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INSTRUMENT NUMBER

SUBDIVISION Village of ORCHARD PARK

LEGAL PT NE 1/4 SE 1/4 S 14 T 14 R 3 E

MORDOH Development Co.

OWNER MALLAH A. MORDOH

CROSS REFERENCE

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DMD/VOID STAMP  
LAND SURVEYOR  
TOWNSHIP  
AUDITOR  
NOTARY

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DECLARATION

ATTACHED AS  
SAME INSTRUMENT No.

OWNER: MALLAH A. MORDOH

TOWNSHIP

Perry

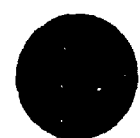
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MALLAH A. MORDOH  
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MARION COUNTY RECORDER



DEVELOPMENT STANDARDS AND  
PLAT RESTRICTIONS AND COVENANTS  
FOR THE VILLAGE OF ORCHARD PARK

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The undersigned, Mordoh Development Company, as owner of the real estate described herein, does hereby lay off, plat and subdivide the said real estate in accordance with the attached plat and certificate.

This subdivision shall be known as The Village of Orchard Park.

The streets and sidewalks, as well as all existing and future trees, shrubbery and plantings within the designated rights-of-way as shown on the plat, are hereby dedicated to the perpetual use of the public for lawful purposes.

There are strips of ground marked "Utility and Drainage Strips" shown on the plat which are hereby reserved for public utilities, not including transportation companies, for the installation and maintenance of poles, mains, sewers, drains, ducts, lines and wires. Purchasers of lots in this subdivision shall take their titles subject to the easements hereby created and subject to all times to the rights of proper authorities to service the utilities and the easements hereby created, and no permanent structure of any kind or part thereof, except fences and sidewalks, shall be built, erected or maintained on said "Utility and Drainage Strips."

There are strips of ground marked "Drainage Easement" which are hereby reserved for the installation and maintenance of drainage improvements. Purchasers of lots in this subdivision shall take their title subject to the easement hereby created, and subject at all times to the proper authorities and the easement hereby created and no permanent structure of any kind shall be built, erected or maintained on any such "Drainage Easement."

Easements, not otherwise specifically described herein, are hereby created and dedicated to the appropriate utility for the maintenance, repair and replacement, if necessary, of all sanitary sewer and water lines and facilities constructed upon and under any lot within this subdivision. The said sanitary sewer and water easements shall permit the continued operation of those said utility services perpetually and shall be limited to twelve feet (12') in width; six feet (6') on either side of the center lines of each such sanitary sewer and water line, as initially constructed within this subdivision. The owners of each lot, or portion thereof, shall bear the cost of all reasonably necessary maintenance, repairs or replacement of the sanitary sewer laterals and facilities and water lines which serve the residence or residences on the lot. In the event that any two (2) family residence on a lot in this subdivision is owned by more than one owner, each owner shall share equally the reasonable cost of the maintenance, repair or replacement of the commonly used sanitary sewer and/or water lines and facilities.

All lots in this subdivision by present and future owners or occupants shall be subject to the following development standards, conditions and restrictions, which shall run with the land:

1. No lot shall be used except for residential purposes and no building shall be erected, altered, or placed on any

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lot, other than one (1) two family dwelling not to exceed two (2) stories in height and an attached private garage for not less than one and one-half (1-1/2) or more than three (3) cars. Carports with open sides shall not be permitted. All driveways and vehicle parking areas shall be hard surfaced with either concrete, asphalt or brick. No gravel or stone driveways shall be permitted.

2. The buildings constructed upon each lot in this subdivision shall conform to applicable zoning ordinances and the variances approved by the Metropolitan Development Commission of Marion County, Indiana, on April 5, 1989, in Petition 89-CV-9, as amended.

3. Certain additional rights and restrictions of use and lot owners' responsibilities are placed on each lot and the common area within the attached plat. These restrictions are embodied in a document entitled "Declaration of Covenants and Restrictions for The Village of Orchard Park Association, Inc.", which has been executed by the undersigned and placed of record in the office of the Recorder of Marion County, Indiana, concurrently with the recording of this plat and constitutes further standards, covenants and restrictions applicable to all lots and common areas in The Village of Orchard Park running with the land, binding all present and future owners thereof. The Not-For-Profit homeowners association, The Village of Orchard Park Association, Inc., formed concurrently with the execution of this plat and governed in part by the terms and provisions of the aforesaid Declaration, has been formed for the purposes of: 1) maintaining street lighting, 2) maintaining common areas, 3) maintaining entryways, parkways and sidewalks, 4) maintaining landscaping and 5) performing all other functions necessary in the best interests of the development and community, and among all other provisions is empowered to assess and collect sums from all lot owners in The Village of Orchard Park annually and as deemed necessary specially to facilitate the purposes of the association and the best interests the development.

4. The existing tree line along the north and west boundaries of the real estate shall be preserved and shall be supplemented with additional White Pine and other evergreen and ornamental plantings, sufficient in size and number to form a reasonable landscape buffer during the growing season. The supplemental evergreens shall be a minimum of six feet (6') in height and all supplemental landscaping shall be located in accordance with a tree preservation and landscape plan to be approved by the Administrator of Development Services prior to the issuance of any permits for the development.

