

JOHN B. VON ARX
MARION COUNTY RECORDER

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RECORDING DIVISION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
WALLACE CROSSING
PROPERTY OWNERSHIP**

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DECLARATION OF COVENANTS AND RESTRICTIONS
WALLACE CROSSING
Property Ownership

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Exhibit "A"—Real Estate

**DECLARATION OF COVENANTS AND RESTRICTIONS OF
WALLACE CROSSING PROPERTY OWNERSHIP**

THIS DECLARATION made this ___ day of _____, 1996, by
Wallace Crossing Development Corporation, an Indiana corporation ("Declarant").

W I T N E S S E I H:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Real Estate").

B. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Real Estate and be binding upon all parties having any right, title or interest in the Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

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

(a) "Applicable Date" means the date determined pursuant to subparagraph (b) of Paragraph 9 of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the Bylaws of the Corporation (also herein the "Board").

(d) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(e) "Common Area" means the ground designated as such upon the Recorded Plat(s).

(f) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and all sums lawfully assessed against the Members of the Corporation.

(g) "Corporation" means Wallace Crossing Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Paragraph 9 of this Declaration; such Corporation being more particularly described in Paragraph 9 of this Declaration.

(h) "Declarant" shall mean and refer to Wallace Crossing Development Corporation, an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(i) "Dwelling Unit" means one of the living units located upon a Lot.

(j) "Lot" means any plot of ground designated as such upon any Recorded Plat(s) and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(k) "Member" means a member of the Corporation.

(l) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(m) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(n) "Recorded Plat(s)" means any plat of a portion of the Real Estate depicting thereon Lots and Common Areas that has been (i) prepared and certified by registered surveyor in the State of Indiana; (ii) executed by the owner of the Real Estate that is the subject of the plat; and (iii) recorded in the Office of the Recorder of Marion County, Indiana.

(o) "Wallace Crossing" means the name by which the Real

Estate, which is the subject of this Declaration, shall be known.

2. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Wallace Crossing. Wallace Crossing shall be a single family residential development consisting of Lots and Common Areas as depicted on the Recorded Plat(s). The Common Area and the size of the Lots are as designated on the Recorded Plat(s).

4. Lot Boundaries. The boundaries of each Lot shall be as shown on the Recorded Plat(s).

5. Common Area. Common Area includes all the area designated as such on the Recorded Plat(s), including, but not limited to, the lakes, ponds, drainage areas and recreational areas, if any, but excluding all Lots. It may also include all streets, roads, sidewalks, parking areas and similar areas, designated as such on the Recorded Plat(s) which have been or are hereafter constructed for the purpose of providing common access to any or all lots. However, the Common Area does not include any portion of the Real Estate that has been donated or dedicated to the public and accepted for maintenance by the appropriate public agency. Declarant has the right, but not the obligation, to construct recreational facilities in any of the Common Area, and if such facilities are constructed, such facilities shall be part of the Common Area.

Prior to conveying the Common Area to the Corporation, Declarant reserves the right to donate any portion of the Common Area to the Indianapolis Department of Parks and Recreation by gift or granting a recreational easement.

6. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members, and by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 10.

(c) The Common Area, including all real and personal property subject to easements in the Common Area, shall be conveyed to or owned by the Corporation on the Applicable Date or earlier; provided, however, that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate (including, but not limited to construction of lakes and recreational facilities) at any time prior to the Applicable Date.

(d) Access to and use of any lake or pond in the Common Area which is surrounded by Lots such that access can only be gained by crossing over one such Lot shall be limited to the Owners of those Lots which are directly adjacent to such Common Area. Other Owners have no easement to use such Common Area and no right to cross over Lots directly adjacent to such Common Area.

(e) A portion of the Common Area is designated as a "Preservation Area." This area is made up of the Common Area located in the southern portion of the Real Estate bordered on the south by Southeastern Avenue and Lick Creek and to the north by Lots ~~62~~ through ~~75~~. The Corporation shall make every reasonable effort to maintain this area in its natural state. Except as required for the installation and maintenance of utility, sanitary sewers, water and drainage facilities, no excavation or improvements shall be permitted in the Preservation Area. Trees, shrubs and undergrowth, except diseased vegetation or noxious plants (such as poison ivy), shall not be trimmed, removed or disturbed.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his/her right of enjoyment, and use of the Common Area and facilities to members of his/her family, his/her tenants or contract purchasers who reside on any Lot.

