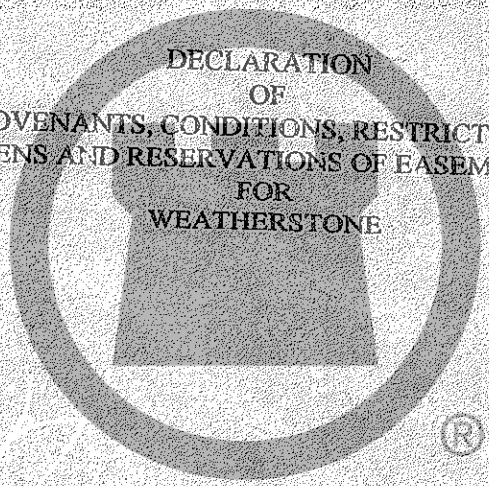


67.00
30

199909949886
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
On 08-23-1999 At 02:18 pm.
DEC COV RES 67.00

DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS,
LIENS AND RESERVATIONS OF EASEMENTS
FOR
WEATHERSTONE



Prepared by:

Colleen M. Haas, Esq.
Frost & Jacobs LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

CHICAGO TITLE

TABLE OF CONTENTS

	<u>Page</u>
Declaration.....	1
ARTICLE 1 – DEFINITIONS.....	1
1.1 Additional Property.....	1
1.2 Articles and Articles of Incorporation	2
1.3 Assessments.....	2
1.4 Association.....	2
1.5 Board.....	2
1.6 Builder.....	2
1.7 By-Laws.....	2
1.8 Common Expenses.....	2
1.9 Common Property.....	2
1.10 Declaration.....	2
1.11 Default.....	2
1.12 Developer.....	3
1.13 Development.....	3
1.14 Director.....	3
1.15 Dwelling Unit.....	3
1.16 Lot.....	3
1.17 Member.....	3
1.18 Owner.....	3
1.19 Phase or Section.....	3
1.20 Primary Builder.....	3
1.21 Property.....	3
ARTICLE 2 – ASSOCIATION MEMBERS AND VOTING	4
2.1 Members.....	4
2.2 Classes and Voting Rights	4
2.3 Administration by Association.....	5
2.4 Compliance by Owners.....	5
ARTICLE 3 – ASSESSMENTS.....	6
3.1 Covenant of Payment: Creation of Lien.....	6
3.2 Purpose of Annual Assessment.....	6

3.3	Initial Assessment.....	6
3.4	Annual Assessment.....	7
3.5	Calculation of Annual Assessment.....	7
3.6	Special Assessment (Operating Shortfalls).....	7
3.7	Individual Assessment.....	7
3.8	Interest.....	8
3.9	Creation of Lien and Personal Obligation of Assessments.....	8
3.10	Enforcement of Lien.....	9
3.11	Purchaser at Foreclosure Sale.....	9
ARTICLE 4 – COVENANTS AND RESTRICTIONS.....		9
4.1	Real Covenants.....	9
4.2	Residential.....	9
4.3	Activity Restrictions.....	10
4.4	Right of Association to Remove or Correct Violations.....	13
4.5	Board Hearing.....	13
ARTICLE 5 – COMMON PROPERTY.....		14
5.1	Rights of Enjoyment in Common Property.....	14
5.2	Subordination to Mortgage or Other Lien.....	14
5.3	Maintenance and Management of Common Property.....	15
5.4	Use of Common Property by Developer and Primary Builder.....	15
ARTICLE 6 – LOT MAINTENANCE.....		15
6.1	General Maintenance.....	15
6.2	Maintenance of Common Drives.....	15
6.3	Private Sewer Line.....	16
6.4	Storm Water Control Structures.....	16
ARTICLE 7 – EASEMENTS AND LICENSES.....		16
7.1	Utility and Support Easements.....	16
7.2	Common Property Easement.....	17
7.3	Owner License.....	17
7.4	Self-Help Easement.....	17
7.5	Prohibition.....	17
7.6	Easement to Run with the Land.....	17

ARTICLE 8 – ARCHITECTURAL CONTROL	17
Architectural Control	17
8.2 Enforcement	18
8.3 Fees	18
8.4 Approval of Plans by Developer	19
8.5 Handicap Accessibility	19
ARTICLE 9 – ANNEXATION AND ALTERATIONS TO THE PROPERTY	19
ARTICLE 10 – INSURANCE	20
10.1 Maintenance of Liability Insurance	20
10.2 Other Insurance	20
10.3 Insurance Limitation	20
10.4 Dwelling Unit Insurance	20
10.5 Premiums	20
10.6 Insurance Proceeds	21
10.7 Casualty	21
ARTICLE 11 – REAL ESTATE TAXES AND ASSESSMENTS	21
11.1 Real Estate Taxes	21
11.2 Allocation	21
11.3 Common Property	21
ARTICLE 12 – MISCELLANEOUS	21
12.1 Duration	21
12.2 Assignment by Developer, Primary Builder	22
12.3 Amendment	22
12.4 Personal Liability	23
12.5 Notices	23
12.6 Enforcement	23
12.7 Severability	24
12.8 Conflicts	24
12.9 Rights of Mortgage Holders	24
12.10 Condemnation	24

**DECLARATIONS OF COVENANTS, CONDITIONS, RESTRICTIONS,
LIENS AND RESERVATIONS OF EASEMENTS FOR
WEATHERSTONE**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, LIENS AND RESERVATIONS OF EASEMENTS FOR WEATHERSTONE ("Declaration") is made this ____ day of July, 1999, by MARINA I LIMITED PARTNERSHIP, an Indiana limited partnership ("Developer"), under the following circumstances:

WHEREAS, Developer is the owner of certain real property located in Hamilton County, Indiana, more particularly described in Exhibit A attached to this Declaration (the "Property").

WHEREAS, Developer desires to declare that the Property shall be held, sold and conveyed subject to the provisions of this Declaration.

WHEREAS, Developer has formed Weatherstone Homeowners' Association, Inc., which shall be responsible for the administration and enforcement of the provisions of the Declaration.

WHEREAS, Developer owns or may acquire other real property in the vicinity of the Property that may be annexed to the Property, enjoy the benefit of all amenities in the Development, and be subjected to this Declaration.

WHEREAS, Developer desires to grant certain rights and privileges to Zaxing Homes, Inc., an Ohio corporation, as the primary home builder in Weatherstone with respect to the Property, any Additional Property, this Declaration and the Association as provided herein.

NOW, THEREFORE, for the purposes of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Developer declares that the Property shall be held, occupied, sold and conveyed subject to this Declaration and be binding on all parties having any right, title and interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

In addition to any definitions contained elsewhere in this Declaration, the following terms used in this Declaration shall have the meanings set forth in this Article 1.

- 1.1 Additional Property. "Additional Property" means real property in the vicinity of the Property which may be annexed to the Development, enjoy the benefits of all amenities in the Development, and be subject to this Declaration.
- 1.2 Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, as the same may be amended from time to time, filed with the

Indiana Secretary of the State, incorporating the Weatherstone Homeowners' Association, Inc., as a non-profit corporation under the laws of Indiana. A true copy of the Articles is attached hereto as Exhibit C and made a part hereof.

- 1.3 Assessments. "Assessments" means the charges established by Article 3 of this Declaration.
- 1.4 Association. "Association" means Weatherstone Homeowners' Association, Inc., an Indiana non-profit corporation, which will own, operate and/or maintain the Common Property, and any successor organization that owns, operates and/or maintains the Common Property.
- 1.5 Board. "Board" means the Board of Directors of the Association.
- 1.6 Builder. "Builder" means any person or entity, other than the Developer and Primary Builder, who, in the ordinary course of business, constructs a Dwelling Unit with or without accessory structures (i) for resale to, or on behalf of, a third party, or (ii) for their own use or the use of their family. A Builder may or may not be an Owner.
- 1.7 By-Laws. "By-Laws" means the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time. A true copy of the By-Laws is attached hereto as Exhibit B and made a part hereof.
- 1.8 Common Expenses. "Common Expenses" shall mean those expenses described in Section 3.6.
- 1.9 Common Property. "Common Property" means all real and personal property owned by, leased to or under the control of the Association for the benefit, use and enjoyment of the Owners and including any easements or other rights over real property adjacent to or near the Property which easements or other rights are created for the benefit of the Association.
- 1.10 Declaration. "Declaration" means this instrument as the same may be amended from time to time as hereinafter provided.
- 1.11 Default. "Default" means any violation, breach or any failure to comply with, this Declaration or the By-Laws, or other standards, rules or regulations adopted pursuant to this Declaration.
- 1.12 Developer. "Developer" means Marina I Limited Partnership, an Indiana limited partnership, its successors and assigns.
- 1.13 Development. "Development" shall mean all phases or sections of the record plat for Weatherstone, a subdivision in Hamilton County, Indiana, and consisting of

all the property from time to time made subject to the provisions of this Declaration.

- 1.14 Director. "Director" means any person elected or appointed to the Board.
- 1.15 Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by persons or a family.
- 1.16 Lot. "Lot" means any parcel of the Property shown as such on the record plat of Development. Unless the context otherwise requires, the term "Lot" shall be deemed to include both the parcel of Land and the Dwelling Unit on that Land, if any, excluding Common Property.
- 1.17 Member. "Member" means any Owner who is a member of the Association as provided in the Articles of Incorporation.
- 1.18 Owner. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including purchasers on land installment contracts and including contract sellers on other forms of executory contracts for the sale of a Lot, but excluding those having such interest merely as security for the performance of an obligation.
- 1.19 Phase or Section. "Phase or Section" shall mean all of the land area encompassing a group of Lots as designated on a recorded subdivision plat including streets and Common Property.
- 1.20 Primary Builder. "Primary Builder" means exclusively Zaring Homes, Inc., an Ohio corporation, its successors and assigns.
- 1.21 Property. "Property" means that real property located in Hamilton County, Indiana, more particularly described in Exhibit A attached to this Declaration.

ARTICLE 2 - ASSOCIATION MEMBERS AND VOTING

- 2.1 Members. Every Owner shall be a member of the Association, and such membership shall be appurtenant to and may not be separated from ownership of a Lot. Developer shall be a member of the Association so long as it qualifies as a Class A or Class B member as defined in Section 2.2. Primary Builder shall be a member of the Association so long as it qualifies as a Class A or Class C member as defined in Section 2.2.
- 2.2 Classes and Voting Rights. The Association shall have three (3) classes of voting memberships:

- A. CLASS A – Class A Members shall be all the Owners, except the Developer (if the Class B membership exists) and the Primary Builder (if the Class C membership exists). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, the vote for such Lot shall be exercised as the majority of such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot notwithstanding the number of persons who may own an interest therein. The Board shall be entitled to suspend voting rights of a Member in the Association during the time period in which the Member has breached the provisions of this Declaration or any of the By-Laws, rules or regulations of the Association.
- B. CLASS B – The Class B Member shall be the Developer and such Member shall be entitled to such number of votes as will constitute seventy-five percent (75%) of the total voting power of the Association, so long as (i) there is no Class C membership and (ii) the Class B membership continues to exist. So long as Class C membership exists, then the Class B Member shall not be entitled to any votes in the voting power of the Association and shall have no duties with respect to the management of the Association. The Class B membership shall continue to exist to the extent permitted by Indiana law and shall be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:
- (i) Upon the annexation to this Declaration of the Property described in Exhibit A and the Additional Property by Developer and the sale of seventy-five percent (75%) of the Lots included therein to individual Lot owners;
 - (ii) Upon the expiration of seven (7) years after the date this Declaration is filed for record. Provided, further, that nothing herein shall be construed to prohibit the Class B Member from converting its Class B membership to Class A membership with the results set forth above at any time earlier by written statement executed by Developer, with the written consent of the Primary Builder, and delivered to the Association.
- C. CLASS C – The Class C Member shall be the Primary Builder, and such Member shall be entitled to such number of votes as will constitute seventy-five percent (75%) of the total voting power of the Association, so long as the Class C membership continues to exist. The Class C membership shall continue to exist to the extent permitted by Indiana law and for so long as Primary Builder has not defaulted (subject to any applicable notice and cure period) under that certain Lot Purchase

Agreement between Developer, as Seller, and Primary Builder, as Purchaser, dated April 6, 1999. (Upon such a default by Primary Builder and expiration of any applicable notice and cure period, the Directors appointed by the Primary Builder will resign and Developer shall appoint Directors to take their place on the Board.) The Class C membership shall be converted to Class A membership upon the happening of any of the following events, whichever occurs earlier:

- (i) Upon the annexation to this Declaration of the Property described in Exhibit A and any Additional Property by Developer and the sale of seventy-five percent (75%) of the Lots included therein to individual Lot owners;
- (ii) Upon the termination of the right of Primary Builder to acquire additional Lots in the Development and the conveyance by Primary Builder of all Lots it acquired in the Development; or
- (iii) Upon the expiration of seven (7) years after the date this Declaration is filed for record. Provided, further, that nothing herein shall be construed to prohibit the Class C Member from converting its Class C membership to Class A membership with the results set forth above at any time earlier by written statement executed by Primary Builder and delivered to the Association.

2.3 Administration by Association. Subject to the rights retained by Developer or granted to Primary Builder pursuant to this Declaration, the ownership, operation and maintenance of the Common Property and of the administration and enforcement of this Declaration shall be by the Association in accordance with the terms and provisions of this Declaration. Developer shall have no duties with respect to the management of the Association so long as Class C membership exists.

2.4 Compliance by Owners. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, By-Laws, rules and regulations of the Association and the decisions and resolutions of the Association or its representatives, all as lawfully amended from time to time. Failure to comply with any such provisions, rules and regulations, decisions and resolutions shall be grounds for an action to recover sums due and for damages and injunctive and other appropriate relief.