5. Each living unit shall have provision for three (3) bedrooms, and shall have two (2) full baths, not less than a one and one-half (1-1/2) car attached garage and a hardsurfaced driveway of concrete or asphalt. Dwellings to be constructed on the real estate shall be of diverse architectural style and exterior building materials. Not more than twenty percent (20%) of the dwellings constructed shall have the same exterior elevations and combination of exterior building materials, and no two (2) structures having the same exterior style and building materials shall be located adjacent to one another. The structures' exterior elevations shall be constructed of brick, cedar and/or wood grain vinyl; provided that no less than twenty-five percent (25%) of the exterior elevations of each structure shall be brick, consisting of three (3) styles and four (4) colors disbursed throughout the development, and the cedar and wood grain vinyl shall consist of two (2) styles and four (4) colors throughout the development. Further, not less than fifty percent (50%) of the structures abutting the north property line of the development shall have a brick wainscoting on the north elevation of those structures.

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6. No noxious or offensive activity shall 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.

7. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently. No above-ground swimming pools shall be permitted on any lot in this development.

8. No sign of any kind shall be displayed to the public view on any lot, except signs used by a builder to advertise the property for sale.

9. 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, water or natural gas shall be erected, maintained or permitted on any lot. All propane tanks must be concealed.

10. 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.

11. No lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Antennas, masts, towers or satellite dishes of any kind will not be permitted on any lot or outside any dwelling. No trash or building materials may be burned or buried on any lot within the development and all lots shall be kept clean at all times during construction. Dumpsters shall be used and located on each lot during any construction with all trash and excess materials stored therein and removed daily.

12. No fence, wall, hedge or shrub planting which obstructs the sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five feet (25') from the intersection of the street property lines, or in the case of a rounded property corner, from the intersection of the streets 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 driveway shall be located within forty feet (40') of the intersection of two (2) street lines. Sidewalks shall be constructed as required by the sidewalk plan approved by the Plat Committee for the Department of Metropolitan Development, which construction shall be the responsibility of the lot owner upon whose lot the sidewalk is to be constructed; provided, however, that certain common area sidewalks shall be constructed by the developer as designated on the final development - sidewalk plan. All sidewalks to be constructed by lot owners shall be completed at such time as the driveway on the lot is constructed, or within eighteen (18) months of the date such lot is initially conveyed by the undersigned, whichever date shall first occur. No fence in excess of three and one-half feet (3-1/2') in height shall be erected, except for patio enclosures connected to a dwelling or fences enclosing an in-ground swimming pool.

13. Each lot shall be kept in a neat and pleasing manner, with the grass mowed when necessary to maintain a growth of six inches (6") or less at all times. Campers, recreational vehicles or boats of any kind may not be stored or

parked on any lot outside the main dwelling or garage. All basketball backboards and any other fixed games and play structures shall be located behind the front foundation line of the main structure and within lot setback lines.

14. Any field tile or underground drain which is encountered in construction of any improvements within this subdivision shall be perpetuated, and all owners of lots in this subdivision and their successors shall comply with the Indiana Drainage Code of 1965, and all amendments thereto.

15. Any motor vehicle which is inoperative and not being used for normal transportation shall not be permitted to remain on any lot.

16. The finished yard elevations at the house site on lots in this subdivision shall be not lower than the elevations shown on the general development plan. The lot owner shall be solely responsible for maintaining all finished grade elevations in accordance with the approved development plans and shall bear the cost of all grading or improvements necessary to bring the lot into compliance with these Covenants.

17. Drainage swales (ditches) or drainage retention areas 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 Indianapolis Department of Public Works. Property owners must maintain these swales as sodded grassways, or other noneroding 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 Indianapolis Department of Public Works. Any property owner altering, changing, or damaging 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 Indianapolis Department of Public Works will cause said repairs to be accomplished, and the statement for costs of the said repairs will be sent to the affected property owner for immediate payment.

18. All costs of litigation and attorney's fees resulting from violation of these Covenants shall be the financial responsibility of the lot owner or owners found to be in violation.

19. These restrictions are hereby declared to be Covenants running with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless at any time after fifteen (15) years following the date of recordation, an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said Covenants in whole or in part.

20. 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.

21. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority, to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided, further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 38-A0-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

WITNESS my hand and seal this 29 day of November 1989.

Mordoh Development Company

By Mallah A Mordoh  
Mallah A. Mordoh  
VP Title

STATE OF INDIANA )  
                          )SS:  
COUNTY OF MARION )

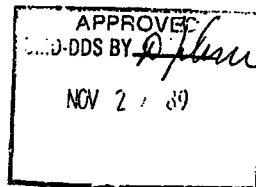
Before me, a Notary Public in and for said County and State, personally appeared Mordoh Development Company, by Mallah A. Mordoh, and acknowledged the execution of the foregoing Development Standards and Plat Restrictions and Covenants for The Village of Orchard Park.

Witness my hand and Notarial Seal this 29th day of Nov, 1989.

My Commission Expires: 11-2-93  
Vickie Lynn Johns  
VICKIE LYNN JOHNS, Notary Public  
Resident of Marion County

This Instrument Prepared By:

Michael J. Kias, Esq.  
STEWART & IRWIN  
Two Market Square Center  
251 East Ohio Street  
Suite #1100  
Indianapolis, Indiana 46204  
Phone: (317) 639-5454



APPROVED BY 29th  
Nov. 1989

J. Ballagh NOTARY SWAN  
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③ 26.00  
26/15

CROSS-REFERENCE: 89-119387

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DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR THE VILLAGE OF ORCHARD PARK ASSOCIATION, INC.,  
AN INDIANA NOT-FOR-PROFIT CORPORATION

26/15

THIS DECLARATION made this 8<sup>th</sup> day of December  
1989, by Mordoh Development Company, hereinafter referred to  
alternatively as the "Developer" and/or "Declarant".

W I T N E S S E T H :

WHEREAS, the Developer is the owner of certain real  
property, hereinafter described, in Perry Township, Marion  
County, Indiana, and has created thereon a residential  
development and subdivision commonly known as The Village of  
Orchard Park ("the Subdivision"), which includes certain common  
and easement areas, streets, sidewalks and other common  
improvements; and

WHEREAS, the Developer desires to provide for the  
preservation of the values of the properties and amenities  
within the Subdivision and for the maintenance of the common  
and easement areas, as well as provide for the removal of snow  
and debris from the streets within the Subdivision, and to that  
end desires to subject the real estate described herein and all  
lots within the Subdivision to the covenants, restrictions,  
easements, charges and liens hereinafter set forth, each and  
all of which is intended for the benefit of the said properties  
and each subsequent owner thereof; and

WHEREAS, the Developer deems it desirable, for the  
efficient maintenance of the lawns, streets and common areas  
within the Subdivision, to create an entity to which should be  
delegated and assigned the authority and responsibility of  
maintaining and administering the common property and the snow  
removal contemplated herein, enforcing the covenants and  
restrictions of the plat of the Subdivision and collecting and  
disbursing the assessments and charges hereinafter created; and

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MARION COUNTY RECORDER

WHEREAS, the Developer will incorporate under the laws of the State of Indiana, as a not-for-profit corporation, The Village of Orchard Park Association, Inc., for the purpose of exercising the above-mentioned functions, all as set forth herein.

NOW, THEREFORE, Mordoh Development Company, by its Vice-President, Mallah A. Mordoh, does hereby declare that the real estate described in Article II of this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, assessments, charges and liens ("covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Corporation" shall mean and refer to The Village of Orchard Park Association, Inc.

(b) "The Properties" shall mean and refer to all such properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of Common Properties as heretofore defined.

(e) "Dwelling Unit" shall mean and refer to any portion of a building designed and intended for use and occupancy as a residence by a single family.

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(f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Dwelling Unit situated upon the Properties and Contract Purchasers, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgages unless and until such mortgages have acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Subdivision" shall mean and refer to The Village of Orchard Park as platted and approved by the Metropolitan Development Commission of Indianapolis, Marion County, Indiana.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Perry Township, Marion County, Indiana, and is more particularly described as follows:

\*

all of which said property shall hereinafter be referred to as the "Properties".

Section 2. Easements to Owners. Declarant hereby grants an easement in favor of each Owner for the use, enjoyment, and benefit of the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 3. Covenant to Convey Common Properties. Declarant hereby covenants and declares that all areas within the Subdivision now owned by it which are not included in the definition of "Lot" and have not been dedicated to the public for street rights-of-way or other easement purposes, shall be conveyed to the Corporation as and for the Common Properties, at such time after Declarant has sold and conveyed ninety percent (90%) of the Lots in the Subdivision to initial Owners

as, in the discretion of the Declarant, will be in the best interests of the Owners and the Subdivision, by a general warranty deed, free and clear of all liens and encumbrances, except the lien of current taxes, rights-of-way, the provisions of these covenants and restrictions and other easements and restrictions of record. Declarant may, in its sole discretion, convey the said Common Properties to the Corporation prior to the sale and conveyance of ninety percent (90%) of the Lots in the Properties, should Declarant determine such conveyance to be in the best interests of the Owners and the Subdivision.

Section 4. Additions to the Properties. Additional lands may become subject to this Declaration in the following manner:

(a) Upon approval in writing of the Corporation pursuant to its Articles of Incorporation or By-Laws, or any amendment thereof, the Owner of any property who is desirous of adding it to the jurisdiction of the Corporation, may file of record a Supplementary Declaration of Covenants and Restrictions which shall extend the scheme of the covenants and restrictions of this Declaration to such property. A Supplemental Declaration adopting by reference the provisions of this Declaration in its entirety shall be sufficient to conform with this Section. In addition, such Supplementary Declaration may contain such complimentary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Properties.

(b) Upon a merger or consolidation of the Corporation with another corporation, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or

consolidated corporation or, alternatively, the Properties, rights and obligations of another corporation may, by operation of law, be added to the Properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration with the Properties, except as hereinafter provided.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE CORPORATION

Section 1. Membership. Every person or entity who is a record owner of a fee interest in any Lot, or portion of any Lot, which is a part of the Properties or is a party to a Conditional Sales Contract for the sale and purchase of any Lot, and which is subject by covenants of record to assessment by this Corporation, shall be a member of the Corporation; provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Corporation shall have two (2) classes of voting membership:

Class A. Class A members shall be all those Owners as defined in this Article III, Section 1, with the exception of the Declarant. Except as otherwise set forth in the Articles of Incorporation, Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by this Article III, Section 1. When more than one (1) person holds such interest or interests in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B members shall be the undersigned Declarant-Developer and its successors in interest. The Class B members shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership by Article

III; provided, however, that the Class B membership shall be cancelled and cease to exist upon conveyance of the Common Properties from Declarant to the Corporation.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Properties, hereby covenants and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Corporation: 1) annual assessments or charges; 2) special assessments for capital improvements, such assessment to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

" Notwithstanding the foregoing assessment requirement, the Developer/Declarant shall not be required to pay either annual or special assessments with respect to any lots owned by the Declarant prior to the conveyance of the Common Properties to the Corporation. In lieu of the payment of such assessments prior to conveyance of the Common Properties, the Developer may supplement the assessments collected as reasonably necessary to accomplish the responsibilities of the Corporation as set forth herein, but shall not be obligated to make such contributions.

Section 2. Purpose of Assessments. The assessment levied by the Corporation shall be used exclusively for the

purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and, in particular, for the improvement and maintenance of property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Properties, but not limited to the payment of taxes and insurance for the Common Properties, snow removal from all public streets and maintenance of the Common Properties and entry area of the Subdivision, all as may be approved by the Corporation's Board of Directors, from time to time.

Section 3. Basis and Maximum of Annual Assessments.

Until the year beginning January, 1991, the annual assessment shall be Two Hundred Forty Dollars (\$240.00) per Lot owned by Class A members of the Corporation. From and after January 1, 1991, the annual assessment may be increased by vote of the Board of Directors, as hereinafter provided, for the next succeeding two (2) years and at the end of each such period of two (2) years for each succeeding period of two (2) years. Notwithstanding the foregoing, Lots within the Properties owned in fee by the Class B members shall not be subject to annual assessments as provided herein, however, the Developer may participate in and contribute to the expense of maintaining the Common Properties and right-of-way areas, as may be reasonably required in the best interests of the Properties.

The Board of Directors of the Corporation may, after consideration of current maintenance costs and future needs of the Corporation, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Corporation may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common

Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of each class of its membership, voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the provisions of Section 3 hereof, and for the periods therein specified, the Corporation may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period, provided that any such change shall have the assent of fifty-one percent (51%) of each Class of its membership, voting in person or by proxy (as defined and required in Section 6 below), at a meeting duly called for this purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, and provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Corporation is authorized to participate under its Articles of Incorporation and under Article II, Section 2 hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all of the votes of each Class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2)

of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments;

Due Dates. The annual assessments provided for herein shall commence on the date fixed by the Board of Directors of the Corporation to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bears to twelve (12). The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the Properties, now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment, which resolution may authorize payment in equal installments no less often than monthly, provided the entire special assessment is paid during the calendar year to which it is applicable.

Section 8. Duties of the Board of Directors. The Board of Directors of the Corporation shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Properties and assessments applicable thereto which shall be kept in the office of the Corporation and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be mailed to every Owner subject thereto.

The Corporation shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Corporation, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Fund for Capital Expenditures. All sums assessed by the Corporation shall be determined and established by using generally accepted accounting principles approved on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and facilities, which funds shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas and facilities. The said fund for capital expenditures in repair and replacement of Common Areas and facilities shall be maintained in a separate interest bearing account with a bank or savings and loan association authorized to conduct business in Marion County, Indiana.

Section 10. Effect of Nonpayment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Corporation. If the assessments are not paid on the date or dates when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, successors and assigns. If, under Section 7, installment payments of special assessments have been authorized, then failure to pay any one (1) installment within ten (10) days after the due date shall accelerate the payment of all installments and the entire unpaid balance of such assessment shall immediately become due



and owing without further notice. The Grantee of any Lot in the Properties shall be jointly and severally liable with the Grantor for all unpaid assessments against the latter for his share of the Common Properties' expenses, as herein provided, incurred up to the time of the conveyance, without prejudice, however, to the Grantees' right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the Corporation setting forth the amount of unpaid assessments against the Grantor and such Grantee shall not be liable for, nor shall the Lot so conveyed be subject to a lien for any unpaid assessments against the Grantor in excess of the amount certified by the Corporation to the Grantee.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum, and the Corporation may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained such judgment shall include interest on the assessment, as above provided, and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 11. Subordination of Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage. Such sale shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

Section 12. "Junior Lien" Provision. If any premises subject to the lien hereof shall become subject to the lien of a mortgage or deed of trust (a) the foreclosure of the lien thereof shall not operate to affect or impair the lien of the mortgage or deed of trust; and (2) the foreclosure of the lien of the mortgage or deed of trust or the acceptance of a deed in lieu of foreclosure by the mortgagee shall not operate to affect or impair the lien hereof, but said charges as shall have accrued up to the foreclosure on the acceptance of the deed in lieu of foreclosure shall be subordinate to the lien of the mortgage or deed of trust with the foreclosure purchaser or deed in lieu Grantee taking title free of the lien hereof for all such charges that have accrued up to the time of the foreclosure or deed given in lieu of foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the foreclosure or deed given in lieu of foreclosure.

ARTICLE V

INCORPORATION OF PLAT RESTRICTIVE COVENANTS

The Developer has caused to be executed and placed of record with the Recorder of Marion County, Indiana, certain Restrictive Covenants governing construction upon and the use of all Lots with the Properties; and here declares that those said Restrictive Covenants of The Village of Orchard Park, and all subsequent restrictive covenants recorded in connection with the platting of the subdivision and the Properties are hereby incorporated in this Declaration and thus may be enforced by the undersigned and the Corporation as these Covenants are enforced.

ARTICLE VI

GENERAL PROVISIONS

Section 1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarants, the Owner of any land subject to this Declaration, their respective

legal representatives, heirs, successors, and assigns and The Village of Orchard Park Association, Inc., for a term of thirty-five (35) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding of law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Developer, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Payment of Fees and Expenses of Litigation. Class A members and others acting for, on behalf of, or through any Class A member violating the terms and restrictions of these Covenants shall be responsible for and pay all professional fees and expenses for any litigation, arbitration or other proceedings, including negotiations, and time and services otherwise incurred in enforcing the terms and provisions of this Declaration and/or the Restrictions of the Plat of The Village of Orchard Park and the collection of assessments and other sums due by these provisions.

MORDOH DEVELOPMENT COMPANY

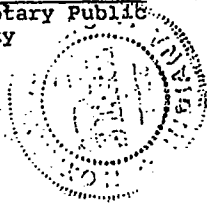
By Mallah A. Mordoh  
Mallah A. Mordoh  
Vice-President

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Mallah A. Mordoh, Vice-President of Mordoh Deveicpment Company, and acknowledged the execution of the foregoing Declaration of Covenants and Restrictions for The Village of Orchard Park Association, Inc., an Indiana Not-For-Profit Corporation.

Witness my hand and Notarial Seal this 8<sup>th</sup> day of December, 1989.

My Commission Expires: 2/12/93 Burke W. Schneider, Notary Public  
Resident of Marion County



This Instrument Prepared By:  
Michael J. Kias, Esq.  
STEWART & IRWIN  
Two Market Square Center  
251 East Ohio Street  
Suite 1100  
Indianapolis, Indiana 46204  
(317) 639-5454

EXHIBIT A

Part of the Northeast Quarter of the Southeast Quarter of Section 14, Township 14 North, Range 3 East, Perry Township, Marion County, Indiana, being more particularly described as follows:

COMMENCING at the Northeast corner of said Quarter Quarter, said corner being marked by a Brass Plug; thence South 00 degrees 43 minutes 24 seconds East along the East line of said Quarter Quarter 923.00 feet to a PK nail (basis of bearings were established on a survey by Paul Maurer, R.L.S. #880006, State of Indiana, dated January 9th, 1989); thence South 88 degrees 04 minutes 11 seconds West parallel with the North line of said Quarter Quarter 200.00 feet to a 5/8" rebar with a yellow plastic cap; thence South 00 degrees 43 minutes 24 seconds East parallel with the East line of said Quarter Quarter 112.35 feet to a 5/8" rebar with a yellow plastic cap; thence South 88 degrees 09 minutes 14 seconds West parallel with the South line of said Quarter Quarter 94.99 feet to the POINT OF BEGINNING of the herein described parcel, said POINT OF BEGINNING being marked by a 5/8" rebar with a yellow plastic cap; thence continuing South 88 degrees 09 minutes 14 seconds West parallel with the South line of said Quarter Quarter 913.94 feet to a 5/8" rebar with a yellow plastic cap; thence South 00 degrees 40 minutes 35 seconds East parallel with the West line of said Quarter Quarter 297.00 feet to the South line of said Quarter Quarter, said point being marked by a 5/8" rebar with a yellow plastic cap; thence South 88 degrees 09 minutes 14 seconds West along said South line 140.00 feet to the Southwest corner of said Quarter Quarter, said corner being marked by a 5/8" rebar with a yellow plastic cap; thence North 00 degrees 40 minutes 35 seconds West along the West line of said Quarter Quarter 637.68 feet to the Southwest corner of Huddleston Estates - Section II (Instrument #870113628, Office of the Recorder), said corner being marked by a 5/8" rebar with a plastic yellow cap; thence North 88 degrees 04 minutes 11 seconds East along the South line of said Huddleston Estates and parallel with the North line of said Quarter Quarter, 1004.34 feet to a 5/8" rebar with a yellow plastic cap; thence South 00 degrees 43 minutes 24 seconds East parallel with the East line of said Quarter Quarter 126.50 feet to a 5/8" rebar with a yellow plastic cap; thence North 88 degrees 04 minutes 11 seconds East parallel with the North line of said Quarter Quarter 49.35 feet to a 5/8" rebar with a yellow plastic cap; thence South 00 degrees 43 minutes 24 seconds East parallel with the East line of said Quarter Quarter 215.72 feet to the POINT OF BEGINNING.

The real estate described above comprises The Village of Orchard Park, consisting of Lot 1 through and including Lot 27, and Orchard Village Drive, as per plat recorded November 29, 1989, as Instrument #89-119387, in the Office of the Recorder of Marion County, Indiana.

890123325

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF

THE VILLAGE OF ORCHARD PARK  
AND THE ORCHARD PARK ASSOCIATION, INC.,  
an Indiana Not For Profit Corporation

255.00  
184

THIS DECLARATION made on the date hereinafter set forth by Mordoh Development Company, an Indiana corporation with its principal offices located at 811 Antique Court, Indianapolis, Indiana 46260 (hereinafter "Declarant");

## W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real estate in Indianapolis, Perry Township, Marion County, Indiana, comprised of approximately nine (9) acres, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference thereto, and intends to develop thereon a residential community with permanent common areas for the benefit of the community. The said real estate and development is hereinafter referred to as "THE VILLAGE OF ORCHARD PARK" or the "PROPERTIES"; and

WHEREAS, the Declarant has developed the Properties by subdividing and platting twenty-seven (27) lots, each of which is intended to accommodate one (1) one or two family residential structure and common areas utilized for drainage retention, and the entrance to the development, all of which common areas shall be owned and maintained by a homeowners association (the "Association") to which all owners of any lot or tract within the Properties must belong and pay lien-supported maintenance assessments; and

WHEREAS the Declarant intends the Association, in addition to the maintenance of the common areas, shall provide certain other maintenance, repair and control over the Properties for which annual assessments will be required of all owners. The Declarant has conveyed the common areas to the Association for the common use and enjoyment of the owners (subject to the terms of this Declaration), which common areas are more particularly described in the "Common Area Legal

Description" attached hereto as Exhibit "B", made a part hereof and referred to herein as the "Common Area").

NOW, THEREFORE, Declarant hereby declares that all of the real estate described in Exhibit "A" (subject to the easements granted herein) shall hereafter be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors, assigns and personal representatives, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

#### DEFINITIONS

1.1. "Association" shall mean and refer to The Orchard Park Association, Inc., a corporation incorporated pursuant to the Indiana Not For Profit Corporation Act of 1971, as amended, and its successors and assigns.

1.2. "Owner" and "Owners" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any lot, or portion thereof, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.3. "Properties" shall mean and refer to the certain real estate described in Exhibit "A" (subject to the easements granted herein) and such additions as may hereafter be brought within the jurisdiction of the Association.

1.4 "Lot" or "Lots" shall mean and refer to any plat of land shown upon any recorded subdivision plat of the Properties, with the exception of the Common Areas and dedicated public rights of way. The Declarant has twenty-seven (27) Lots on the Properties, as more particularly illustrated on the Plat of The Village of Orchard Park, a copy of which is

attached hereto as Exhibit "C" and made a part hereof. Each two-family residential dwelling shall be so situated upon the Lot as to provide direct driveway access to the public street which the Lot fronts and the minimum separation between the dwellings in the Properties required by the zoning approval. Otherwise, the Declarant reserves the right to locate each two-family dwelling upon each Lot as the Declarant deems most beneficial to the Lot and the Properties.

1.5. "Common Areas" shall mean and refer to all the real estate (including any improvements thereon) owned by the Association for the common use and benefit of the Owners as herein defined.

1.6. "Declarant" shall mean and refer to Mordoh Development Company, its principals, successors and assigns.

## ARTICLE II

### PROPERTY RIGHTS

2.1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge and assess reasonable assessments and fees for the maintenance of the Common Areas and the Properties as herein provided;

(b) The right of the Association to suspend the voting rights and the right to use of the Common Area by an Owner for any period during which any assessment, or portion thereof against the Owner's Lot, remains unpaid;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, executed by



two-thirds (2/3) of each class of members of the Association has been recorded.

2.2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, the Owner's right of use and enjoyment to the Common Area and facilities, if any, to the members of his family, his tenants, or contract purchasers who reside on any Lot in the Properties.

2.3. Title to Common Areas. The Declarant shall convey the Common Areas to the Association, in fee simple absolute at the discretion of the Declarant. Such conveyance to be subject to taxes, current but unpaid at the time of conveyance, and to restrictions, conditions, limitations and easements of record.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

3.1. Every Owner of a Lot, or portion thereof, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot, or portion thereof, which is subject to assessment.

3.2. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A member shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot, or portion of a Lot, owned. When more than one (1) person holds an interest in any Lot, or portion thereof, all such persons shall be members. The vote for such Lot or portion of a Lot shall be exercised as they determine but, in no event, shall more than one (1) vote be cast with respect to any Lot, except in those cases where a Lot has been divided to accommodate conveyance to separate Owners of each half of the dwelling situated on such Lot. A person, group of persons or entity who holds an interest in a Lot, or portion thereof, solely as security for performance of an obligation, shall not

be considered an Owner for purposes of membership in Class A.

(b) Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each lot, or portion of a Lot, owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event, to-wit:

(i) all lots conveyed to initial owners.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot, or portion thereof, owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments and charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, reasonable attorney's fees, and any other obligation which may be charged to an Owner pursuant to this Declaration shall be a charge on the Land and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment, or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties and for the improvement, maintenance, repairs and replacement of the Common Area and for the improvement and maintenance of

the homes situated upon the Properties, where, in the discretion of the Board of Directors of the Association, such improvement or maintenance should be done by the Association.

4.3. Maximum Annual Assessment. The maximum annual assessment shall be Fifty Dollars (\$50.00) per Lot, which shall be due and payable annually:

(a) From and after January 1, 1993, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1993, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, as such voting rights are provided in Article III of this Declaration.

(c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

(d) The Class B Member shall be exempt from paying said annual assessments on vacant lots.

4.4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent to two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, as such voting rights are provided in Article III of this Declaration.

4.5. Notice and Quorum for Any Action Authorized Under Sections 3 or 4. Written notice of any meeting called for the

purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

4.7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area, or any part thereof. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

4.8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association

may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot, or otherwise.

4.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. 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 became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE V

##### EXTERIOR MAINTENANCE - DWELLINGS

In addition to maintenance of the Common Areas, the Association may, but shall not be required to provide maintenance and repair of the exterior of any dwelling structure on any Lot in the Properties, where the need for such maintenance or repair arises due to the failure or unwillingness of the Owner to make reasonably required exterior maintenance or repairs and where such failure may result in an adverse effect upon other Lots and dwellings in the Properties. In the event the Association is required to make repairs or provide maintenance to any dwelling in the Properties to preserve the enjoyment and value of the Properties, the reasonable cost of such exterior repairs or maintenance shall be added to and become a part of the assessment to which the Lot or portion of the Lot and dwelling are subject, and such additional amount shall be payable upon demand in a lump sum or over such period of time as determined by the Board of Directors of the Association. In the event the Association is required to make repairs or provide maintenance

to the roof of any dwelling in the Properties, as determined herein, the reasonable cost of such repairs or maintenance shall be assessed against the Owner of that half of the two-family dwelling upon which such repairs are made or the maintenance is provided, unless, in the discretion of the Board of Directors of the Association, such costs should be assessed equally or proratably against the Owners of both dwellings within the two-family residence upon the Lot, in which case such costs shall be paid by both Owners as the Board of Directors determines.

#### ARTICLE VI

##### PARTY WALLS

6.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes on the Properties and placed on the dividing line of the Lots, shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law of the State of Indiana regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

6.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Wall in proportion to such use.

6.3. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Wall may restore it, and if the other Owners thereafter make use of the Wall, they shall contribute to the cost of the restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

6.4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or

willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6.5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Land and shall pass to such Owner's successors in title.

6.6. Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by the majority of all the arbitrators.

#### ARTICLE VII

##### GENERAL PROVISIONS

7.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association, or by any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

7.3. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the Land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument

signed by the then Owners of seventy-five percent (75%) of the Lots has been recorded, agreeing to revoke said covenants and restrictions in whole or in part. No such agreement to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken and no such agreement to change shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Area herein created. This Declaration may be amended during the first twenty (20) years by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the office of the Recorder of Marion County, Indiana.

7.4. Annexation. Additional residential real estate and Common Area from real estate not described on Exhibit "A" attached hereto may be annexed to the Properties with the consent of two-thirds (2/3) of the votes of each Class of Members.

#### ARTICLE VIII

##### Association Insurance Requirements

The Association shall maintain a comprehensive policy of public liability insurance covering all of the Common Areas in the Properties insuring the Association for not less than Five Hundred Thousand Dollars (\$500,000.00) covering all claims for personal injury and for property damage arising out of a single occurrence such coverage to protect against all risks customarily covered with respect to property similar in construction, location and use.

#### ARTICLE IX

##### INSURANCE AND TAXES

9.1. Property Insurance. Every Owner shall maintain property insurance on the improvements made to said Owner's



property, including the buildings on said property and regardless of whether the improvements were made prior or subsequent to the Owner obtaining possession, in an amount equal to one hundred percent (100%) of the full replacement value of the improvements (exclusive of land, excavation and foundation costs), and shall provide evidence of such insurance as may be required by the Association. Such insurance must afford protection against at least the following:

1. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage if a building is sprinklered, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

2. Such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

9.2. Insurance Proceeds. Every Owner shall use all proceeds from the property's insurance maintained in Section 1 for no other purpose than to repair, replace or reconstruct the improvements on the insured property. Such repair, replacement or reconstruction shall be commenced and completed as quickly as possible under the circumstances.

9.3. Inadequate Insurance. In the event that the improvements to any Lot are damaged or destroyed and the Owner of said Lot has failed to maintain an adequate amount of insurance or has failed to apply the proceeds of such insurance to the repair, replacement or reconstruction of such damaged or destroyed improvements or if the insurance is inadequate for any other reason, the Association shall have the power to make the necessary contracts for the repair, replacement or reconstruction of the improvements on such Owner's property, with the cost of such repair, replacements or reconstruction becoming a charge and lien on the property of such Owner and such charge is to be paid and be a claim against such Owner.

9.4. Taxes. Owner shall pay all installments of real estate taxes on the Lot or Lots owned by him. In the event that any installment of such taxes becomes delinquent, then the Association shall have the right to pay such installments, and any amount so paid by the Association shall become a lien on such Owner's property in accordance with the provisions in Article IV, Section 1 of this Declaration.

#### ARTICLE X

##### ARCHITECTURAL CONTROL

10.1. The Architectural Review Board. An Architectural Review Board consisting of three (3) or more persons shall be appointed by the Class B Member. At such time as the Class B membership expires, members of the Architectural Review Board shall be appointed by the Board of Directors of the Association for a term of one (1) year or until their successor has been appointed and qualified.

10.2. Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Properties and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

10.3. Conditions. No improvements, alterations, repairs, change of paint colors, excavations, changes in grade or other work which in any way alters the exterior of any Property or the improvements located thereon from its natural or improved state existing on the date such Property was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence, or other structure shall be commenced, erected, maintained, or improved, altered, made or done without the prior written approval of the Architectural Review Board.

10.4. Sight Distances. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street, shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

10.5. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse Architectural Review Board decision to the Board of Directors of the Association which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors present and voting.

#### ARTICLE XI

##### USE OF PROPERTY

###### 11.1. Protective Covenants.

(a) Residential Use. All property designated for residential use shall be used, improved and devoted exclusively to residential use. Nothing herein shall be deemed to prevent the Owner from leasing a Lot and improvements thereon to a single family, subject to all of the provisions of the Declaration.

(b) Nuisances. No nuisance shall be permitted to exist or operate upon any Property so as to be detrimental to any other Property in the vicinity thereof or to its occupants.

(c) Restriction on Further Subdivision. No Lot, or portion thereof, after conveyance to an Owner, shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot so conveyed, nor any easement or other interest herein, shall be conveyed or transferred by an Owner, provided that this shall not prohibit deeds of correction, deeds to resolve boundary disputes, and similar corrective instruments.

(d) Other Restrictions. The Architectural Review Board shall adopt general rules to interpret the covenants in this Section, including but not limited to rules to regulate fences, animals, antennas, satellite dishes, signs, storage, maintenance, and use of recreational vehicles, campers, boats or other vehicles, storage and use of machinery, use of outdoor drying lines, burning of trash and storage of trash containers, planting, maintenance and removal of vegetation on the Properties. Except as may be provided by the Architectural Review Board, no junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat, or the like, shall be kept upon the Properties nor shall the repairs or extraordinary maintenance of automobiles or other vehicles be carried out thereon, except in the case of temporary emergencies which necessitate such action.

(e) Exceptions. The Architectural Review Board may issue temporary permits to except any prohibitions expressed or implied by this section, provided the Board can show good cause and acts in accordance with adopted guidelines and procedures.

11.2. Utility Easements. There is hereby created a blanket easement upon, across, over, through and under the above described premises for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to, water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it

shall be expressly permissible for the Declarant or the providing utility or service company to install and maintain facilities and equipment on said Property, to excavate for such purposes and to affix and maintain wires, circuits, and conduits on, in and under the roofs and exterior walls of said residence, providing such company restores disturbed areas to the condition in which they were found. Notwithstanding anything to the contrary contained in this paragraph, no sewer, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated on said premises, except as designed and/or approved by the Declarant prior to the conveyance of the first Lot to an Owner or by the Architectural Review Board thereafter. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to improvements as originally constructed.

11.3. Declarant's Easement to Correct Drainage.

For a period of five (5) years from the date of conveyance of the first Lot in the Properties, the Developer reserves a blanket easement and right on, over and under the ground within the Properties to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which the Declarant shall restore the affected Property to its original condition as near as practicable. The Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of the Developer an emergency exists which precludes such notice.

11.4. Perpetual Easement for Encroachments. If any portion of the Common Area shall encroach upon any Lot, or if any Lot or any improvement, building, overhang, fixture or other structure or improvements of whatever type shall for any reason encroach upon any other Lot or upon any portion of the

Common Area as a result of the construction of the building or improvements, or as a result of settling or shifting of the building or improvements, a valid, perpetual easement for the encroachment and for its maintenance is retained by the Declarant for its benefit and for the benefit of the Association and any Owner of a Lot whose Lot is affected thereby and shall exist perpetually. In the event the building or the improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, any resulting encroachment shall be permitted, and a valid easement for such encroachments is hereby reserved by the Declarant for its benefit and for the benefit of the Association and any Owner of a Lot whose Lot is affected thereby and shall exist perpetually.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 13<sup>th</sup> day of August, 1992.

Mordoh Development Company

By Alvin M Mordoh  
ALVIN M MORDOH President

Attest:

Mallah A Mordoh  
Mallah A MORDOH Secretary

STATE OF INDIANA )  
) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Mordoh Development Company, by Alvin M Mordoh and Mallah A Mordoh, its President and Secretary, respectively, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of The Village of Orchard Park and The Orchard Park Association, Inc., an Indiana Not For Profit Corporation, and who, having been duly sworn, stated that the representations contained therein are true.

WITNESS my hand and seal this 13<sup>th</sup> day of August, 1992.

Vickie Lynn Johns  
VICKIE LYNN JOHNS Notary Public

My Commission Expires:  
11-2-93

My County of Residence:  
Marion

This Instrument Prepared By:  
Michael J. Kias, Esq.  
STEWART & IRWIN  
Two Market Square Center  
251 East Ohio Street  
Suite 1100  
Indianapolis, Indiana 46204  
(317) 639-5454

92010711g



LEGAL DESCRIPTION

Part of the Northeast Quarter of the Southeast Quarter, Section 14, Township 14 North, Range 3 East, Perry Township, Marion County, Indiana, being more particularly described as follows:

Stephen L. Smith P.E., L.S.  
Resident

Perry Quillman  
Vice President

Samuel Neubecker L.S.  
Project Manager

Ken Bledsoe L.S.  
Surveyor Manager

COMMENCING at the Northeast corner of said Quarter Quarter, said corner being marked by a Brass Plug; thence SOUTH 00 degrees 43 minutes 24 seconds EAST along the East line of said Quarter Quarter 923.00 feet to a PK nail (basis of bearings were established on a survey by Paul Maurer, R.L.S. #880006, State of Indiana, dated January 9th, 1989); thence SOUTH 88 degrees 04 minutes 11 seconds WEST parallel with the North line of said Quarter Quarter 200.00 feet to a 5/8" rebar with a yellow plastic cap; thence SOUTH 00 degrees 43 minutes 24 seconds EAST parallel with the East line of said Quarter Quarter 112.35 feet to a 5/8" rebar with a yellow plastic cap; thence SOUTH 88 degrees 09 minutes 14 seconds WEST parallel with the South line of said Quarter Quarter 194.99 feet to the Point of Beginning of the herein described parcel, said Point of Beginning being marked by a 5/8" rebar with a yellow plastic cap; thence continuing SOUTH 88 degrees 09 minutes 14 seconds WEST parallel with the South line of said Quarter Quarter 913.94 feet to a 5/8" rebar with a yellow plastic cap; thence SOUTH 00 degrees 40 minutes 35 seconds EAST parallel with the West line of said Quarter Quarter 297.00 feet to the South line of said Quarter Quarter, said point being marked by a 5/8" rebar with a yellow plastic cap; thence SOUTH 88 degrees 09 minutes 14 seconds WEST along said South line 140.00 feet to the Southwest corner of said Quarter Quarter, said corner being marked by a 5/8" rebar with a yellow plastic cap; thence NORTH 00 degrees 40 minutes 35 seconds WEST along the West line of said Quarter Quarter 637.68 feet to the Southwest corner of Huddleston Estate - Section II (Instrument #870113628, Office of the Recorder), said corner being marked by a 5/8" rebar with a yellow plastic cap; thence NORTH 88 degrees 04 minutes 11 seconds EAST along the South line of said Huddleston Estates and parallel with the North line of said Quarter Quarter 1004.34 feet to a 5/8" rebar with a yellow plastic cap; thence SOUTH 00 degrees 43 minutes 24 seconds EAST parallel with the East line of said Quarter Quarter 126.50 feet to a 5/8" rebar with a yellow plastic cap; thence NORTH 88 degrees 04 minutes 11 seconds EAST parallel with the North line of said Quarter Quarter 49.35 feet to a 5/8" rebar with a yellow plastic cap; thence SOUTH 00 degrees 43 minutes 24 seconds EAST parallel with the East line of said Quarter Quarter 215.72 feet to the Point of Beginning, containing 9.069 acres, more or less.

125 Morningside Drive  
Office Box 155  
Bloomington, Indiana 47402  
Telephone 812 336-6536  
FX 812 336-0-13

141 Bash Street  
Suite 102  
Indianapolis, Indiana 46250  
Telephone 317 841-9102  
FX 317 841-9120

92-107119