8. Easements. Unless otherwise provided for in this Declaration, each Owner shall have an easement in common with each other Owner to use all sidewalks, roads, streets, pipes, wires, ducts, cables, conduits, utility lines and other facilities, if any, located in the Common Area. Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area and Lots to perform its duties. Except in the case of an emergency, reasonable notice shall be given the Lot Owner.

The Board of Directors and Declarant, even after the Common Area has been conveyed to the Corporation, shall have the right to grant an easement in any Common Area to the appropriate public agency for a public right-of-way and/or for utilities.

9. Corporation: Membership: Voting: Functions

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his/her ownership of a Lot ceases at which time such membership shall terminate and will be transferred to the new Owner of such Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he/she realizes upon such security, at which time he/she shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

- (i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote 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.

- (ii) **Class B.** Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the resident agent of the Corporation, (ii) the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or (iii) January 1, 2005.

(c) **Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

10. **Board of Directors**

(a) **Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he/she is, or is deemed in accordance with this Declaration to be, an Owner, or is a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 10.

(b) **Initial Board of Directors.** The Initial Board of Directors shall be composed of three persons appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided

above, every such vacancy shall be filled by a person appointed by Declarant, who shall hereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the Bylaws or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he/she is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 10, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date (which, if appropriate, may be a special meeting) one (1) member of the Board of Directors shall be elected for a three (3) year term, one (1) for a two (2) year term, and one (1) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. If such election is at a special meeting, the

Directors elected shall serve for the applicable period plus the time from the special meeting to the first annual meeting. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his/her election and until his/her successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 10 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 10. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his/her successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his/her successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his/her successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners) and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) Protection, surveillance and replacement of the Common Area; provided, however, that this duty shall not include or be deemed or

interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

- (ii) Landscaping, maintenance and upkeep of the Common Area;
- (iii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (iv) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (v) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (vi) Keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (vii) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (viii) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in

connection with the Common Area.

(g) **Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (i) To employ a Managing Agent to assist the Board in performing its duties;
- (ii) To purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (iii) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (vi) To open and maintain a bank account or accounts in the name of the Corporation;
- (vii) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed

to all Owners.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

- (i) Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget; and
- (iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation. No Director shall receive any compensation for his/her services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation

shall indemnify, hold harmless and defend any person, his/her heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he/she is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him/her in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his/her duties. The Corporation shall also reimburse any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his/her duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he/she failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) **Bond.** The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

11. **Initial Management.** The Initial Board of Directors has entered or will hereafter enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such affiliate of Declarant as

appropriate) will provide supervision, management and maintenance of the Common Area, and in general, perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years. Such management agreement is or will be subject to termination by Declarant (or its affiliate as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or its affiliate as appropriate) is in effect, Declarant (or its affiliate as appropriate) shall have and Declarant hereby reserves to itself (or to its affiliate as appropriate), the exclusive right to manage the Real Estate and perform all the functions of the Corporation.

12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his/her proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his/her Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

13. Utilities. Each Owner shall pay for his/her own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

14. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Each Owner shall be responsible for maintaining and keeping his/her Lot, Dwelling Unit and all other structural improvements located on his/her Lot in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot shall keep such

Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

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

If any Owner shall fail to maintain and keep his/her Lot, Dwelling Unit and other structural improvements located on his/her Lot in a good, clean and sanitary condition as determined by the Board of Directors, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's Lot.

So long as the Real Estate is subject to this Declaration each Owner, by his/her acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair, landscaping or other work contemplated herein.

15. Architectural Control

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons. Until the Applicable Date, the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors and may be different than or the same as the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate (Common Area and Lots) and of improvements thereon in

such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements, the normal topography and vegetation in the Tree Conservation and Preservation Areas.

(c) **Conditions.** No improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling Unit or other improvement thereon shall be made or done without the prior written approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. There shall be no requirement that the Architectural Review Board approve the initial construction of a dwelling Unit on a Lot. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the plans by the Architectural Review Board other than the initial construction of a Dwelling Unit and other improvements provided the plans for such construction are approved by Declarant. In addition, the Architectural Review Board is authorized to approve or disapprove and to require replacement of trees and vegetation in the Tree Conservation and Preservation Areas.

(d) **Procedures.** In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote.

