

RATIFICATION OF WHITTINGTON VILLAGEHOMES, SECTION ONE,  
RECORD PLAT

WHEREAS, the Record Plat of Whittington VillageHomes, Section One, an addition to the Town of Brownsburg, Indiana (the "Plat"), was recorded on May 10, 1995 under Instrument #7313 in Plat Cabinet 3, Slide 44, Side 1 in the records of the Recorder of Hendricks County, Indiana.

WHEREAS, the DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE WHITTINGTON VILLAGEHOMES was executed by Timmy J. Shrout, President of Image Real Estate Developers, Inc., and was recorded on May 10, 1995 under Instrument No. 7314 in Miscellaneous Record Book 147, Pages 77-138 in the records of the Recorder of Hendricks County, Indiana; and

WHEREAS, Greenland Homes, Inc. ("Greenland") acquired title to Lot 77 from Image Real Estate Developers, Inc. by metes and bounds description in Corporate Warranty Deed recorded on February 14, 1995, under Instrument No. 2345 in Deed Book 339, Pages 726-728 in the Records of the Recorder of Hendricks County, Indiana, a date which precedes the date on which the aforesaid Plat was recorded; and

WHEREAS, when the Plat was recorded on May 10, 1995 Greenland was omitted as a signer of the Plat.

NOW THEREFORE, the DEDICATION statement as recited on the Plat and as executed by Image Real Estate Developers, Inc. is revised to read as follows:

The undersigned, IMAGE REAL ESTATE DEVELOPERS, INC., and CITIZENS BANK OF WESTERN INDIANA, owner and present mortgagee, respectively, of the within described real estate, except that portion of said real estate identified on this Record Plat as Whittington Drive and as owned by MGL, INC., and also except Lot 77 as owned by GREENLAND HOMES, INC., do hereby lay off, plat and subdivide the same into lots, public ways, and easements in accordance with applicable laws, ordinances, covenants, restrictions, and the plat shown hereon. The streets and public rights-of-way shown hereon, subject to construction standards and acceptance, are hereby dedicated to the public use, to be owned or maintained by the Town of Brownsburg or the governmental body having jurisdiction.


The within plat shall be known and designated as - WHITTINGTON VILLAGEHOMES, SECTION ONE, a subdivision of Brown Township, Hendricks County, Indiana. }

For additional covenants and restrictions, see Instrument

No. 7314 recorded on May 10, 1995 in Miscellaneous Record Book 14, Pages 77-138 in the Office of the Recorder of Hendricks County, Indiana.

Dated this 7<sup>th</sup> day of August, 1995.

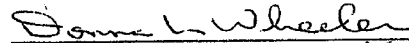
IMAGE REAL ESTATE DEVELOPERS, INC.  
10333 North Meridian Street, Suite 360  
Indianapolis, IN 46290

By:   
Timmy J. Shrout, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, the undersigned Notary Public, in and for said County and State, personally appeared Timmy J. Shrout, President of Image Real Estate Developers, Inc., who acknowledged the execution of the foregoing Record Plat on behalf of said corporation for the purposes therein expressed.

WITNESS MY HAND AND NOTARIAL SEAL this 7<sup>th</sup> day of August, 1995.

  
Notary Public

Donna L. Wheeler  
Name Printed

My County of residence is: Marion

My Commission expires on: 11-19-97

ALSO, the following additional dedication for ratification of the aforesaid record plat by Greenland Homes, Inc., as owner of the aforesaid Lot 77, is as follows:

**DEDICATION**

The undersigned, GREENLAND HOMES, INC., owner of the real estate now identified as Lot 77 in Whittington Village Homes, Section One, an addition to the Town of Brownsburg, Brown Township, Hendricks County, Indiana, does hereby lay off, plat

and subdivide the aforesaid Lot 77 in accordance with applicable laws, ordinances, covenants, restrictions, and the plat shown on the aforesaid record plat of Whittington Village Homes, Section One, as recorded on May 10, 1995 under Instrument No. 7313 in Plat Cabinet 3, Slide 44, Side 1 in the records of the Recorder of Hendricks County, Indiana.

Lot 77 shall be subject to additional covenants and restrictions per the DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE WHITTINGTON VILLAGE HOMES as recorded on May 10, 1995 under Instrument No. 7314 in Miscellaneous Record Book 147, Pages 77-138 in the records of the Recorder of Hendricks County, Indiana.

Subscribed to this 9th day of August, 1995.

GREENLAND HOMES, INC.  
1425 SADLIER CIRCLE, WEST DRIVE  
Indianapolis, IN 46239

By: Thomas E. Farris  
THOMAS E. FARRIS, Secretary-Treasurer

ENTERED FOR RECORD

AUG 9 1995 At 2:45  
BOOK 148 Page 760-62  
Jay Beasley  
HENDRICKS COUNTY RECORDER

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, the undersigned Notary Public, in and for said County and State, personally appeared Thomas E. Farris, Secretary-Treasurer of Greenland Homes, Inc., who acknowledged the execution of the foregoing Record Plat on behalf of said corporation for the purpose therein expressed.

WITNESS MY HAND AND NOTARIAL SEAL this 9th day of August, 1995.

Donna H. Wheeler  
Notary Public  
Donna H. Wheeler  
Name Printed

My County of residence is: Marion  
My Commission expires on: 11-19-97

This Instrument was prepared by: WILLIAM T. REES, Attorney at Law, 8355 Rockville Road, Indianapolis, IN 46234.

980001978  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 05-12-1998 At 01:54 pm.  
PLAT 28.00

**Declaration of Covenants, Restrictions and Assessments**  
**of**

***Whittington Villagehomes,  
Section Three***

THIS DECLARATION of Covenants, Restrictions, and Assessments, ("Declaration") is made this \_\_\_\_ day of April, 1998 by Whittington Investors, Inc., an Indiana Corporation, ("Declarant");

*Plat 16 pgs 2A, 2B, 2C*

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property in the Town of Brownsburg, Hendricks County, Indiana, as described in Exhibit "A" attached hereto and hereby made a part hereof; and,

WHEREAS, Declarant subdivided said real property and designated said subdivision as Whittington Villagehomes, Section 3, a parcel being more particularly described on said plat thereof recorded as Instrument No. \_\_\_\_\_ on or near the same date as this Declaration in the Office of the Recorder of Hendricks County, Indiana, and hereby made a part hereof consisting of 73 lots.

WHEREAS, Declarant hereby further establishes a system of assessments to be borne by all Lot Owners to provide for maintenance of Common Property, Common Expenses of the Development, and mutual enforcement of this Declaration.

NOW, THEREFORE, Declarant hereby affirms that the Development shall hereafter be held, subdivided, sold, and conveyed subject to this Declaration which purports to protect the value and desirability of the Development, and which shall run with the Development and shall be binding on all parties having any right, title or interest in the Development or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

980001979  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 05-12-1998 At 01:54 pm.  
COVENANTS 38.00  
Vol. 58 Pg. 99 - 113

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**ARTICLE I  
DEFINITIONS**

A. The following are the definitions of terms used in this Declaration:

1. "Assessment" shall mean that share of the Common Expenses imposed upon each Lot, together with any interest or late charges thereon imposed for delinquency and any costs of collection thereof, including attorney fees, as determined and levied pursuant to the provisions herein.

"Association" shall mean Whittington Villagehomes Homeowners Association, Inc., or similarly-named organization, its successors and assigns. Its membership shall consist of all Owners. Declarant may choose to merge the Association with an existing adjacent Whittington Village association.