ARTICLE 3 -- ASSESSMENTS

3.1 Covenant of Payment; Creation of Lien. Each Owner of a Lot (other than Developer and Primary Builder, except as hereinafter provided), by acceptance of a deed or other instrument of conveyance for a Lot, agrees to pay to the

Association the Assessments provided in this Article 3. The Assessments (including late charges and costs of collection, as provided below) shall be a charge and a lien on each Lot and shall be the personal obligation of the Owner of each Lot, to the extent and for the period provided in this Article 3.

- 3.2 Purpose of Annual Assessment. The annual assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses; the operation, maintenance, and repair of Common Property; other portions of the Property that the Association is obligated to repair under this Declaration; and the performance of all other duties and obligations to be performed by the Association under this Declaration. The Common Expenses may include, but are not limited to, the costs of employees' wages, materials, equipment, supplies, insurance premiums for the insurance of Common Property, officers and Directors liability insurance, rental fees for any Common Property leased to the Association, the cost of reasonable reserves for contingencies, replacements, and working capital, taxes and assessments on the Common Property, management fees, legal and accounting fees, capital improvements and additions for Common Property, and all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration or the By-Laws.
- 3.3 Initial Assessment. Upon the initial conveyance of a Lot by the Developer, Primary Builder or a Builder to the Owner, the Owner shall pay an initial assessment of \$300.00. The initial assessment shall be used as working capital for the Association and not collected in lieu of any installments of the annual assessment. The initial assessment is non-refundable. No initial assessment shall be due on any Lot purchased from an Owner other than the Developer, Primary Builder or a Builder, nor shall any initial assessment be due on any Lot purchased from the Developer by a Builder or the Primary Builder.
- 3.4 Annual Assessment. The annual assessment or prorated portion thereof for each Lot Owner in each respective Phase or Section of the Development shall commence on the first day of the month following the conveyance of the first Lot from Developer, Primary Builder or Builder to an Owner (other than a Primary Builder or Builder) in that Phase or Section of the Development. Not later than the initial conveyance of a lot in a Phase or Section to an Owner (other than Primary Builder or Builder), the Developer shall convey all Common Property within that specific Phase or Section of the Development to the Association. The Board shall have the right to require the annual assessment to be paid in periodic installments during the year or in a single installment as determined by the Board and shall be due and payable on such date or dates as determined by the Board. It shall be the duty of the Board to determine the amount of the annual assessment allocated to each Lot. The Board shall make reasonable efforts to determine the assessment amount for the following year, by the first day of December of each year, and shall at that time, prepare a roster of the Lots and the portion of the

assessment allocated thereto, which shall be open for inspection by any Owner upon reasonable notice to the Board. The Board shall be entitled to change the method of collection of assessments as it may, from time to time, elect.

Failure to act within any time period established in the Declaration shall not affect the rights of the Board to collect assessments as provided herein.

- 3.5 Calculation of Annual Assessment. Each Owner shall be responsible for and shall pay that portion of the annual assessment allocable to the Owner's respective Lot as determined by the Board. The annual assessment shall equal the estimate of the Common Expenses for the year plus an amount determined by the Board as adequate to provide a reserve fund for future use by the Association for maintenance and/or replacement of the Common Property. The Board during any calendar year shall be entitled to increase the annual assessment for that year if it should determine that the estimated or current assessment is insufficient to cover Common Expenses for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners.
- 3.6 Special Assessment (Operating Shortfalls). If in any year the Common Expenses exceed the income from the annual assessment, the amount of any operating deficit may, at the Board's sole option, be charged to the Owners by means of a special assessment.
- 3.7 Individual Assessment. If any portion of the Common Property that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of an Owner or Owner's guest or invitee, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair and replacement is in the sole discretion of the Board. The cost so incurred by the Board shall be assessed as an individual assessment against all Lots owned by the Owner responsible for the damage. No such assessment may be levied against Lots owned by the Developer without the written consent of the Developer or Lots owned by the Primary Builder without the consent of Primary Builder.
- 3.8 Interest. Delinquent assessments shall bear interest at such interest rates as are from time to time established by the Board (which interest rate shall not exceed the maximum legal interest rate allowed to be charged to an individual under the laws of Indiana). The Board shall have the right to establish a late charge for delinquent payments in addition to interest charges.
- 3.9 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed for the Lot, whether or not it shall be so expressed in such deed, shall be deemed to have covenanted and agreed to pay to the Association the Assessments. The Assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a continuing lien upon the property against which each such Assessment is made. Each such Assessment,

together with interests, 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 was made. The personal obligation for a delinquent Assessment shall not pass to a successor in title, unless expressly assumed by such successor (although any liens for assessments established hereunder shall run with the land). If the obligation is so assumed by a successor in title, the successor and the former Owner shall be jointly and severally liable for payment of the amount due and payable.

The Association shall also have the authority, through the Board, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any provisions of this Declaration, which breach shall require the expenditure of time or money, or both, by the Association for the repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each Assessment levied by the Association on his Lot within ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to the Owner at the address of the Lot, the amount of such charge shall become a lien upon said Owner's Lot and shall continue to be such lien, until fully paid. The Association may perfect such lien by recording a notice of lien with the Recorder of Hamilton County, Indiana. The lien shall be prior to all other liens and encumbrances whatsoever, except real estate taxes and assessments, liens of record in favor of the United States of America, the State of Indiana, or other governmental instrumentality to the extent made superior by applicable law, and all bona fide recorded mortgages.

- 3.10 Enforcement of Lien. Any lien established under this Declaration may be enforced by the Association in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage. In any enforcement proceeding, the amount that may be recovered by the Association shall include all costs of the proceeding, and, to the extent permitted by law, reasonable attorney's fees. In any foreclosure sale, the Association may purchase the Lot.
- 3.11 Purchaser at Foreclosure Sale. Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all of the provisions of this Declaration. When the purchaser of a Lot acquires title to the Lot as a result of a foreclosure action, the purchaser shall not be solely liable for the share of the Assessments chargeable to the acquired Lot that became due prior to the acquisition of title to that Lot. Instead, any unpaid share of the Assessments that became due and payable prior to the date of purchase shall be

deemed to be part of the Assessments collectible from all of the Lots, including that of the purchaser.

ARTICLE 4 - COVENANTS AND RESTRICTIONS

- 4.1 Real Covenants. The provisions of this Declaration are for the benefit of Developer, Primary Builder, Builders and Owners as provided herein, and run with the land and shall be binding on all parties and all persons claiming ownership under them, except as otherwise specifically provided herein.
- 4.2 Residential. All of the Lots shall be used for private residential purposes exclusively, except that an Owner may conduct business activities within the Lot as long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the outside; (b) the activity conforms to all zoning requirements for the Property; (c) the activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; and (d) the activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Developer or the Board. This Subsection shall not apply to any activity conducted by Developer, Primary Builder or other Builder with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.
- 4.3 Activity Restrictions. Except for the activities of Developer or Primary Builder prior to the date on which the Developer and Primary Builder have sold and conveyed all Lots in Development:
- A. No noxious or offensive trade shall be carried on or upon any Lot or within any improvement situated upon the Property, nor shall anything be done thereon which may or may become an annoyance or nuisance to the neighborhood or the Owners; provided that this shall not apply to the construction of Dwelling Units on the Lots or any construction, maintenance or replacement of facilities on the Common Property.
 - B. The maintenance, keeping, boarding or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot, except that this shall not prohibit the keeping of dogs, cats, caged birds or aquarium fish or other domestic pets provided they are not kept, bred, or maintained for commercial purposes, and provided they are kept according to the rules and regulations of the Association. No Owner shall permit or conduct an activity which may violate any applicable law affecting any Lot.

- C. No burning of any trash, accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.
- D. Except as provided herein, no commercial vehicle, trailer, trucks of more than one ton, motorcycle, camper, camp truck, horse trailer, boat or the like shall be kept or used on the Property unless totally enclosed within an improvement or garage, so as not to be visible from the exterior thereof. No junk vehicle, inoperative or unlicensed motor vehicle, structure of a temporary character, mobile home, tent, shack, barn, or other outbuilding shall be kept or used upon any Lot, nor (except for bona fide emergencies) shall the major repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. Notwithstanding the provisions hereof, Developer, Primary Builder or any other Builder and their contractors may, for purposes of business use in connection with the development of the Lots or construction of the Dwelling Units, maintain trucks, equipment, temporary offices (including trailers) and structures in connection with such development and construction.
- E. Trash and garbage containers shall not be permitted to remain in the public view except on days of trash collection.
- F. No signs of any character shall be erected, posted, or displayed upon any Lot, except street and identification signs installed by the Association, the Developer or the Primary Builder and excepting one (1) temporary real estate sign not to exceed six (6) square feet in area erected upon any Lot which advertises the same upon the market for sale or rent. This restriction shall not apply to Builders or Primary Builder, who may erect such signs as are authorized by the Developer or Primary Builder.
- G. No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with an easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction of flow of any drainage channels.
- H. No vegetable garden shall be larger than 300 square feet and must be maintained so as not to be unsightly. No Owner shall be allowed to store more than two cords of firewood on any Lot. Firewood must be neatly stacked and free of unsightly debris.
- I. No oil drilling, quarrying, or mining operation shall be permitted on any Lot.
- J. No above-ground swimming pools shall be permitted on any Lot.

K. Swingsets, jungle-gyms, playhouses or similar yard equipment, basketball courts, trampolines or any other recreational facilities may not be placed, installed or maintained on any Lot without prior approval of the Board. Tennis courts shall not be permitted.

L. Mailboxes shall be of uniform design as specified by the Developer or Primary Builder or as approved by the Board. Mailboxes may be located within the signage, entrance way and landscaping easement.

M.

(i) No fence or any portion thereof may be installed on that part of any Lot which is closer to the street than the primary rear wall of the Dwelling Unit on the Lot. The "primary rear wall" shall be determined by lineal feet of wall area at the rear of the Dwelling Unit, and garage walls shall not be included in the calculation of the primary rear wall if the garage extends further to the rear of the Dwelling Unit than does the living area of the Dwelling Unit.

(ii) All fences shall be of a type and quality approved by Developer, Primary Builder or the Board, provided that any fence enclosing a swimming pool and located entirely within thirty (30) feet of such pool may be of a design and construction as is from time to time required by applicable government authorities for enclosure of swimming pools.

N.

(i) The Association may regulate the location, manner of installation, color and screening of any satellite dish or any television broadcast antenna placed outside a Dwelling Unit (each, a "Reception Device"), as long as such regulation does not (a) unreasonably delay or prevent the installation of an Owner's chosen Reception Device(s), (b) unreasonably increase the cost of the installation, maintenance or use of an Owner's Reception Device(s), or (c) preclude reception of an acceptable quality broadcast signal.

(ii) If an acceptable quality signal can be received by placing Reception Devices inside a Dwelling Unit without unreasonable delay or unreasonable cost increase, then installation outside a Dwelling Unit is prohibited. If not so prohibited, then Reception Devices may be no larger or installed no higher than is absolutely necessary for reception of an acceptable quality signal. Reception Devices may not encroach upon any Common Property.

- (iii) The Association may require an Owner to paint a Reception Device to match the Dwelling Unit with a specific type and color of paint, as long as such paint will not preclude reception of an acceptable quality signal or void a manufacturer's warranty for a Reception Device. The Association may require repainting or replacement if the exterior surface of a Reception Device deteriorates. The Association may require camouflaging of Reception Devices through inexpensive screening or plantings at the Owner's expense if the Reception Device is visible from other Dwelling Units or the Common Property.
- (iv) Prior to the installation of a Reception Device, a Unit Owner must notify the Association in writing of the type of Reception Device and proposed location and provide the Association with a copy of any required permit.

- O. There shall be no violation of any rule or regulation for the use of any Common Property which may from time to time be adopted by the Board and promulgated among the Members in writing. The Board is hereby in this Declaration authorized to adopt such rules.
- P. The Owner of a Lot upon which a portion of the Common Property is located shall not alter the Common Property and shall not otherwise adversely affect or interfere with the intended use of the Common Property.
- Q. There shall be no violation of any additional restrictions which may be, from time to time, reasonably imposed on the Owners by the Association in their use and enjoyment of the Lots.

4.4 Right of Association to Remove or Correct Violations. The Association, Developer and/or Primary Builder may, in the interest of the general welfare of the Owners, and after reasonable notice to an Owner, enter upon any Lot within reasonable hours on any day for the purpose of directing Owner to correct any violations or breach or any attempted violation of any of the covenants and restrictions contained in Article 4, or violation of the rules and regulations of the Board, or for the purpose of directing an Owner to abate anything herein defined as a prohibited use or nuisance, provided, however, that no such actions shall be taken without a resolution of the Board. Before any improvements constructed may be altered or demolished pursuant to this Article, the Association, Developer or Primary Builder must have participated in binding arbitration with such Owner. Such arbitration should be conducted in accordance with the commercial rules of arbitration of the American Arbitration Association. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of

Indiana. If the Owner refuses to participate in binding arbitration as provided for herein, then judicial proceedings must be brought against the Owner in order to alter or demolish any constructed improvements. Notwithstanding the foregoing, any signs which are prohibited by Article 4.3(F) may be removed pursuant to a resolution of the Board and without arbitration or judicial proceedings. All charges incurred by the Association, Developer or Primary Builder in correcting a violation hereunder, (including arbitration or court costs and reasonable attorneys' fees) shall constitute a charge against the Lot and a personal obligation of the Owner thereof, and the Association shall have a lien upon the property and Lot for such expenses, and including costs of collection of such lien amount, which lien shall be subordinate to real estate taxes and assessments, liens of record in favor of the United States of America, the State in which the Lot is located, or other governmental instrumentalities to the extent made superior by applicable law, and all bona fide recorded first mortgages, as provided in Section 3.9.

- 4.5 Board Hearing. In the event of any dispute between Owners regarding the application of this Declaration or any rule or regulation, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time and place for a hearing thereon within thirty (30) days thereafter, and give written notice to each party thereof not less than five (5) days in advance of such hearing. The Board shall act as arbitrator and, after hearing such evidence and arguments as it deems proper, shall render a written decision on the matter to each party within thirty (30) days after such hearing. No legal action may be instituted by either party on such dispute unless the arbitration provided for herein has occurred, or unless the parties have waived the requirement for arbitration.

ARTICLE 5 - COMMON PROPERTY

- 5.1 Rights of Enjoyment in Common Property. Each Owner shall have a right and a nonexclusive easement for the use and enjoyment of the Common Property. This right and easement shall be appurtenant to, and shall pass with the title to the Lot. Each Owner shall have a perpetual right of ingress and egress across the Common Property to that Owner's Lot, which shall be appurtenant to the ownership of the Lot. These rights and privileges shall be subject, however, to the following:
- A. The right of the Board to levy the Assessments.
 - B. The right of the Board to adopt, enforce and amend reasonable rules and regulations pertaining to the use of the Common Property.
 - C. The right of the Board to suspend the right of any Owner to use any of the Common Property that is recreational in nature for any infraction of the rules and regulations relating to the Common Property, which period of suspension shall not exceed 60 days per infraction.

- D. The right of the Board to suspend the right of any Owner to use any of the Common Property that is recreational in nature for the nonpayment or delinquency of any Assessments until paid.
 - E. All other easements, restrictions, and rights to which the Property is subject, including, but not limited to, any easements granted or reserved pursuant to Article 8.
 - F. The right of the Board to convey such Common Property to eliminate any existing setback violation, encroachment or zoning violation created by the original construction of Developer or Primary Builder, free, clear and unencumbered from any and all easements and/or licenses granted pursuant to the Declaration.
- 5.2 Subordination to Mortgage or Other Lien. The rights and privileges provided in this Article shall be subordinate to any mortgage or other lien given by the Association for purposes of acquiring, improving or maintaining the Common Property.
- 5.3 Maintenance and Management of Common Property. The Association shall provide for the maintenance, repair, replacement and management of all Common Property as provided in Section 3.6. The Association may fulfill this responsibility and any other duties and obligations of the Association under this Declaration by contracting with any professional management company upon such terms and conditions as shall be agreed upon by the Board and the management company.
- Until such time as the Developer and Primary Builder have sold and conveyed all Lots within Development, the design of landscaping and plant, shrub and tree varieties installed on and/or comprising part of the Common Property shall be maintained as initially installed unless otherwise approved by Primary Builder, (or, if the Primary Builder is no longer the Class C Member, the Developer). Thereafter, modifications to landscaping design and plant, shrub and tree varieties shall be approved by the Board.
- 5.4 Use of Common Property by Developer and Primary Builder. In addition to the rights described in Section 5.1, Developer and Primary Builder shall have the right during the period Developer or Primary Builder owns any Lot, to use the Common Property, free of charge, for promotional, construction, management, maintenance, repair, remodeling, rental and sales purposes.

ARTICLE 6 - LOT MAINTENANCE

- 6.1 General Maintenance. Subsequent to transfer of a Lot to an Owner, the Owner thereof shall keep the Lot well-landscaped and in a good and well-maintained

condition. In the event that a portion of the Common Property encumbers a Lot, the Owner thereof shall be responsible for the maintenance of the Lot occupied or affected by the Common Property to the extent that the Association, Developer or Primary Builder does not maintain the same.

- 6.2 Maintenance of Common Drives. All Owners who share a common driveway for ingress and egress to their Lots shall participate in the cost and maintenance, repair or replacement of said common driveway based on their allocable use thereof. An Owner's allocable use shall be calculated by taking the longest distance within the common driveway which is being used for access by the Owner and dividing that distance by the sum of all the longest distances of every Owner's use of the common driveway. The maintenance, repair or replacement of a common driveway shall be agreed upon by the Owners of said Lots. In the event Owners fail to agree on the manner in which such maintenance, repair or replacement of the common driveway is to be performed, or the amount of each Owner's allocable share thereof, then the same shall be determined by the Board upon application by an interested Owner. The decision of the Board shall be final and non-appealable. No parking shall be permitted on any portion of the common driveway which serves another Lot.
- 6.3 Private Sewer Line. The maintenance, repair or replacement of utility distribution lines and connections or private sewer laterals (which connect a Lot to sewer main) and are located on or exclusively service the Lot shall be the responsibility of the Owner using the line, connections or laterals. If more than one Owner is using a line, connection or lateral and the Owners fail to agree on a formula to determine their share of the cost or in the event the Owners fail to agree on the manner in which such maintenance, repair or replacement shall be done, then the Board shall make such determination upon application by an interested Owner. The decision by the Board shall be final and non-appealable.
- 6.4 Storm Water Control Structures. The Association shall be responsible for the care and maintenance of all only those storm water control structures constructed by Developer, Primary Builder or at the direction of the Association and located on the Common Property and/or within private drainage easements and/or private storm sewer easements (including detention basin structures, outlet structures, paved channels, headwalls and any and all other storm drainage structures) which are located outside the public right of way and as depicted on any record plat of the Development except for those specifically assumed by the Hamilton County Surveyor or any other applicable governmental authority. If applicable, all such care and maintenance shall comply with and conform to the requirements, standards and specifications of the Hamilton County Surveyor or other applicable governmental authority.

ARTICLE 7 - EASEMENTS AND LICENSES

- 7.1 Utility and Support Easements. Developer hereby grants, conveys, and reserves non-exclusive easements over the Property as indicated on any record plat of the Development for the purpose of (i) the construction, reconstruction, alteration, and maintenance of all facilities necessary to provide utility services, including without limitation, telephone, water, gas, sanitary and storm sewer services to each Lot and the Common Property, and (ii) the cutting, grading and maintaining of slopes, retention walls and other supports, both for the benefit of each Lot and the Common Property. Developer further reserves the right to grant easements or modify existing easements over any portion of the Property for any of the purposes set forth in this Section 7.1.
- 7.2 Common Property Easement. Developer hereby grants, conveys, establishes and reserves an exclusive easement for the benefit of the Developer, Primary Builder and Association over the Common Property for the purpose of the construction, reconstruction, alteration, maintenance and use thereof by Developer, Primary Builder and the Association. Developer further grants, conveys, establishes and reserves a non-exclusive easement over that portion of the property not defined as the Common Property for the temporary occupation thereof in order to facilitate the exercise of any of the foregoing easements by either Developer, Primary Builder or Association.
- 7.3 Owner License. Developer hereby grants, conveys and reserves unto each Owner a non-exclusive license over the Common Property designated by the Primary Builder or Developer, or the Association upon the termination of the Class B and Class C membership therein, as defined in Article 2, for the use and enjoyment of the individual Owners and of the Lots, including without limitation, utilities, and sidewalks, roadways and similar amenities, if any.
- 7.4 Self-Help Easement. In the event that an Owner should violate any of the provisions of the Declaration, the Association, the Developer and the Primary Builder are hereby granted a non-exclusive easement over the Lot of the violating Owner so as to permit the Association to occupy the same and to rectify such breach as set forth in Sections 4.4 or 12.6 hereof.
- 7.5 Prohibition. No Owner, other than Developer or Primary Builder, shall grant an easement, right of way or license over a Lot, without the prior consent of the Association.
- 7.6 Easement to Run with the Land. All easements and rights described in this Declaration shall run with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Developer, Primary Builder, the Association, and any Owner, purchaser, mortgagee or other person now or in the future having an interest in any part of the Property.

ARTICLE 8 - ARCHITECTURAL CONTROL

- 8.1 Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition or change (including any change in color) or alteration thereof be made, until a detailed set of plans and specifications is submitted to and approved by the Board. Notwithstanding the foregoing, initial construction of Dwelling Units and improvements by a Builder, Primary Builder or the Developer shall be under the exclusive control of the Primary Builder (or, if Primary Builder is no longer the Class C Member, Developer) as provided in Section 8.4, below. All plans and specifications shall be delivered to the Board, in such form and shall contain such information as the Board may reasonably require, including but not limited to any or all of the following: a site plan; proposed landscaping; patio and walkway locations; description of materials; location of lighting; architectural plans including cross-sections, floor plans and elevations; evidence of conformity with building codes; the exterior design, color and the location of the proposed improvements in relation to the surrounding improvements and topography of the surrounding Property. Review of the plans and specifications shall include the following considerations: the continued maintenance of the Development as a residential community of high aesthetic quality; the promotion of the health, safety and welfare of all Owners; the preservation, beautification and maintenance of the Property and all structures thereon; the preservation and promotion of environmental quality; and the assurance of adequate water, sewer and drainage facilities and other utilities and services. The Board shall (i) approve the plans and specifications, (ii) disapprove them, or (iii) approve them with conditions of qualifications. The approval of the plans and specifications by the Board shall not constitute a representation or warranty by it as to the quality of the workmanship, materials or architectural or engineering design covered thereunder, or the proposed work's feasibility or compliance with any applicable laws. In the event the Board fails to approve or disapprove such design and location and notify Owner of its decision within thirty (30) days after plans and specifications have been submitted to it, approval will not be required and this Article 8 will be deemed to have been fully complied with. Such submission to the Board shall be in person, or by registered or certified mail, with return receipt, directed to the Association manager, or if there is no manager, to its President.
- 8.2 Enforcement. In the event of a violation of the provisions of this Article 8, the Association shall have the right to enforce this Article by any proceedings authorized in this Declaration, the By-Laws, or by law.
- 8.3 Fees. The Board may charge reasonable fees for the processing of said plans and specifications and any inspections. Any modifications to be undertaken to the exterior of a Dwelling Unit and Lot or the Common Property shall comply with the guidelines and regulations of the United States Department of Housing and

Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract, the terms, conditions and specifications of which, shall be approved by the Board. The approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members, the Board is authorized to make reasonable accommodations to any rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Dwelling Unit and Lot, including the Common Property.

- 8.4. Approval of Plans by Developer. Each Builder, other than the Primary Builder, prior to initial construction of a Dwelling Unit and/or accessory structures on a Lot shall deliver its plans and specifications to Primary Builder and secure the approval by Primary Builder (or, if Primary Builder is no longer the Class C Member, by Developer) of such plans and specifications (as defined in Section 8.1, above). Such approval of plans and specifications by Primary Builder or Developer shall be conducted in the same manner and in the same time frame as set forth in Section 8.1, above. Primary Builder and Developer shall have all legal and equitable remedies available under this Declaration to enforce their decision against Builders, Owners, or their successors.
- 8.5. Handicap Accessibility. Notwithstanding the other provisions herein, an Owner of any Dwelling Unit and Lot may, at his expense, have such reasonable modifications made to the interior and exterior of his Dwelling Unit and Lot and the Common Areas as may be necessary to afford the physically handicapped a Lot in connection therewith. Fees shall be paid at the time the plans and specifications are submitted to the Board.

ARTICLE 9 - ANNEXATION AND ALTERATIONS TO THE PROPERTY

The provisions of this Declaration are imposed upon the Property and the Dwelling Units thereon. Developer shall have the right at any time to remove any portion of the Property from the scope of this Declaration or to subject any Additional Property to the provisions of the Declaration by the execution and recording of a supplement to the Declaration.

The Developer may annex to this Declaration any Additional Property without the consent of the Members of the Association, within seven (7) years after the date this Declaration is filed for record. However, the Developer is not bound to annex any of said property to this Declaration, and until such time as any of said property is annexed, the same shall not be subject to the provisions of this Declaration.

Any annexations made pursuant to this Article 9 shall be evidenced by filing an amendment or supplement to this Declaration with the Recorder of Hamilton County, Indiana, which supplement or amendment shall extend this Declaration to such Additional Property. The supplement or amendment to this Declaration may contain additional covenants, conditions, restrictions, easements and liens as the Developer or Primary Builder shall deem appropriate for the purpose of completing the development of the any Additional Property. Such Additional Property shall enjoy the benefit of all amenities in the Development.

ARTICLE 10 - INSURANCE

- 10.1 Maintenance of Liability Insurance. The Association, as a Common Expense, shall insure itself, the Board, Developer, Primary Builder, all Owners and Members of their respective families and other persons residing with them in the residence, their tenants, and all persons lawfully in possession or control of the Lots, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from, the Common Property and the portions of the Lots to be maintained by the Association, such insurance to afford protection with limits of not less than \$500,000.00 with respect to bodily injury, disease, illness or death suffered by any one person and of not less than \$1,000,000.00 with respect to bodily injury, disease, illness or death suffered by more than one person in any one occurrence, and not less than \$500,000.00 with respect to damage to or destruction of property arising out of one accident.
- 10.2 Other Insurance. The Association shall have a right to maintain officers and Directors liability insurance and such insurance or extended coverage insurance insuring the Common Property in such amounts, against such perils, for such time periods and under such circumstances as the Association through its Board determines, in their sole discretion, is appropriate and in the best interest of the Development.
- 10.3 Insurance Limitation. Except as otherwise provided in Section 10.1, the policies of insurance maintained by the Association pursuant to this Article 10 shall not insure against liability for personal injury or property damage arising out of or relating to the Lots. Each Owner shall be responsible for obtaining insurance with respect to any Lot and improvements thereon and the contents thereof and any personal liability to the extent not covered by insurance provided in this Article 10. All insurance procured by the Association shall have such deductibles as the Board shall, from time to time, determine necessary and appropriate.
- 10.4 Dwelling Unit Insurance. The Association shall have no responsibility or liability to obtain or maintain any type of insurance upon any Dwelling Unit constructed on Lots and such insurance shall be the sole responsibility of the Owner.

- 10.5 Premiums. All premiums paid for any insurance procured by the Association hereunder shall be deemed to be a Common Expense.
- 10.6 Insurance Proceeds. Any and all insurance proceeds received by the Association shall be held by the Association and used for the benefit of the Owners, the Common Property and the Lots as the Board shall, from time to time, determine. No Owner shall have any right in or to the proceeds of any such insurance.
- 10.7 Casualty. In the event that any portion of the Common Property is damaged or destroyed, the Association shall restore the affected portion of the Common Property to substantially its condition existing immediately prior to such damage or destruction to the extent reasonably practicable. If such damage or destruction is not covered by insurance maintained by the Association or the proceeds are insufficient to fully restore the affected portion of the Common Areas as a result thereof, then the Association shall effect the restoration thereof in such a manner as the Association may determine appropriate in its sole judgment and shall levy a special assessment against each Owner for any deficiency in a proportion to its respective share thereof.

ARTICLE 11 - REAL ESTATE TAXES AND ASSESSMENTS

- 11.1 Real Estate Taxes. Each Owner shall be responsible for and pay all taxes and assessments, general and special, levied or imposed upon their respective Lot and its improvements.
- 11.2 Allocation. Prior to the time the Auditor of Hamilton County, Indiana, or any other applicable taxing authority, establishes separate tax parcels for each Lot, the Primary Builder (or, if Primary Builder is no longer the Class C Member, the Developer) shall allocate the real estate taxes and assessments upon the Property among and against the Lots and against the remainder of the Property in a fair and equitable manner so as to allocate the real estate taxes and assessments charged in common to the various Lots as well as the remainder of the Property within the Development. The allocation made in accordance with the terms hereof shall be binding upon all Owners.
- 11.3 Common Property. Taxes and assessments, general and special, charged against the Common Property of Development shall be deemed a Common Expense. Assessments, general and special, charged against Development shall be paid by the Owners as set forth in Article 3 hereof.

ARTICLE 12 - MISCELLANEOUS

- 12.1 Duration. Except where permanent or perpetual easements or other permanent rights or interests are herein created, the terms and provisions of this Declaration

shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association or by any of the Lot Owners, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of recordation of this Declaration, after which the Declaration shall be automatically extended for successive periods of ten (10) years in perpetuity, unless a recorded instrument signed by the Owners of two-thirds (2/3) of the Lots have been recorded, agreeing to terminate the Declaration.

12.2 Assignment by Developer; Primary Builder. Developer shall be entitled to assign to any party, by a separate recorded instrument or instruments, all or a portion of the rights and benefits contained in this Declaration which are reserved to the Developer. In the event of any assignment, such party shall be deemed to be a "Developer" to the extent of the rights and benefits hereunder which are assigned. Any such rights and benefits of the Developer contained herein shall not be assignable or transferable without an express assignment hereof by Developer. Such assignments may transfer rights and benefits exclusively or non-exclusively. Primary Builder shall be entitled to assign, by a separate recorded instrument, all or a portion of the rights and benefits contained in this Declaration which are reserved to the Primary Builder; however, such assignment shall be made only in connection with the assignment or transfer of the right of Primary Builder to acquire additional Lots in the Development or, if no such right exists, in connection with the conveyance by Primary Builder of its remaining Lots in the Development. In the event of any assignment, such party shall be deemed to be the "Primary Builder" to the extent of the rights and benefits hereunder which are assigned. Any such rights and benefits of the Primary Builder contained herein shall not be assignable or transferable without an express assignment hereof by Primary Builder. Such assignments may transfer rights and benefits exclusively or non-exclusively.

12.3 Amendment. The Declaration may be amended, from time to time as follows:

A. Class B Members. Developer reserves, for the benefit of the Developer and the Primary Builder, the right and power and each Owner by acceptance of a deed to a Lot is deemed to and does grant to each of the Developer and the Primary Builder a Power of Attorney coupled with an interest, the burden of which interest shall run with the title to the Lot, and shall be irrevocable except by Developer and the Primary Builder for a period of seven (7) years from the date hereof, to amend this Declaration to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution, (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lot Owners, or to the extent necessary to enable Developer and the Primary Builder to meet any other

reasonable need or requirement including those associated with completion of the development of the Property and to facilitate the making and marketing of first mortgages upon any of the Lots. Any amendment must be recorded and shall be effective upon recording.

B Lot Owners. This Declaration may be amended at any time by an instrument executed by persons or entities able to exercise seventy-five percent (75%) of the voting power of all classes of the Association and approved by eligible first mortgage holders representing Lots having at least fifty-one percent (51%) of the voting power; provided, however, that rights of Developer or Primary Builder hereunder may not be amended or altered without the prior written consent of Developer and/or Primary Builder, as the case may be. Any amendment must be recorded and shall be effective upon recording.

- 12.4 Personal Liability. Nothing in this Declaration, the Articles, or By-Laws, of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any Director or any officer of the Association acting in their capacity as such, for the maintenance, repair or replacement of any Dwelling Unit or part of the Common Property or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all persons now or hereafter serving as an officer or Director, or both, from any liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such person is covered by insurance and in such event the amount of recovery shall be limited to the amount of insurance.
- 12.5 Notices. Any notice required to be sent to a Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage prepaid, to the last known address of the person who appears as Member or Owner appearing on the records of the Association at the time of such mailing.
- 12.6 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, to restrain and/or to enjoin violation and/or to recover damages, and against the Property to enforce any lien created by these covenants; and the failure or forbearance by the Association 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 hereafter. In the event of a violation of the provisions of the Articles or By-Laws, the Association shall have the right to enforce any covenant or restriction by proceedings authorized in this Declaration, the Articles, By-Laws or by law.

- 12.7 Severability. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way effect any other provision hereof, each of which shall remain in full force and effect.
- 12.8 Conflicts. In the case of any conflict between this Declaration and either the Articles or By-Laws of the Association, the Declaration shall control.
- 12.9 Rights of Mortgage Holders. Any mortgagee of a Lot may pay any taxes or other charges which are in default and which may or have become a charge against the Common Property or any part thereof any may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage upon the lapse of a policy, for such Common Property, and such mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.

The holder, insurer or guarantor of the first mortgage on any Lot shall be entitled to timely written notice of the following:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage;
- B. Any sixty (60) days delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage;
- C. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- D. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders; and
- E. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

A mortgage holder, insurer or guarantor shall send a written request to the Association, stating both its name and address and the Lot number or address upon which it holds a mortgage, in order to obtain the foregoing notices.

12.10 Condemnation.

- A. In the event any Lot or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the net proceeds of any award or settlement shall be the property of the Owner and the holder of the first mortgage, to the extent of their respective interests. Each Owner shall give the holder of a first mortgage on the Owner's Lot timely written notice of such proceeding or proposed acquisition.

B. In the event any Common Property or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their first interests appear.

IN WITNESS WHEREOF, Developer has executed this instrument at the time and place set forth above.

Signed and acknowledged
in the presence of:

MARINA I LIMITED PARTNERSHIP,
an Indiana limited partnership

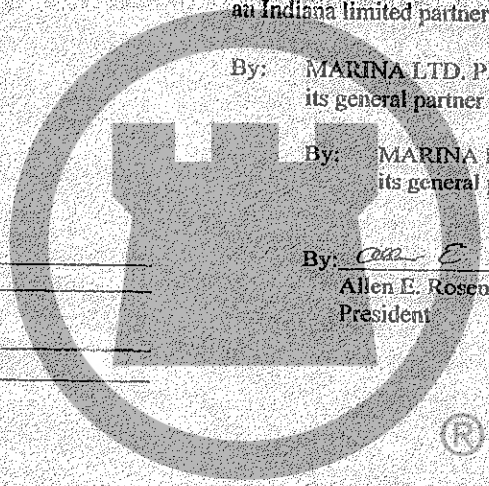
By: **MARINA LTD. PARTNERSHIP,**
its general partner

By: **MARINA II CORPORATION,**
its general partner

By: *Allen E. Rosenberg*
Allen E. Rosenberg
President

Print Name: _____

Print Name: _____



CHICAGO TITLE

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Allen R. Rosenberg, President of Marina II Corporation, general partner of Marina Ltd. Partnership, general partner of Marina I Limited Partnership, a limited partnership organized and existing under the laws of the State of Indiana, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, Restrictions, Liens and Reservations of Easements for and on behalf of said limited partnership, and who, has been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 20 day of ^{August} ~~July~~, 1999.

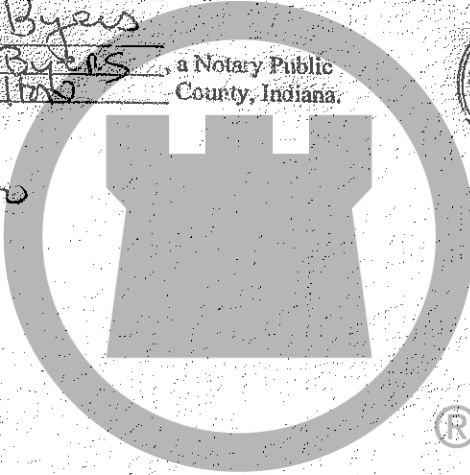
Signature Gordon Byers
Printed Gordon Byers, a Notary Public
Residing in Hamilton County, Indiana.



My commission expires:

Sept 20, 2000

659915.03



CHICAGO TITLE

E. A
Legal Description of Property

PL No. 370105-308000
Date: March 19, 1999

Land Description
(Weatherstone Plat Description)

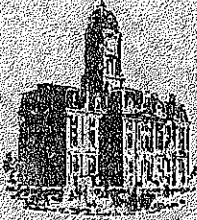
A part of the Southwest Quarter of Section 1 and a part of the Northwest Quarter of Section 12, all in Township 17 North, Range 5 East, Fall Creek Township, in Hamilton County, Indiana, described as follows:

Commencing at the Southwest corner of said Section 1 said corner being located North 00 degrees 23 minutes 03 seconds East 2619.57 feet from the Southeast corner of the Northeast Quarter of Section 11, Township 17 North, Range 5 East (basis of bearings is the record plat of The Springs of Cambridge Section Four); thence along the West line of the Northwest Quarter of said Section 12, South 00 degrees 23 minutes 03 seconds West 102.53 feet to the Point of Beginning of this description; thence North 88 degrees 22 minutes 58 seconds East 633.89 feet; thence North 64 degrees 54 minutes 19 seconds East 291.57 feet; thence North 00 degrees 08 minutes 05 seconds West 57.06 feet; thence North 59 degrees 01 minutes 44 seconds East 162.39 feet to a curve having a radius of 150.00 feet, the radius point of which bears South 68 degrees 14 minutes 01 seconds West; thence Northwesterly along said curve, 32.77 feet to a point which bears North 55 degrees 42 minutes 55 seconds East from said radius point; thence North 55 degrees 42 minutes 55 seconds East 50.00 feet; thence North 52 degrees 35 minutes 34 seconds East 168.89 feet; thence South 44 degrees 30 minutes 00 seconds East 69.63 feet; to the West line of the East Half of the Southwest Quarter of said Section 1, (3) thence along said West line, South 00 degrees 40 minutes 12 seconds West 221.38 feet to the Southwest corner of East Half of the Southwest Quarter of said Section 1 which point is also the Northeast corner of the Northwest Quarter of the Northwest Quarter of said Section 12; thence along the East line of the Northwest Quarter of said Northwest Quarter, South 00 degrees 03 minutes 30 seconds West 1319.34 feet to the Southeast corner of the Northwest Quarter of said Northwest Quarter and to the center of 104th Street; thence along the South line of the Northwest Quarter of said Northwest Quarter and along the center of 104th Street, South 85 degrees 41 minutes 15 seconds 697.90 feet; thence North 00 degrees 08 minutes 05 seconds West 478.97 feet; thence South 89 degrees 18 minutes 00 seconds West 639.93 feet to the West line of said Northwest Quarter; thence along said West line, North 00 degrees 23 minutes 03 seconds East 687.49 feet to the point of beginning, containing 32.046 acres, more or less.

Except that part of the above described tract contained in a Warranty Deed to Hamilton County, Indiana, recorded June 24, 1999, as Instrument No. 9909937585 in said Recorders Office.

Subject to an easement for a sanitary sewer force main in the vicinity of the South line of said Section 1.

Subject to any rights-of-way, easements, restrictions and covenants of record.



HAMILTON COUNTY RECORDER

MARY L. CLARK • RECORDER

Instrument Number 9949887

Date of Plat 8-19-1999

Recording Date 8-23-1999

Time 2:18 pm

Recording Fee \$ 65.00

Grantor (Developer/Owner) The Marina I LP by Allen Rosenberg

Grantee (Name of Plat) Weatherstone

Legal Description Part of the Southwest 1/4 of Section 1 Township 17 North,
Range 5 East and Part of the Northwest 1/4 of Section 12,
Township 17 North and Range 5 East. 32.046 acres More or Less

Plat Cabinet & Slide Number PC 2 Slide 305

Number of Lots 62 lots numbered 1 through 62

Transferred: YES **NO**

Date of Transfer 8-23-1999

Cross Reference Number 9949885 and 9949886