16. **Assessments**

(a) **Annual Accounting.** Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accounting group approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) **Proposed Annual Budget.** Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal

year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area that must be repaired and replaced on a periodic basis, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget, as adopted by the Owners, shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as

set forth in said budget, contain a proposed assessment, against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots on the Real Estate. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his/her respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in two equal semi-annual installments with the first payment due on the first day of the first month of each fiscal year. Payment of the semi-annual installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, the Owners may elect to pay assessments annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming

due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his/her Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his/her Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his/her Lot or any interest therein, shall not relieve or release such Owner or his/her successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his/her successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 17 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special

Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is selling Lots and Dwelling Units are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the Bylaws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 16.

Prior to the Applicable Date, the Corporation will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent or Managing Agent") in accordance with the provisions of Paragraph 11 of this Declaration. So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Management Agent shall guarantee that until the earlier of (1) the termination of said management agreement, or (2) December 31, 1996, the yearly Regular Assessment shall not exceed \$____ (the "Guaranteed Charge"). After December 31, 1996, assuming that said management agreement has not been terminated and so long thereafter as said management agreement remains in effect and Management Agent continues to perform such functions, Management Agent guarantees that the yearly Regular Assessment shall not exceed the amount of the Guaranteed Charge (\$____), plus (1) the greater of an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items - all cities) published by the United States government over such index as existed in the month of December, 1995, or (2) ten percent (10%). The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index or ten percent (10%), whichever is greater, or if Declarant so determines a lesser amount. Such adjustments to the Guaranteed Charge shall be made annually on the first day of each fiscal year so long as said

management agreement remains in effect and Management Agent continues to perform such functions. Such yearly charge shall, during such guaranteed period, entirely defray the Owner's obligation for his/her share of Common Expenses or shall be the Owner's entire Regular Assessment. Management Agent shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund.

Twenty-five percent (25%) of the Regular Assessment prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and if required, applied to the replacement of Common Areas. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence nine (9) months after the date of conveyance of such Lot by Declarant to such new owner or on the date the new Owner occupies such Lot, whichever occurs first (Commencement Date). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next semi-annual payment is due. Thereafter, payment of the Regular Assessment shall be paid semi-annually beginning with the first day of the fiscal year or the first day of the seventh calendar month of the fiscal year, as applicable.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 11 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself/herself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or

enjoyment of the Common Area or by abandonment of the Lot belonging to him/her. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate as announced by Bank One, Indianapolis, NA, from time to time (or if said bank is no longer in existence then such rate charged by a national bank in Marion County, Indiana, selected by the Board of Directors) during the unpaid period plus three percent (3%).

(g) Subordination of Assessment Lien to Mortgage.

Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party

acquiring the subject Lot from which it arose).

17. Mortgages and Unpaid Assessments.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his/her Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee, as may be otherwise required by this Declaration, the Bylaws or otherwise, shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area

on the lapse of a policy. Any mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

18. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees.

Each Owner shall be solely responsible for loss or damage to his/her Dwelling Unit and the contents thereof, however caused, and his/her personal property stored elsewhere on the Real Estate and the Corporation shall have no liability to the Owner for such loss or damage. Each Owner shall be solely responsible for obtaining his/her own insurance to cover any such loss and risk.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of

the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his/her right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.

19. Casualty and Restoration of Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction.

20. **Covenants and Restrictions.** The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Recorded Plat(s), and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) Each Lot will be a residential lot used exclusively for one single-family residence. No other buildings or structures will be permitted on a Lot without the prior approval of the Architectural Review Board.

(b) The minimum square footage of finished living space of each Dwelling Unit constructed, exclusive of garage, carports, open porches or basements below ground level, shall be 1,200 square feet of main floor area for a one-story Dwelling Unit or 800 square feet of main floor area if higher than one-story with any Dwelling Unit higher than one story having a minimum total finished living space of 1,200 square feet.

(c) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his/her Dwelling Unit or on his/her Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No nuisance shall be permitted on any Lot.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets in reasonable numbers may be kept in a Dwelling Unit subject to rules and regulations adopted by the Corporation through its Board of Directors,

provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. The Board shall have the absolute power to prohibit a pet from being kept in any Dwelling Unit or on any Lot or any of the Common Area.

(f) All rubbish, trash or garbage shall be stored in closed sanitary containers, shall be regularly removed from the premises, and shall not be allowed to accumulate. No Owner shall burn or permit the burning out-of-doors of rubbish, trash or garbage. All Dwelling Units shall be equipped with a garbage disposal unit.