"Builder" shall mean the contractor(s) constructing the first Dwelling Unit on each Lot.

"Committee" shall mean the Development Control Committee who shall be subject to removal by the Declarant as long as Declarant owns a Lot, at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment by the Board of Directors.

"Common Expenses" shall mean the actual and estimated cost to the Association for maintenance, lighting, management, operation, repair, taxation, improvement or replacement of any Common Property. Such costs shall include but not be limited to maintenance of any easements, entry signs or landscaping, storm water retention lakes, and any other expenses incurred by the Association for the benefit of the Common Property, including the cost of insurance as required herein. Common Expenses shall not include any construction costs incurred in connection with the initial installation of the streets, utility lines and mains, drainage systems, or other improvements constructed by Declarant or utility companies.

"Common Property" shall mean all real and/or personal property which is in the nature of common or public improvements, whether or not such property is located on or within any Common Area.

"Development" or "Property" shall mean Whittington Villagehomes, Section 3, a 73-lot residential subdivision located in Brownsburg, Indiana.

"Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Property.

"Dwelling Unit" shall mean a detached single-family residence, including attached garage, situated upon a Lot in the Development.

"Lot" shall mean any residential parcel of real estate as shown on the Plat. No Lot may be subsequently subdivided for development purposes, except for Declarant's adjustment for infractions which may occur.

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"Owner" shall mean a person or legal entity which acquires title or interest, in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation.

"Plat" shall mean the subdivision plat(s) of the Development identified as the Plat of Whittington Villagehomes, Section III, and recorded in the Office of the Recorder of Hendricks County, Indiana.

**ARTICLE II  
CHARACTER OF THE DEVELOPMENT**

Each Lot shall be used exclusively for single family residential purposes. No permanent structure shall be erected, placed or permitted to remain upon any Lot except a Dwelling Unit. No business buildings may be erected on any Lots thereof. No business may be conducted on any Lots thereof, other than those occupations permitted in the Zoning Ordinance of Hendricks County, Indiana or applicable ordinances affecting the Development. All Lots shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

**ARTICLE III**

**RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF DWELLING UNITS AND OTHER STRUCTURES**

- A. **Type, Size, and Nature of Construction Permitted and Approvals Required:** Declarant shall approve all Builder plans including plot plans, elevations, specifications, and exterior colors for paint, brick, shingles, etc. No exterior improvement such as a greenhouse, porch, garage, swimming pool, hot tub, deck, fence, basketball goal, tennis court or other exterior improvement or addition shall be erected, placed, stored, or altered on any Lot without the prior written approval of the Committee. Each Owner or Builder shall request such approval in writing to the Committee and shall take into account restrictions including, but not limited to, the type of materials, exterior facade, exterior paint colors, design, layout, location, landscaping and finished grade elevations.

Declarant may, at the option of Declarant, impose higher standards of construction to the Development than those required herein throughout the Development Period.

1. **Minimum Areas:** Any Dwelling Unit shall have the following minimum areas, exclusive of open porches, basements, and garages:
  - a. The minimum floor area of a one-story Dwelling Unit shall be 1,200 square feet.
  - b. The minimum floor area of a Dwelling Unit of more than one story shall be 1,700 s.f., with the minimum floor area of the first floor of 700 s.f.

All garages shall be a minimum of a 2-car garage. Lots shall be sold as single family homes and not as condominiums.

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2. Driveways and Off-Street Parking Spaces: There shall be a minimum of two (2) off-street, off-sidewalk parking spaces in each driveway. No additional parking shall be permitted on a Lot other than in the existing driveway. No two vehicles shall be parked in the street across from each other so as to restrict emergency vehicle clearance. No boats, campers, trailers of any kind, buses, mobile homes, large trucks, motorcycles, mini bikes, mopeds, or any other non-passenger vehicles shall be permitted, parked or stored anywhere within the Development, unless completely enclosed in an attached garage. Vehicle repair work shall be confined to the garage. Non-conforming vehicles may be towed at owner's expense. The speed limit within the Development shall be 15 m.p.h., unless posted otherwise.
4. Prohibition of Relocated or Moveable Structures: No Dwelling Unit, garage, trailer, or other structure of any kind may be moved onto any Lot for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a Dwelling Unit on a Lot.
5. Maintenance of Lots During Construction: All Lots shall be kept and maintained in a sightly and orderly manner during the period of construction of any structures on said Lots. It is understood by all parties to this Declaration that due to the construction nature of the Development throughout the Development Period, a certain level of rubbish and erosion will exist until all Lots have been improved. Declarant shall not be responsible for the removal of debris, construction materials, etc. on any streets or Lots owned by Declarant due to the construction of the Development.
6. Mailboxes: Prior to completion of construction, Builders shall install one mailbox in a location approved by Declarant and Post Office. Declarant shall approve the style, color, and location of each mailbox prior to installation.
7. Fences: All fences shall be approved by the Committee prior to construction, and, except those installed by Declarant, must meet the following standards, unless approved otherwise by the Committee:
  - a. The design of the fence shall be wooden shadow box or vinyl-clad chain link, unless another design is approved by the Committee.
  - b. If wooden fences are painted or stained, they shall be in a color approved by the Committee.
  - c. For corner lots, no fence shall encroach into the side yard as determined by the building setback line unless approved by the Committee. For non-corner lots, no fence shall be installed between the street and the rear face of the house unless approved by the Committee.
  - d. All corner lot fences shall meet the requirements of Article III.B of this Declaration regarding sight distances.
  - e. The heights of shadow box or similar privacy or pool fences may not exceed six (6) feet for rear yards and 48 inches for non-rear yard fences. Every fence shall be installed in a sturdy, workmanlike manner, and must be maintained in good condition by the Owner. Fence care includes but is not

limited to repaint/restain, rust removal, and repair of structural damage, defects, or deterioration of fencing, posts, and gates.

f. Any deviation from the above requirements must have written approval of the Committee.

9. Unapproved Structures: The following structures shall not be allowed in the Development.

- Outside fuel storage tanks;
- Awnings and patio covers made of metal, fiberglass or similar type materials;
- Above-ground (or mid-grade or similar) swimming pools;
- Solar heat panels;

10. Satellite Dishes and Antennas: A satellite dish which does not exceed eighteen inches (18") in diameter may be installed in the Development if it is located so as not to be visible from the street, in the Committee's opinion. The maximum height of exposed antennas shall not exceed five (5) feet above the respective roof peak. As with any exterior improvement, the location of satellite dishes and antennas must also be approved by the Committee prior to installation.

11. Windows, Roof, and Siding Requirement: Aluminum, wood, and vinyl windows are permitted provided that they are of a compatible color. Wood or vinyl siding is permitted provided colors are a muted or earth colors (grey, white, taupe, tan, or cream). Yellow or blue colors are prohibited.

All Dwelling Units shall be improved with a minimum roof pitch of 6/12 for one-story structures and 5/12 for two-story structures. All shingles shall be "weathered wood". Declarant shall approve and determine compliance of shingles, windows, siding paint colors, etc. of all Dwelling Units throughout the Development Period. The Committee shall approve exterior colors after the Development Period.

B. Sight Distance at Intersections: No fence, wall, hedge or planting which obstructs sight lines shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. No landscaping shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height sufficient to prevent obstruction of such sight lines.

C. Building Setback Lines: Front, side and rear building setback lines are established as shown on the Plat. Between said lines and the right-of-way lines of the streets and the side and rear lot lines, no structures may be erected or maintained. The minimum side yard setback shall be seven (7) feet, and a minimum aggregate of adjacent side yards of fourteen (14) feet. The minimum front yard setback is twenty-five (25) feet. The minimum rear yard setback is fifteen (15) feet.

D. Damaged Structures: No Dwelling Unit which has been partially or totally destroyed by fire or other catastrophic event shall be allowed to remain in such state without commencement of reconstruction for more than sixty (60) days from the date of such occurrence.



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- E. Maintenance of Lots and Improvements: The Owner of any Lot shall at all times maintain the Lot and any improvements thereon in such a manner to prevent the Lot or improvements from becoming unsightly, in the opinion of the Committee. These requirements shall not apply to Lots owned by the Declarant during the Development Period or during the initial construction period of a Dwelling Unit.

Specifically, the Owner shall: 1) establish the original lawn and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height; 2) keep Lot free of debris, equipment, stored building materials, and rubbish including any outside storage of trash containers; 3) prevent the existence of any other conditions which may detract from or diminish the aesthetic appearance of the Development in the opinion of the Committee; 4) remove dead or unsightly trees or other plants; and, 5) maintain the exterior of all improvements in good repair to avoid any unsightly appearance, in the opinion of the Committee.

All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Unit (including garage) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage shall be placed in sealed disposable containers.

- F. Requirement to Mow Grass in Public Right-of-Way: All Owners shall be required to mow and maintain the grass in public rights-of-way of their Lot.

**ARTICLE IV  
EASEMENTS**

The strips of ground shown on the Plat which are marked "D.& U.E." (Drainage and Utility Easement) are reserved for the use of public utility companies, including cable television companies and municipal agencies for the purpose of installing and maintaining swales, ducts, poles, lines, wires, sewers, drains and appurtenances thereto. Said easements shall be perpetual from the date of the Plat by the Declarant, its successors and assigns. No permanent structures may be erected in said easements except for temporary structures, fences, driveways and walkways and subject to the applicable easement(s). Owners shall take title to said Lots subject to the rights of said companies, agencies, and other Owners for purposes of ingress and egress in, along and through said easements so reserved.

**ARTICLE V  
MISCELLANEOUS PROVISIONS AND PROHIBITIONS**

- A. Nuisances: No noxious or offensive activities shall be conducted on any Lot, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to Owners of other Lots, in the opinion of the Committee. Such annoyances include, but not limited to; noise from musical instruments, radio, television, loud speakers, electrical equipment, power tools, amplifiers, or other equipment or machines or loud persons.
- B. Sump Pumps: No sump pump may be discharged into any street after a Dwelling Unit is completed. Only storm sewers shall be used for such discharge. The sump pump must be installed underground with plastic pipe or tile to such designated areas.

- C. **Animals:** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs or cats may be kept in a Dwelling Unit, provided that they: 1) are not kept, bred, or maintained for any commercial purpose; 2) do not become a nuisance to other Owners, in the opinion of the Committee, and; 3) they be leashed upon leaving the Dwelling Unit and their waste be promptly disposed of. The Committee may prohibit the tethering of pets in any area outside the Dwelling Unit if it is deemed an unreasonable disturbance.
- D. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible within the Development. No industry, trade, solicitation, or other commercial or religious activity, educational or otherwise, designed for profit, altruism, or otherwise, shall be conducted within the Development, without Committee approval.

**ARTICLE VIII  
REMEDIES**

- A. **Available Remedies:** In the event of a violation, or threatened violation, of any of the provisions of this Declaration, Declarant, Owners, and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Declaration contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with this Declaration, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.
- B. **Government Enforcement:** The Hendricks County Plan Commission or similar Town of Brownsburg agency ("Commission"), its successors and assigns, shall have no right, power or authority to enforce this Declaration other than those terms which expressly run in favor of the Commission; provided further, that nothing herein shall be construed to prevent the Commission from enforcing any provisions of the Subdivision Control Ordinance, or any conditions attached to approval of the Plat and any subsequent sections approved thereafter.
- C. **Delay or Failure to Enforce:** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the terms of this Declaration shall be held to be a waiver by that party of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Declaration.

**ARTICLE IX  
EFFECT OF BECOMING AN OWNER**

Any Owner, by the acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner, shall accept said deed and execute said contract subject to this Declaration and the Plat. By acceptance of said deed or the execution of said contract, the Owner acknowledges the rights and powers of interested parties with respect to the Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns. Said Owner shall covenant and agree

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with and consent to Declarant and with and to the Owners and subsequent Owners of each of the Lots to keep, observe, comply with and perform said agreements.

**ARTICLE X**  
**TITLES**

The underlined titles of the various Articles and Sections of these Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter, and vice versa.

**ARTICLE XI**  
**DURATION AND AMENDMENT**

- A. **Duration of Declaration:** This Declaration shall be effective for an initial term until December 31, 2018 and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners of two-thirds (2/3) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.
- B. **Amendment of Declaration:** Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, so long as Declarant owns any Lot within the Development or subsequent phases thereto.

If Declarant no longer owns any Lot in the Development, the Declaration may be amended upon the approval of a majority of members of the Association.

**ARTICLE XII**  
**SEVERABILITY**

This Declaration shall run with the land and shall be binding on all parties claiming under them. Invalidation or unenforcement of any of the provisions of this Declaration by Judgment, Court Order, or the Board of Directors shall in no way affect any of the other provisions which shall remain in full force and effect.

**ARTICLE XIII**  
**DEDICATION OF STREET RIGHTS-OF-WAY**

All street rights-of-way shown on the plat and not heretofore dedicated to the public are hereby dedicated to the public.

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**ARTICLE XIV  
HOMEOWNERS ASSOCIATION**

The Association shall be an Indiana not-for-profit corporation to be formed by Declarant or any Owner, and shall operate in accordance with Articles XV through XVII of this Declaration.

**ARTICLE XV  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

- A. **Membership:** Every Owner shall be a member of the Association ("Member"). Membership shall be appurtenant to and may not be separated from the ownership of any Lot. In addition, the Association, and/or its Members therein, may be members in any one or more umbrella or joint homeowners' associations, if any, composed of associations and/or members from surrounding areas or community.
- B. **Classes of Membership:** The Association shall have two (2) classes of voting Members:
  - 1. **Class A:** Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.
  - 2. **Class B:** The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, including Lots owned in subsequent phases to the Development, if any. Unless Declarant chooses to convert its class earlier, the Class B membership shall cease and be converted to Class A membership upon the occurrence of either of the following events, whichever occurs earlier:
    - a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
    - b. on December 31, 2003.
- C. **Board of Directors:** The Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.
- D. **Responsibility of the Association:** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the determination of Common Expenses, the collection of annual and special Assessments, if any, and the granting of any approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain casualty

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insurance, liability insurance, and such other insurance as it deems necessary or advisable. The Association by its Board of Directors may contract for management services and such other services as the Association deems necessary or advisable.

**ARTICLE XVI  
INSURANCE**

- A. **Public Liability Insurance for Common Property:** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Common Property, if any, as the Board of Directors shall deem appropriate.
- B. **Owner's Responsibility for Loss:** Each Owner shall be solely responsible for liability and loss of or damage to his personal and real property located on his Lot, however caused.

**ARTICLE XVII  
ASSESSMENTS**

- A. **Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively for payment of Common Expenses. Each Owner covenants and agrees to pay the Association:
  - 1. A Pro Rata Share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.
  - 2. A Pro Rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.
- B. **Pro Rata Share:** The pro rata share of each Owner for purposes of this paragraph shall be the percentage obtained by the fraction of one divided by the total number of Lots (1 / Total no. of Lots), except Lot 1.
- C. **Liability for Assessments:** The Assessment on each Lot shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association and shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any first mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer of a Lot shall relieve such Lot from liability for any Assessments, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed.
- D. **Basis of Annual Assessments:** The Board of Directors of the Association shall establish an annual budget for each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for reserves for future repair and replacement of the Common Property or unexpected expenses. The Members of the Association, at a regular or special meeting of the Members with

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proper notice, shall approve the budget or revised budget by a vote of a majority of a quorum of Members present in person or by proxy. A copy of the approved budget shall be delivered to any Owner requesting same within a reasonable time.

E. Basis of Special Assessments: Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. Upon the approval of the Board of Directors and at Declarant's option, the Association may instead borrow up to \$1,000 from Declarant for such unplanned deficits during the Development Period, with or without interest. Any such loan shall be immediately repaid to Declarant upon the Association's ability to repay such amount. If necessary, the Board of Directors may impose a Special Assessment upon the approval of a majority of a quorum of Members present in person or by proxy, and such Special Assessment shall be due and payable on the date(s) determined by the Board of Directors.

F. Fiscal Year, Date of Commencement of Assessments, Due Date: The fiscal year of the Association shall be the calendar year and may be changed from time to time by action of the Board. The annual Assessment on each Lot may commence at any time following the month in which Declarant first conveys any Lot to an Owner.

Annual Assessments shall be due and payable, in full, as of the date which the Board of Directors determine, except that the Board of Directors may, from time to time, authorize the payment of such Assessments in quarterly or semi-annual installments. The Declarant shall not be required to pay an assessment on any vacant Lot which it owns.

In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following year, except that so long as the Declarant controls the Association, Declarant may, at its sole discretion, make up such deficit; provided, however, that Declarant shall be reimbursed by the Association for such funded deficits, together with interest until so reimbursed, from available surpluses in later years or through a Special Assessment.

G. Duties of the Association:

1. Books and Records: The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and Special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner, at Owner's expense (or duly authorized representative of any Owner) at all reasonable times. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause necessary tax returns to be prepared and filed annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be

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

2. Certificate of Assessments: Upon request, the Association shall promptly furnish to any Owner, prospective purchaser, title insurance company, or Mortgagee, a certificate in writing signed by an authorized representative of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

H. Association Remedies for Non-Payment of Assessments:

1. Lien for Non-Payment of Assessment: If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent.
2. Initiation of Action by Association for Non-Payment of Assessment. If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment may be increased by a late fee imposed as determined by the Board of Directors. The Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys' fees, and, in the event a judgment is obtained, such judgement shall include such late fee, costs, and attorneys' fees.
3. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, regardless of the recording date of said mortgage. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of any assessments or pro-rated assessment becoming due prior to the date of such sale or transfer. If and to the extent this paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail.

- I. Initial Assessments. Upon the recording of this Declaration, the annual Assessment per Lot may be imposed on each Lot. Future annual Assessments shall be based on an annual budget.

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J. Quorum and Notice Required For Association Meeting. Written notice of any Association meeting called for the purpose of approving annual or Special Assessments, amending this Declaration, election of the Board of Directors, or transacting other business for the benefit of the Association shall be sent to all Owners not less than twenty (20) calendar days in advance of the anticipated meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast one-tenth of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called without notice other than announcement at the meeting, until such later time or date that a quorum shall be present in person or by proxy.

IN WITNESS WHEREOF, the undersigned has hereunto caused its name to be subscribed this 23 day of April, 1998.

**Whittington Investors, Inc.**

BY: *Richard W. Turner*  
Richard W. Turner, President

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HENDRICKS    )

Before me, a Notary Public in and for said County and State, personally appeared Richard W. Turner, President of Whittington Investors, Inc. who acknowledged the execution of the foregoing Declaration acting for and on behalf of Declarant, and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 23 day of April, 1998.

*Gregory A. Bruzas*  
Notary Public - Signature

Name Printed



GREGORY A. BRUZAS, Notary Public  
My Commission Expires: 1-28-2008  
Residing in Hendricks County

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**CONSENT TO DECLARATION**

As the current owner of real estate granted per Corporate Warranty Deed recorded on August 1, 1995 as Instrument No 12558 in Book 343, pages 202 -204 in the records of the Hendricks County Recorder, Hendricks County, Indiana, which, upon proper recording of plat shall be known as Lot 136 in Whittington Villagehomes, Section Three, Bethesda Baptist Church and Schools, Inc. hereby consents to this Declaration of Covenants, Restrictions, and Assessments as it pertains to Lot 136. The undersigned further represents that he has full corporate capacity and approval to execute this Consent.

BETHESDA BAPTIST CHURCH AND SCHOOLS, INC.

George W. Curry  
George W. Curry, Business Administrator

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HENDRICKS    )

Before me, a Notary Public in and for said County and State, personally appeared George W. Curry, who acknowledged the execution of the foregoing Consent, and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 23 day of April, 1998.

Kimberly F. Ross-Frost  
Notary Public -Signature

Kimberly F. Ross-Frost  
Name Printed

County of Residence: Hendricks

My Commission Expires: 12-14-2000

This instrument prepared by: William T. Rees, Attorney, P.O. Box 34297, Indianapolis, IN 46234-0297

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**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A part of the East Half of Section 2, Township 16 North, Range 2 East of the second principal meridian in Lincoln Township, Hendricks County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the said Half Section; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Half Section 1091.93 feet; thence South 00 degrees 27 minutes 06 seconds West 1950.83 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 07 minutes 41 seconds East 991.38 feet; thence South 00 degrees 28 minutes 31 seconds West 930.09 feet to a point on the North line of the right-of-way of Interstate I-74 said point also being on a curve concave Southwesterly with a central angle 10 degrees 26 minutes 32 seconds and a radius of 6238.99 feet; thence Northwesterly along said curve and said right-of-way an arc length of 1137.08 feet (said curve being subtended by a chord having a bearing of North 64 degrees 23 minutes 10 seconds West and a length of 1135.50 feet) to the Southeast corner of Whittington Villagehomes Section II a subdivision in Brownsburg per the replat thereof recorded as Instrument No. 9700011828 in Plat Cabinet 4, Slide 100, Page 2 in the office of the Recorder of foresaid County; thence North 20 degrees 23 minutes 34 seconds East along the common boundary with said subdivision 170.00 feet to a point on a curve concave Southwesterly with a central angle 00 degrees 15 minutes 05 seconds and a radius of 6408.99 feet; thence Northwesterly along said curve an arc length of 28.12 feet (said curve being subtended by a chord having a bearing of North 69 degrees 43 minutes 59 seconds West and a length of 28.12 feet) to a point on the East line of said subdivision as per the plat thereof recorded as Instrument No. 9701281 in plat Cabinet 4, Slide 40, Page 1 in the office of the Recorder of said County; thence North 01 degrees 41 minutes 04 seconds East along said East line 255.11 feet to the POINT OF BEGINNING of this description and containing 15.21 acres, more or less and subject to all restrictions, easements and legal right-of-way.

April 16, 1998

ENTERED FOR RECORD

7314

MAY 10 1995 8:00  
12  
138  
HENDRICKS COUNTY RECORDER

DECLARATIONS OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF THE  
WHITTINGTON VILLAGEHOMES

This Declaration is made this 25th day of April,  
1995, by Image Real Estate Developers, Inc. (hereinafter,  
collectively, "Declarant").

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real estate in  
Hendricks County, State of Indiana, more particularly described  
in Exhibit "A" attached hereto and by this reference made a part  
hereof ("Real Estate").

Whereas, Declarant desires and intends to create on the Real  
Estate a residential community with facilities, open spaces,  
walls, fences and other common facilities and amenities for the  
benefit of such residential community, to be known as the  
Whittington VillageHomes; and

WHEREAS, Declarant desires to provide for the preservation  
and enhancement of the values and amenities in such community and  
the common facilities therein contained, and, to this end,  
Declarant desires to subject the Real Estate to certain rights,  
privileges, covenants, conditions, restrictions, easements,  
assessments, charges and liens, each and all to the extent herein  
provided, for the benefit of the Real Estate and each owner of  
all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient  
preservation of the values and amenities in said community, to

create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has or will cause to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of Whittington VillageHomes Association, Inc., or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Dwelling Units and Lots situated therein.

ARTICLE I

Definitions

Section 1. The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) "Act" shall mean and refer to the Indiana Not-For-Profit Corporation Act currently in force;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Architectural Review Board" shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- (e) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and the Declaration;
- (f) "Builder" shall mean and refer to the building contractor who purchases a Lot from the Declarant and constructs the Dwelling Units.
- (g) "Building" shall mean and refer to the structure consisting of the "Dwelling Units";
- (h) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;
- (i) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (j) "Common Properties" shall mean and refer to (i) all portions of the Real Estate shown on any recorded

subdivision plat of the Real Estate which are not Lots, if any, (ii) to the extent herein established, such portions of the Real Estate as are herein declared to be Common Properties even though located on or constituting part of one or more Lots, including but not limited to recreational easements, (iii) to the extent herein established, such improvements located, installed or established in, to, on, under, across, or through the Real Estate as are herein declared to be Common Properties whether located, installed or established entirely or partially on Lots or portions of the Real Estate which are not Lots, or both; and (iv) items deemed Common Properties for purposes of maintenance, but not the Dwelling Unit for Real Estate tax purposes;

- (k) "Corporation" shall mean and refer to Whittington VillageHomes Association, Inc., an Indiana not-for-profit corporation which Declarant has or will cause to be incorporated under such name or a similar name, its successors and assigns;
- (l) "Declarant" shall mean and refer to Image Real Estate Developers, Inc. and any successors or assigns whom they designate 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, mortgage executed by Declarant;
- (m) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family, whether such dwelling is detached or attached to another Dwelling Unit and shall include that portion of the Lot upon which it resides and shall be deeded to an Owner;
- (n) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designed and intended for use as a building site for, or developed and improved for use as a one (1) family Dwelling Unit;
- (o) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (p) "Owner" shall mean and refer to the record owner, whether one or more persons of the fee simple title to any Dwelling Unit, but in any event shall not include or mean to refer to a mortgagee or tenant unless and

until such mortgagee or tenant has acquired title to any Dwelling Unit but upon so acquiring title to any Dwelling Unit a mortgagee or tenant shall be owner;

- (q) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or combination thereof;
- (r) "Plat" shall mean and refer to the subdivision plat or plats of the Real Estate (and any additional real estate annexed to the Real Estate) recorded in the Office of the Recorder of Hendricks County, Indiana, as the same may be hereafter amended or supplemented;
- (s) "Real Estate" shall mean and refer to the parcel of real estate in Hendricks County, Indiana, described in the first recital clause of this Declaration, and defined therein as the Real Estate or to any parcel of real estate which may become subject to this Declaration by annexation;
- (t) "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provision set forth in this Declaration, as the same may be amended from time to time;
- (u) "Townhome" shall mean and refer to Dwelling Units which are a part of the Building.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

ARTICLE II

Declaration: Common Properties and Rights Therein, Easements

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Dwelling Unit (i) by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent

Owner of such Dwelling Unit, or (ii) by the act of occupancy of any Dwelling Unit, shall accept such deed or execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Dwelling Units affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Owner. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Dwelling Unit.

Section 3. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the Common Properties (including items deemed Common Properties for maintenance, including but not limited to Townhome lawns). Such easement shall permit the Corporation or its agents to enter onto any Lot to make emergency repairs or to do other work reasonably necessary for the property maintenance or operation of the development and to enter onto any Lot for the purpose of reconstruction and restoration in the event of



casualty. Maintenance shall include but not be limited to maintenance of utilities which serve more than one Dwelling Unit and utilities owned and utilized by the Corporation, if any.

Section 4. Encroachment Easements. If any portion of the Common Properties encroaches on any Dwelling Unit or any Dwelling Unit encroaches upon the Common Properties or another Dwelling Unit or Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Corporation or to the Owner of the encroaching Lot or improvement for the encroachment and for the maintenance thereof so long as such encroachment exists.

ARTICLE III

Obligations of Declarant

as to Common Properties, Dedication

Section 1. Agreement To Construct and Convey Other Common Properties. Declarant has constructed or provided for, or will construct or provide for Common Properties consisting of the following items:

- (a) installation of utility equipment, facilities and systems to serve the Townhomes and the Common Properties,
- (b) perimeter treatment of the Real Estate, including landscaping,

Upon final construction or provision of the Common Properties described in this Section 1, and prior to the closing

of the first sale of a Lot subject to this Declaration, Declarant covenants to convey all of its right, title and interest in and to such Common Properties to the Corporation and all such right, title and interest in and to such items (whether owned in fee, by leasehold or in the nature of an easement or license) shall then be the property of the Corporation, whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Properties located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein, as described in Article II, Section 2 of this Declaration.

ARTICLE IV

Corporation, Membership, Voting, Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Dwelling Unit shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any Person who holds the interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and member of the

Corporation.

**Section 2. Voting Rights.** The Corporation shall have two

(2) classes of membership, with the following voting rights:

- (a) **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 Dwelling Unit 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 Dwelling Unit, all such persons shall have only one (1) vote for such Dwelling Unit, 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 Dwelling Unit.
- (b) **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 three (3) votes for each Lot or Dwelling Unit 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 first to occur of (i) the total votes outstanding in the Class A membership equal eighty percent of the total votes of Class A and Class B members or (ii) December 31, 1999 ("Applicable Date").

**Section 3. Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V

Board of Directors

Section 1. 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 is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designed in the Articles, ("Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (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 thereafter be deemed a member of the Initial Board. 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 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 Dwelling Unit for any other purpose (unless he is actually the Owner of a Dwelling Unit and thereby a member of the Corporation).

Section 3. 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 Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

Section 4. Term of Office and Vacancy. Subject to Section 2 of this Article V, 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. The Board of Directors shall be elected for a term of three (3) years. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V 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 Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his 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.

Section 5. 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 successor shall be elected at the same meeting from eligible Owners nominated at the meeting. If no eligible Owner is available, the Directors may choose to operate as a Board despite the vacancy, until a new Owner becomes eligible. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 6. 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 Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable property management agent ("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:

- (a) maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance).
- (b) protection, surveillance and replacement of the Common Properties, unless the same are otherwise the responsibility or duty of Owners of Dwelling Units; 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 may, but need not be, furnished;
- (c) maintenance of utilities used in connection with the Lots and Dwelling Units in the Townhome Area;
- (d) removal of trash and waste from the Real Estate as the same may be needed;
- (e) snow removal from the Common Properties and from streets dedicated to the public;
- (f) assessment and collection from the Owners of the Owner's respective share of the Common Expenses;
- (g) 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;
- (h) 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;
- (i) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Properties 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;

- (j) 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
- (k) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (l) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the Subdivision and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances;
- (m) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's financial statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 7. 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:

- (a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or any entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and further provided that after the Applicable Date any such agreement shall be subject to termination by either party without cause and without payment of termination fee upon ninety (90) days written notice to the other party;
- (b) 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;



- (c) 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;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Corporation;
- (g) 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 Properties (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 to all Owners.

Section 8. Limitation on Board Action. The Board's powers are subject to the following limitations.

- (a) 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 Properties 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 as approved by the Owners at the annual meeting; 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.

(b) The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the Owners (other than Declarant) and Mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Dwelling Units which have at least Sixty-Seven percent (67%) of the votes of Dwelling Units subject to mortgages;

(i) by act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easement for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);

(ii) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walks in the Common Properties or common fences, or the upkeep of lawns;

(iii) fail to maintain fire and extended coverage insurance on Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs; and

(iv) use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

Section 9. Compensation. No director shall receive any compensation for his services as such except to such extent as

may be expressly authorized by a majority vote of the Owners. The Managing Agent, if one is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 10. 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. Directors shall not have personal liability with respect to any contract made by them on behalf of the Corporation.

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a part to any action, suit or proceeding by reason of the fact that such person is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except as otherwise specifically provided herein. The Corporation shall also reimburse to 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 guilty of or liable for negligence or misconduct in the performance of his 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 failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors shall provide surety bonds and shall 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, wrongful abstraction, 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 protections for any

insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its management agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds.

Section 13. Initial Management. The Initial Board has or will enter into a management agreement with Declarant (or with an entity affiliated with Declarant) for a term which will expire not later than the Applicable Date under which Declarant (or an affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. ("Management Agent") Notwithstanding anything to the contrary contained in this Declaration, so long as such Management Agreement remains in effect, Declarant (or its affiliate) shall have, and Declarant hereby reserves to itself or its affiliates, the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

ARTICLE VI

Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Dwelling Unit shall be paid by the Owner thereof. Any real estate taxes or other assessments against the Common Properties shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Dwelling Unit. Utilities which are not separately metered to an Owner's Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

ARTICLE VII

Maintenance, Repairs and Replacements

Section 1. By Owners. Except as provided in Section 2(b) of this Article, each Owner shall, at his expense, be responsible for, and shall promptly perform as the need therefor arises, all interior maintenance, repairs, decoration and replacement of his own Dwelling Unit. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Dwelling Unit, except (1) for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Properties for purposes for maintenance only and (2) lawn maintenance as provided in Section 2 below. All fixtures and equipment installed within or as part of a Dwelling Unit,

commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which such Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include but are not limited to heating and air conditioning system, any partitions and interior walls, internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit. The Owner shall be responsible for the maintenance, repair and replacement of all windows.

Section 2. Common Properties and Exteriors of Dwelling Units and Lawns.

- (a) Maintenance, repairs, replacements and upkeep of the Common Properties shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.
- (b) In addition to maintenance of Common Properties, the Corporation, as part of its duties, and as part of the Common Expenses, shall provide for:
  - (i) maintenance, repairs, replacement and upkeep of the exteriors of each Dwelling Unit, including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of interior maintenance) and exterior walls shall be considered part of the Common Properties for purposes of maintenance only;

- (ii) maintenance of the lawns, which shall be considered part of the Common Properties for purposes of maintenance only. Maintenance of lawns shall include but shall not be limited to the fertilizing, mowing and re-planting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Declarant. It shall not include the care and maintenance of shrubs, trees which were not planted by Declarant, flowers or other plants on any Lot. It is the responsibility of each Owner to water his own lawn. If the Owner fails to water his own lawn, the Corporation has the right, but not the obligation, to water his lawn by using the water bills of the noncomplying Owner and charge the Owner for the labor cost to perform the watering. Firewood may not be stored on the grass nor placed against siding. Also, the Owner shall keep his/her garage coach lites on from dusk to dawn as part of the security plan for the Community. The Association shall provide replacement bulbs.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties (or items deemed Common Properties for purposes of maintenance only) as it deems necessary.

- (c) Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or items deemed as such for purposes of maintenance), or if



maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance and such policy has 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 assessment to which such Owner's Dwelling Unit is subject.

- (d) The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Dwelling Unit as may be required in connection with maintenance, repairs or replacements of or to the Common Properties and items deemed as Common Properties for purposes of maintenance, including, but not limited to, access to any easements reserved by any subdivision plat of any portion of the Real Estate for such purposes.

**ARTICLE VIII**

**Architectural Control**

**Section 1. 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 as may, from time to time, be provided in the By-Laws or by resolution of the Board of Directors. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon consistent with the architecture of the neighborhood and in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Dwelling Unit or Lot or the improvements located thereon from its natural or improved state existing on the date such Dwelling Unit or Lot was first conveyed in fee by the Declarant or a Builder to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or interior structural change shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

Section 4. 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 (together with all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) has 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 two-thirds (2/3) vote of the Directors then serving.

ARTICLE IX

Party Walls

Section 1. General Rules of Law to Apply. Any wall which is built as a part of the original construction of any Dwelling Unit upon the Real Estate and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

Section 3. Destruction by Fire or Other Casualty. If any party wall is destroyed or damaged by fire or other casualty,

then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions; without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of the furnishing the necessary protection against those elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator from among disinterested Owners, and such arbitrators shall choose an additional arbitrator, who need not be an Owner, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of

Directors of the Corporation shall select an arbitrator for the refusing party.)

**ARTICLE X**

**Assessments**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** Annually, on or 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 current fiscal year estimating the total amount of the Common Expenses for the current 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 proposed Budget shall be presented at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (herein defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners present at the annual meeting, provided that any increase of more than ten

percent (10%) must be approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, provided further, 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 other 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 be drawn to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Properties and capital expenditures and replacement and repair of those items deemed Common Properties for purposes of maintenance only as defined in Article VII, Section 2(b), which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties shall be maintained by the Corporation in a separate interest-bearing account with one or more banks, savings and loan associations, or other financial institution or brokerage house authorized to conduct business in Hendricks or Marion County, Indiana, as may be 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 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.

Section 3. Regular Assessments. The annual budget adopted by the Owners shall contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: all estimated Common Expenses plus (i) the estimated cost of the master casualty insurance policy provided for in Article XII Section 1 and (ii) the estimated cost of maintenance to be performed by the Corporation pursuant to Article VII, Section 2(b), shall be divided by the total number of Dwelling Units and the quotient shall be the Regular Assessment for each Dwelling Unit. The portions of the Regular Assessment attributable to the replacement reserve funds shall be computed as a part of the estimated Common Expenses. Nothing contained herein shall make Declarant, as to Lots without Dwelling Units, responsible for the expenses described in (i) and (ii) above.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Dwelling Unit (herein called the "Regular

of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing 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.

Section 5. Failure of Owner to Pay Assessment.

(a) No Owner may exempt himself from paying Regular Assessments or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular Assessments 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 or Special Assessments when due, the lien for such Assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as



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 Dwelling Unit based upon the annual budget finally adopted. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last month of such fiscal year. Payment of the Regular Assessment shall be made to the Board of Directors, provided, however, Owners may elect to pay their assessments semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

- (a) 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, 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
- (b) 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 credited; provided, however, that if an Owner paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) 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 Dwelling Unit 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 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 Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI 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. Quarterly 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.

Each Owner of a Dwelling Unit shall prepay to the Corporation at the time his Dwelling Unit is conveyed to such Owner an amount equal to three (3) monthly installments of the amount required to pay for the Dwelling Unit Owner's pro-rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Corporation shall hold such pre-paid funds in a separate escrow account for the purchase of insurance as provided in Article XII, Section 1. This prepayment of the master casualty insurance is in addition to the insurance cost included in the monthly assessment because insurance is paid in advance of the coverage period.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, 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 Dwelling Unit, pro-rated in equal shares ("Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the votes

Section 6. Initial and Annual Budgets and Assessments.

Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular and Special Assessments shall be established by the Initial Board without meeting of or concurrence of the Owners.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

From the date of the first conveyance of a Lot by Declarant to any unrelated third party until the Applicable Date:

- (i) the Regular Assessment shall be pro-rated on a daily basis for any period of time less than a month (the amount required to fund the insurance escrow shall be in addition to the Regular Assessment), and
- (ii) the Regular Assessment shall be one-half (50%) of the amount of the Regular Assessment set forth in Subparagraph (i) for each Dwelling Unit owned by Declarant and not rented. Should Declarant own and rent a Unit for a period exceeding one year, such assessment shall be the regular assessment.

Section 7. Payment of Assessments. The following policies shall govern regarding the payment of Regular and Special Assessments.

1. All assessments are due the first day of each Quarter.
2. Any assessment payment not received in the office of the management company by the 15th day of the month in which it is due shall be termed delinquent.
3. At the time an assessment becomes delinquent, a late charge of \$40.00 will be added to the account. A notice of delinquency shall be mailed to the owner, which notice shall include the amount of the delinquent payment, the late charge and the total amount remaining unpaid.

4. If a delinquent account remains unpaid on the last day of any quarterly calendar month, interest will be charged to the account at the rate of 1.25% per month (15% APR).
5. The interest will be calculated on the total account balance (including assessment fees, late fees, interest, fines, legal costs, and any other amounts which have been properly added to the homeowner's account) as of the first day of the quarter less any payments received during the quarter. Charges posted to the account after the first of the quarter will not be subject to interest during the quarter in which the charges are posted.
6. Minimum charge: A minimum charge of \$.50 will be assessed to the account in any quarter in which an interest charge of less than \$.50 would otherwise be imposed.
7. If within fifteen (15) days of the mailing of notification, the account still remains delinquent, a list of the property(ies) in question and the names of the owners shall be turned over to counsel for the Association who shall send notice of non-payment and intent to file a lien. The charge for this procedure shall be added to the delinquent account.
8. If within fifteen (15) days of the attorney's notice the account still remains delinquent, counsel shall cause the lien(s) to be recorded and shall take other appropriate legal action. All legal fees will be added to the delinquent account and will be payable by owner.
9. If after one hundred five (105) days from the due date the account remains unpaid, foreclosure proceedings shall be undertaken. All legal fees incurred will be charged back to the owner for payment.
10. At the same time as the delinquent account is turned over to counsel, the right of the delinquent owner to vote, to serve on the Board of Directors or to serve on any committee established by the Board shall be suspended until delinquent assessments have been paid, unless relief is granted by special resolution of the Board of Directors.

otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rents and any other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a 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 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 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 a rate not to exceed the maximum rate allowable under State law.

- (b) The lien provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Dwelling Unit 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 the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the 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 or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share, the lien for which has been divested as provided above, shall be deemed to be a Common Expenses, collectible from all Owners (including the party acquiring the subject Dwelling Unit from which it arose).

ARTICLE XIMortgages

Section 1. Notice to Corporation. Any Owner who places a first mortgage lien upon his Dwelling Unit, 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's 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 By-Laws or otherwise, shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record. 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 which such Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or effectively given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in 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 which such Mortgagee may otherwise be entitled shall be required.

Section 2. Notice of Certain Actions or Conditions. The



Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written notice of:

- (i) any condemnation loss or any casualty loss which affects a material portion of the subdivision or any Dwelling Unit on which there is a first mortgage;
- (ii) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days;
- (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation; and
- (iv) any proposed action which would require the consent or approval of Mortgagees under the terms of this Declaration or the regulations of either FNMA or FNMLC.

Section 3. 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 Dwelling Unit, 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 Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit 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 Section 3 of Article X hereof.

Section 4. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance) and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for purposes of maintenance).

ARTICLE XII

Insurance

Section 1. Casualty Insurance.

(a) The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on or in any Dwelling Unit or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain

"all risks" 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. If deemed necessary or advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of the Owners in the Townhome Area. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each such Owner.

- (b) The Corporation shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" affording fire and extended coverage insurance insuring all Common Properties owned by the Corporation including, but not limited to utilities and recreational equipment in an amount consonant with the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage for such improvements. 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. If deemed

advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgages of each Owner.

- (c) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as herein set forth shall be paid to it or to the Board of Directors. In the event that members of the Board of Directors have not posted surety bonds for the faithful performance of their duties or if such bonds do not equal or exceed the funds which will come into their hands, and there is damage to a part or all of the Common Properties resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners of the Corporation. The proceeds shall be used or disbursed

by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such casualty insurance policy, and "all risk" coverages 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) waives any defense based on invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. 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; provided, such coverage shall be at least One Hundred Thousand Dollars (\$100,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such

comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, and Managing Agent appointed or employed by the Corporation, all persons acting or who may act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Dwelling Units and all other persons entitled to occupy any Lot or Dwelling Unit. 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.

Section 3. 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 coverage shall also provide for any cover cross liability claims of one insured party against another insured party. 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 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.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall promptly be furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Dwelling Unit.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the

BOOK 147 PAGE 22

foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards to be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for any and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.

ARTICLE XIII

Casualty and Restoration, Condemnation, Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit or in the event of damage to or destruction of any of the Common Properties due to fire or any

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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.

If 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, or in the event there are no insurance proceeds, (i) the cost of restoring the damage and repairing and reconstructing a Building or Dwelling Unit 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 and (ii) the cost for restoring the damage and repairing and reconstructing any Common Properties (excluding items deemed Common Properties for maintenance only) so damaged or destroyed (or the cost 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 Building so damaged or destroyed to as near as possible the same conditions as it existed immediately prior to the damage or destruction and with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Dwelling Unit which may be created as a result of such reconstruction or repair of any Building shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Dwelling Unit such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

Section 2. Total or Partial Condemnation.

(a) In the event of the condemnation of all or any part of the Common Properties or all or any part of any Building, Dwelling Unit or Lot, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties, Building or Dwelling Units. For the purpose of such negotiation and/or of contest of such award to the Board as to Building and Dwelling Units and Lots, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected by the

condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

(b) Awards for the taking of all or part of a Building, Dwelling Unit or Lot shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, such Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

**Section 3. Termination.** In the event of condemnation of three-fourths (3/4) or more of the Dwelling Units, the remaining Owners may terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the Plat and in Article XIV shall remain in full force and

effect in accordance with the terms of the Plat and Article XVIII of this Declaration.

**ARTICLE XIV**

**Restrictions, Covenants and Regulations**

**Section 1. Restrictions on Use.** The following covenants and restrictions on use and enjoyment of the Lots, Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein or in any plat of any part of the Real Estate heretofore or hereafter recorded, 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 violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Properties which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be

committed in any Dwelling Unit or on any Lot.

- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of the Dwelling Unit without the prior consent of the Architectural Review Board.
- (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 Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its Owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any area outside an Owner's Dwelling Unit does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that an Owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to relieve or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.
- (f) Nothing shall be done or permitted in any Dwelling Unit or on any Lot which will impair the structural integrity of any of the Common Properties or which would structurally change any of the Common Properties. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the Townhomes developed on the Real

Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

- (g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Properties or any public street. The Common Properties shall be kept free and clear of rubbish, debris and other unsightly materials.
- (h) 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. No soliciting is permitted within the Townhome Community. Residents should notify the Hendricks County Sheriff to have violators removed from the Real Estate.
- (i) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate, any Lot or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Lots and Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant in the marketing, advertising or sale of Lots or Dwelling Units as a part of the development of this Townhome Community.
- (j) All Owners and members of their families, their guests, or invitees, and all occupants of any same and to use and enjoy the Common Properties 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 Properties.
- (k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Real Estate; provided,

however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles, outside of the Owner's garage. No overnight parking of any vehicles on the streets is allowed. At no time shall vehicles of any type be parked on the grass. At no time shall vehicles be parked on the opposite side of the street to another vehicle already parked on the street. This restriction is necessary in order to provide adequate clearance for emergency vehicles. Residents and guests should avoid parking any vehicles on a blind curve or within a street intersection at any time. Vehicles not in compliance with these covenants and restrictions may be towed at the Owner's expense. The speed limit is 15 miles per hour within the community unless otherwise posted.

- (l) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Properties (excluding lawns which are deemed Common Properties for maintenance only), except with express permission from the Board.
- (m) No Owner shall remove any tree without the written approval of the Board.
- (n) Each Owner shall keep his Dwelling Unit in good order, condition and repair and free of debris including, but not limited to, the pruning, trimming and cutting of all trees and shrubbery, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Dwelling Unit shall fail to so maintain his Dwelling Unit, the Corporation after notice to the Owner and approval by majority vote of all Owners, shall have the right to enter upon said Dwelling Unit to correct, repair, maintain and restore the Dwelling Unit. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Dwelling Unit, payable by the Owner upon demand by the Corporation.
- (o) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for

trash collections as are designated by the Board.

- (p) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, 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 the Common Properties and 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 and 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 Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

Section 2. Violations and Fines. If any resident or owner



continues to violate any of the Declaration, Covenants, Conditions and Restrictions, Articles of Incorporation, Rules and Regulations or By-Laws of Whittington VillageHomes and said violations continue five (5) days after receiving written notice of said violation, the Board of Directors is empowered to levy a fine against said owner at the rate of \$20.00 per day for each day the violation continues. Collection of all fines will be handled in the same manner as the collection of Association dues, including filing a lien and/or claim in court of proper jurisdiction. All costs to collect will be assessed against said owner.

**ARTICLE XV**

**Amendment of Declaration**

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) **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.
- (b) **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.
- (c) **Adoption.** Any proposed amendment to this Declaration must be approved by seventy-five percent (75%) of all Owners attending the meeting. 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

provisions hereof.

- (d) Special Amendments. Sixty-Seven percent of Mortgagees required. No amendment to this Declaration shall be adopted which changes the provisions hereof which establish, provide for, govern or regulate (1) the applicable share of an Owner's liability for the common Expenses, or the method of determining the same, (2) Article XII of this Declaration with respect to casualty insurance to be maintained by the Corporation, (3) Article XIII of this Declaration with respect to reconstruction or repair of the Common Properties or Dwelling Units in the event of fire or any other casualty or disaster, (4) establishment of the Architectural Review Board and its functions, (5) voting rights, (6) assessments, assessment liens or subordination of such liens, (7) reserves for maintenance, repair and replacement of the Common Properties, (8) insurance and fidelity bonds, (9) rights to use of the Common Properties and the Dwelling Units, (10) boundaries of any Dwelling Unit, Lot or of the Common Properties, (11) the leasing of Dwelling Units, (12) imposition of any right of first refusal or similar restriction on the right of a Dwelling Unit Owner to sell, transfer or otherwise convey such Dwelling Unit or (13) the rights of mortgagees or insurers or guarantors of first mortgages on Dwelling Units or Lots; without, in each and any of such circumstances the approval of mortgagees (whose mortgage interests have been known to the Board of Directors) holding mortgages on Dwelling Units or Lots which have at least sixty-seven percent (67%) of the votes of Dwelling Units and Lots which are subject to mortgages, provided, a Mortgagee who receives written notice of a proposed amendment and does not deliver or mail a negative response to the Secretary of the Board of Directors within thirty (30) days of said notice shall be deemed to have approved the proposed amendment.
- (e) 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 Hendricks County, Indiana, and such amendment shall not become effective until so recorded.

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, 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 Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, 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, (d) or to correct clerical or typographical errors.

ARTICLE XVI

Acceptance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an

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agreement that the provisions of this Declaration, the Articles, the By-Laws 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 bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

#### ARTICLE XVII

##### Negligence

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any members of his family or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or Dwelling Unit or its appurtenances or of the Common Properties.

**ARTICLE XVIII**

**Benefit and Enforcement**

The Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Hendricks County, Indiana, and expiring December 31, 2020, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any Owner shall have the right to enforce the covenants, conditions and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of

the same shall in no event be deemed a waiver of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

**ARTICLE XIX**

**Additions**

Declarant anticipates that it will develop additional Lots or construct additional Dwelling Units on additional sections by expansion within the properties all or part of which may be added in the manner set forth hereinafter. Added real estate may become subject to this Declaration in the following manner:

- (a) Additions by the Declarant: Declarant shall have the right to subject to the Declaration by expansion any additional real estate which lies within the area described in Exhibit "B" as it may be amended from time to time.
- (b) Other Additions: Additional real estate, other than that described above, may be annexed to the properties upon approval of two-thirds (2/3) of the votes of all of each class.

The additions authorized under subsection A and B shall be made by filing of record one or more supplementary declarations of covenants, conditions and restrictions with respect to the additional property.

**ARTICLE XXI**

**Miscellaneous**

**Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments

required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, 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 costs and reasonable attorneys' fees incurred in connection with such default or failure.

Section 2. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the Articles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

Section 3. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

Section 4. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and subparagraphs 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.

IN WITNESS WHEREOF, Image Real Estate Developers, Inc., Declarant, have executed this Declaration on the day and year first hereinabove set forth.

IMAGE REAL ESTATE DEVELOPERS, INC.

By: [Signature]  
Timmy J. Shrout, President

ATTEST:

[Signature]  
David Cooper, Secretary

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said County and State, personally appeared Image Real Estate Developers, Inc. by Timmy J. Shrout, President, and David Cooper, Secretary, who acknowledged execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Whittington Village Homes, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 25<sup>th</sup> day of April, 1995.



[Signature]  
Notary Public  
Shirley A. Hartloff  
Printed Name

My Commission Expires: 12-31-97  
County of Residence: Marion

This instrument was prepared by: William T. