main Street, P. O. Box 7575,
Greenwood, Indiana 46142
317/881-7575

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LEGAL DESCRIPTION

Part of the Southeast Quarter of the Southeast Quarter of Section 27, Township 14 North, Range 3 East of the Second Principal Meridian:

Beginning at the Southeast corner thereof; thence West on the South line 7075 feet; thence North and parallel with the East line of said Quarter Quarter Section 295.68 feet; thence East and parallel with the South line 707.52 feet to the East line; thence South on the East line 295.68 feet to the Place of Beginning, containing 4.80 acres, more or less.

EXHIBIT "A"