(g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.

(h) No structure of a temporary character, trailer, boat, camper, bus or tent shall be maintained on any Lot, nor shall any garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently.

(i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.

(j) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with express permission from the Board.

(k) The Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(l) No Owner may rent or lease his/her Dwelling Unit for transient or hotel purposes.

(m) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(n) There are designated on the Recorded Plat(s) building lines. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area.

(o) A portion of the Real Estate is designated as a "Tree Conservation Area". This area is within the rear yard setback of the treed lots adjacent to Minnesota Street and adjacent to Lick Creek. All healthy trees that are greater than six (6) inches in diameter within the Tree Conservation Area shall be retained.

(p) The development of the Real Estate and the use of the Real Estate shall be subject to the terms and provisions of certain Commitments filed in connection with the rezoning of the property pursuant to Rezoning Petition 94-Z-9 recorded on May 20, 1994 as Instrument No. 1994-0081131 in the Office of the Recorder of Marion County, Indiana, and to the extent any provisions of this Declaration are inconsistent with such Commitments, such Commitments shall govern.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

21. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.
- (iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 15 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Lot, or (6) the

provisions of paragraph 21(f) of this Declaration with respect to amendments solely by Declarant without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

- (vi) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Association, the Veteran's Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical, typographical or other errors in this Declaration or any Exhibit hereto or any supplemental or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 21 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power

to the Declarant to act pursuant to rights reserved or granted under this Paragraph 21 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

22. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Real Estate in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

23. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his/her negligence or by that of any member of his/her family or his/her or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

24. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the Bylaws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

25. Waiver. No Owner may exempt himself/herself from liability for his/her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his/her Lot.

26. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws, shall not impair or affect in any manner the validity, enforceability or

effect of the rest of this Declaration, the Articles, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

27. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

28. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

29. The Plats. The Declarant shall have the right at any time to record plats for additional portions of the Real Estate and upon such recording such plats shall be Recorded Plats. The Declarant does not have the obligation to record any additional plat(s). The Declarant may withdraw any portion of the Real Estate which is not part of a Recorded Plat under the terms and provisions of this Declaration by a document executed by Declarant reflecting such withdrawal and recorded in the Office of the Recorder of Marion County, Indiana.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

WALLACE CROSSING DEVELOPMENT
CORPORATION

By: *Thomas J. Miller*
Printed: Thomas J. Miller
Title: President



STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared THOMAS E. MULLEN, by me known and by me known to be the PRESIDENT of Wallace Crossing Development Corporation, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Wallace Crossing Property Ownership" on behalf of said Corporation.

Witness my hand and Notarial Seal this 2nd day of April, 1996.

Holly J. Lee
Notary Public

HOLLY J. LEE
(Printed Signature)

My Commission Expires:

April 1, 2000

My County of Residence:

Hamilton

This instrument prepared by Philip A. Nicely, Attorney-at-Law, Boss McKinney & Evans, 8888 Keystone Crossing, Suite 1201, Indianapolis, Indiana 46240.

EXHIBIT "A"

**LAND DESCRIPTION
(WALLACE CROSSING - SEC. ONE)**

Part of the South Half of Section 15, Township 15 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Southwest Quarter of said Section 15; Thence South 88 degrees 21 minutes 54 seconds West (assumed bearing) along the North line of the said Southwest Quarter Section 667.08 feet to the Northwest corner of the East Half of the East Half of the said Southwest Quarter Section; thence South 00 degrees 05 minutes 08 seconds East along the West line of the said East Half Half Quarter Section 416.82 feet to the point of beginning; thence North 89 degrees 54 minutes 52 seconds East 176.73 feet; thence North 72 degrees 00 minutes 00 seconds East 125.07 feet; thence North 82 degrees 00 minutes 00 seconds East 60.37 feet; thence South 70 degrees 00 minutes 00 seconds East 64.55 feet; thence South 31 degrees 17 minutes 30 seconds East 40.03 feet; thence South 05 degrees 00 minutes 00 seconds West 149.28 feet; thence South 20 degrees 00 minutes 00 seconds West 64.49 feet; thence South 48 degrees 30 minutes 00 seconds East 111.24 feet; thence North 41 degrees 30 minutes 00 seconds East 35.00 feet; thence South 48 degrees 30 minutes 00 seconds East 180.00 feet; thence North 41 degrees 30 minutes 00 seconds East 73.85 feet; thence South 50 degrees 00 minutes 00 seconds East 130.04 feet; thence South 60 degrees 00 minutes 00 seconds East 193.89 feet; thence South 41 degrees 30 minutes 00 seconds West 39.21 feet; thence South 48 degrees 30 minutes 00 seconds East 175.00 feet; thence South 41 degrees 30 minutes 00 seconds West 26.09 feet; thence South 48 degrees 30 minutes 00 seconds East 381.56 feet to the West line of a tract of land as described in a Deed recorded as Instrument #92-109477 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 04 minutes 36 seconds East along the West line of said tract 54.03 feet to the centerline of Lick Creek; thence with said centerline South 51 degrees 55 minutes 41 seconds West 44.98 feet; thence with said centerline South 83 degrees 01 minutes 37 seconds West 72.13 feet; thence with said centerline South 43 degrees 34 minutes 54 seconds West 60.34 feet; thence with said centerline South 24 degrees 01 minutes 30 seconds West 247.65 feet; thence with said centerline South 10 degrees 50 minutes 20 seconds West 114.11 feet; thence with said centerline South 67 degrees 24 minutes 15 seconds West 350.37 feet; thence with said centerline North 85 degrees 30 minutes 21 seconds West 54.09 feet to the Northerly line of property appropriated by the Department of Transportation of the City of Indianapolis as described in a Finding and Judgement recorded as Instrument No. 83-15187 in the Office of the Recorder of Marion County, Indiana; thence with said Northerly line North 34 degrees 34 minutes 32 seconds East 51.15 feet; thence with said Northerly line North 84 degrees 37 minutes 41 seconds West 507.67 feet; thence with said Northerly line North 65 degrees 48 minutes 38 seconds West 101.12 feet; thence with said Northerly line North 57 degrees 10 minutes 12 seconds West 136.09 feet to the West line of the East Half of the East Half of the said Southwest Quarter Section; thence North 00 degrees 05 minutes 08 seconds West along the said West line 1326.00 feet to the point of beginning, containing 31.39 acres, more or less.

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FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS OF WALLACE CROSSING PROPERTY OWNERSHIP

This First Amendment to Declaration of Covenants and Restrictions of Wallace Crossing Property Ownership is made this 20th day of May, 2002 by Wallace Crossing Development Corporation, an Indiana corporation ("Declarant").

421872 MAY 21 2002
MARTHA A. WOMACKS
MARION COUNTY AUDITOR
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER

WITNESSETH

Whereas the following facts are true:

- A. On April 3, 1996, Declarant filed of record in the Office of the Recorder of Marion County, Indiana as Instrument No. 960043648 a Declaration of Covenants and Restrictions of Wallace Crossing Property Ownership (the "Declaration");
- B. Declarant desires to amend the Declaration to complete certain information which was not completed in the Declaration as recorded and to correct a clerical error with respect to Exhibit A which was attached to the Declaration; and
- C. Declarant is executing this First Amendment pursuant to paragraph 21(b) of the Declaration.

NOW THEREFORE, the Declaration is amended as follows:

- 1. The first introductory paragraph of the Declaration is amended to read as follows: This Declaration made this 2nd day of April, 1996 by Wallace Crossing Development Corporation, an Indiana Corporation ("Declarant").
- 2. The second paragraph of paragraph 16(e) is amended to read as follows:

Prior to the Applicable Date, the Corporation will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent or Managing Agent") in accordance with the provisions of Paragraph 11 of this Declaration. So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Management Agent shall guarantee that until the earlier of (1) the termination of said management agreement, or (2) December 31, 1996, the yearly Regular Assessment shall not exceed Fifty Dollars (\$50.00) (the "Guaranteed Charge"). After December 31, 1996, assuming that said management agreement has not been terminated and so long thereafter as said management agreement remains in effect and Management Agent continues to perform such functions, Management Agent guarantees that the yearly Regular Assessment shall not exceed the amount of the Guaranteed Charge (\$50.00), plus (1) the greater of an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items - all cities) published by the United States government over such index as existed in the month of December, 1995, or (2) ten percent

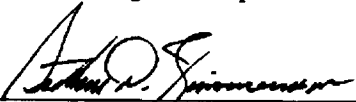
(10%). The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index or ten percent (10%), whichever is greater, or, if Declarant so determines, a lesser amount. Such adjustments to the Guaranteed Charge shall be made annually on the first day of each fiscal year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such yearly charge shall, during such guaranteed period, entirely defray the Owner's obligation for his/her share of Common Expenses or shall be the Owner's entire Regular Assessment. Management Agent shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund.

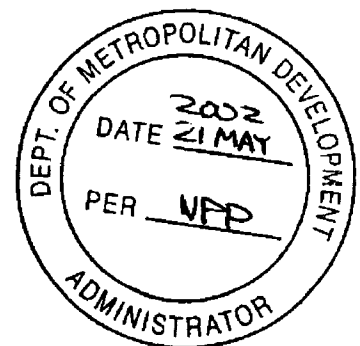
The remainder of paragraph 16 remains unchanged.

3. Exhibit A to the Declaration is hereby deleted in its entirety and replaced with Exhibit A attached hereto and incorporated herein.
4. To the extent not amended by this First Amendment, all other terms, provisions and conditions of the Declaration remain the same.

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

Wallace Crossing Development Corporation

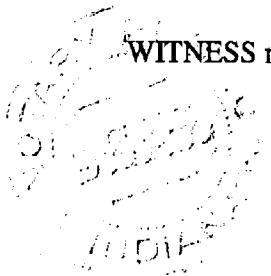
By: 
Stephen D. Zimmerman, Secretary/Treasurer



STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Stephen D. Zimmerman, by me known and by me known to be the Secretary/Treasurer of Wallace Crossing Development Corporation, an Indiana corporation, who acknowledged the execution of the foregoing "First Amendment to Declaration of Covenants and Restrictions of Wallace Crossing Property Ownership" for and on behalf of said corporation.

WITNESS my hand and seal this 20th day of May, 2002.



Molly A. Stuckey
Notary Public

Printed MOLLY A. STUCKEY

My Commission Expires: 10-19-2009
My County of Residence: Hamilton

This instrument prepared by Tammy K. Haney, Attorney at Law, Bose McKinney & Evans, 600 East 96th Street, Suite 600, Indianapolis, Indiana, 46240. *

EXHIBIT "A"

**LAND DESCRIPTION
(WALLACE CROSSING - SEC. ONE)**

Part of the South Half of Section 15, Township 15 North, Range 4 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Southwest Quarter of said Section 15; Thence South 88 degrees 21 minutes 54 seconds West (assumed bearing) along the North line of the said Southwest Quarter Section 667.08 feet to the Northwest corner of the East Half of the East Half of the said Southwest Quarter Section; thence South 00 degrees 05 minutes 08 seconds East along the West line of the said East Half Half Quarter Section 416.82 feet to the point of beginning; thence North 89 degrees 54 minutes 52 seconds East 176.73 feet; thence North 72 degrees 00 minutes 00 seconds East 125.07 feet; thence North 82 degrees 00 minutes 00 seconds East 60.37 feet; thence South 70 degrees 00 minutes 00 seconds East 64.55 feet; thence South 31 degrees 17 minutes 30 seconds East 40.03 feet; thence South 05 degrees 00 minutes 00 seconds West 149.28 feet; thence South 20 degrees 00 minutes 00 seconds West 64.49 feet; thence South 48 degrees 30 minutes 00 seconds East 111.24 feet; thence North 41 degrees 30 minutes 00 seconds East 35.00 feet; thence South 48 degrees 30 minutes 00 seconds East 180.00 feet; thence North 41 degrees 30 minutes 00 seconds East 73.85 feet; thence South 50 degrees 00 minutes 00 seconds East 130.04 feet; thence South 60 degrees 00 minutes 00 seconds East 193.89 feet; thence South 41 degrees 30 minutes 00 seconds West 39.21 feet; thence South 48 degrees 30 minutes 00 seconds East 175.00 feet; thence South 41 degrees 30 minutes 00 seconds West 26.09 feet; thence South 48 degrees 30 minutes 00 seconds East 381.56 feet to the West line of a tract of land as described in a Deed recorded as Instrument #92-109477 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 04 minutes 36 seconds East along the West line of said tract 54.03 feet to the centerline of Lick Creek; thence with said centerline South 51 degrees 55 minutes 41 seconds West 44.98 feet; thence with said centerline South 83 degrees 01 minutes 37 seconds West 72.13 feet; thence with said centerline South 43 degrees 34 minutes 54 seconds West 60.34 feet; thence with said centerline South 24 degrees 01 minutes 30 seconds West 247.65 feet; thence with said centerline South 10 degrees 50 minutes 20 seconds West 114.11 feet; thence with said centerline South 67 degrees 24 minutes 15 seconds West 350.37 feet; thence with said centerline North 85 degrees 30 minutes 21 seconds West 54.09 feet to the Northerly line of property appropriated by the Department of Transportation of the City of Indianapolis as described in a Finding and Judgement recorded as Instrument No. 83-15187 in the Office of the Recorder of Marion County, Indiana; thence with said Northerly line North 34 degrees 34 minutes 32 seconds East 51.15 feet; thence with said Northerly line North 84 degrees 37 minutes 41 seconds West 507.67 feet; thence with said Northerly line North 65 degrees 48 minutes 38 seconds West 101.12 feet; thence with said Northerly line North 57 degrees 10 minutes 12 seconds West 136.09 feet to the West line of the East Half of the East Half of the said Southwest Quarter Section; thence North 00 degrees 05 minutes 08 seconds West along the said West line 1326.00 feet to the point of beginning, containing 31.39 acres, more or less.

LAND DESCRIPTION
(WALLACE CROSSING—SEC. TWO)

PART OF THE SOUTH HALF OF SECTION 15, TOWNSHIP 15 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN IN MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 15; THENCE NORTH 88 DEGREES 19 MINUTES 04 SECONDS (ASSUMED BEARING) ALONG THE NORTH LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER SECTION 1332.65 FEET TO THE NORTHEAST CORNER THEREOF; THENCE WITH THE SOUTH LINE OF 3.367 ACRE TRACT OF LAND AS DESCRIBED IN A DEED RECORDED AS INSTRUMENT NO. 88-7323 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, NORTHEASTERLY 221.12 FEET ON A CURVE TO THE LEFT HAVING A RADIUS OF 411.00 FEET AND SUBTENDED BY A LONG CHORD BEARING NORTH 72 DEGREES 40 MINUTES 55 SECONDS EAST A DISTANCE OF 218.46 FEET; THENCE WITH SAID SOUTH LINE NORTH 57 DEGREES 16 MINUTES 10 SECONDS EAST 294.00 FEET; THENCE WITH SAID SOUTH LINE NORTHEASTERLY 292.92 FEET ON A CURVE TO THE RIGHT HAVING A RADIUS OF 576.00 FEET AND SUBTENDED BY A LONG CHORD BEARING NORTH 71 DEGREES 50 MINUTES 17 SECONDS EAST A DISTANCE OF 289.77 FEET TO THE WEST LINE OF A 3.351 ACRE TRACT OF LAND AS DESCRIBED IN A DEED RECORDED AS INSTRUMENT NO. 67-48173 IN SAID RECORDER'S OFFICE; THENCE SOUTH 00 DEGREES 05 MINUTES 58 SECONDS EAST 289.98 FEET WITH THE WEST LINE OF SAID 3.351 ACRE TRACT TO THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 348.00 FEET WITH THE WEST LINE OF A TRACT OF LAND DESCRIBED IN A DEED RECORDED AS INSTRUMENT NO. 71-61383, IN SAID RECORDERS OFFICE TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 88 DEGREES 05 MINUTES 42 SECONDS EAST 28.59 FEET WITH THE SOUTH LINE OF SAID TRACT TO THE CENTERLINE OF LICK CREEK; THENCE WITH THE CENTERLINE OF SAID CREEK SOUTH 38 DEGREES 52 MINUTES 12 SECONDS WEST 20.34 FEET; THENCE WITH SAID CENTERLINE NORTH 86 DEGREES 33 MINUTES 10 SECONDS WEST 79.68 FEET; THENCE WITH SAID CENTERLINE SOUTH 68 DEGREES 03 MINUTES 39 SECONDS WEST 329.26 FEET; THENCE WITH SAID CENTERLINE NORTH 89 DEGREES 23 MINUTES 18 SECONDS WEST 206.22 FEET; THENCE WITH SAID CENTERLINE SOUTH 64 DEGREES 14 MINUTES 30 SECONDS WEST 147.30 FEET; THENCE WITH SAID CENTERLINE SOUTH 45 DEGREES 38 MINUTES 37 SECONDS WEST 256.31 FEET; THENCE WITH SAID CENTERLINE SOUTH 40 DEGREES 39 MINUTES 01 SECONDS WEST 388.95 FEET; THENCE WITH SAID CENTERLINE SOUTH 13 DEGREES 51 MINUTES 32 SECONDS WEST 240.61 FEET; THENCE WITH SAID CENTERLINE SOUTH 34 DEGREES 00 MINUTES 51 SECONDS WEST 149.94 FEET TO THE NORTH LINE OF A TRACT OF LAND AS DESCRIBED IN DEED RECORDED AS INSTRUMENT NO. 92-109477 IN SAID RECORDERS OFFICE; THENCE SOUTH 88 DEGREES 02 MINUTES 24 SECONDS WEST 110.72 FEET WITH THE NORTH LINE OF SAID TRACT TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 00 DEGREES 04 MINUTES 36 SECONDS EAST ALONG THE WEST LINE OF SAID TRACT 48.39 FEET TO THE NORTHERLY LINE OF WALLACE CROSSING - SECTION ONE, AS PER PLAT THEREOF, RECORDED AS INSTRUMENT NO. 96-43649 IN THE SAID RECORDER'S OFFICE (THE NEXT SEVENTEEN COURSES ARE ALONG THE NORTHERLY LINE OF SAID WALLACE CROSSING - SECTION ONE); 1) THENCE NORTH 48 DEGREES 30 MINUTES 00 SECONDS WEST 381.56 FEET; 2) THENCE NORTH 41 DEGREES 30 MINUTES 00 SECONDS EAST 26.09 FEET; 3) THENCE NORTH 48 DEGREES 30 MINUTES 00 SECONDS WEST 175.00 FEET; 4) THENCE NORTH 41 DEGREES 30 MINUTES 00 SECONDS EAST 39.21 FEET; 5) THENCE NORTH 60 DEGREES 00 MINUTES 00 SECONDS WEST 193.89 FEET; 6) THENCE NORTH 50 DEGREES 00 MINUTES 00 SECONDS WEST 130.04 FEET; 7) THENCE SOUTH 41 DEGREES 30 MINUTES 00 SECONDS WEST 73.85 FEET; 8) THENCE NORTH 48 DEGREES 30 MINUTES 00 SECONDS WEST 180.00 FEET; 9) THENCE SOUTH 41 DEGREES 30 MINUTES 00 SECONDS WEST 35.00 FEET; 10) THENCE NORTH 48 DEGREES 30 MINUTES 00 SECONDS WEST 111.25 FEET; 11) THENCE NORTH 20 DEGREES 00 MINUTES 00 SECONDS WEST 64.49 FEET; 12)

EXHIBIT A Continued on next page

THENCE NORTH 05 DEGREES 00 MINUTES 00 SECONDS 149.28 FEET; 13)
THENCE NORTH 31 DEGREES 17 MINUTES 30 SECONDS WEST 40.03 FEET;
14) THENCE NORTH 70 DEGREES 00 MINUTES 00 SECONDS WEST 64.55
FEET; 15) THENCE SOUTH 82 DEGREES 00 MINUTES 00 SECONDS WEST
60.372 FEET; 16) THENCE SOUTH 72 DEGREES 00 MINUTES 00 SECONDS
WEST 125.07 FEET; 17) THENCE SOUTH 89 DEGREES 54 MINUTES 52
SECONDS WEST 176.73 FEET TO THE WEST LINE OF THE EAST HALF OF
THE EAST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 15;
THENCE NORTH 00 DEGREES 05 MINUTES 08 SECONDS WEST ALONG SAID
WEST LINE 416.82 FEET TO THE NORTHWEST CORNER OF SAID EAST
HALF-HALF QUARTER SECTION; THENCE NORTH 88 DEGREES 21 MINUTES
54 SECONDS EAST ALONG THE NORTH LINE OF SAID EAST HALF-HALF
QUARTER 667.08 FEET TO THE POINT OF BEGINNING. (CONTAINING 48.55
ACRES MORE OR LESS)

NOTE: THE ACREAGE INDICATED IN THIS LEGAL DESCRIPTION IS SOLELY
FOR THE PURPOSE OF IDENTIFYING THE SAID TRACT AND SHOULD NOT BE
CONSTRUED AS INSURING THE QUANTITY OF LAND.

EXHIBIT A

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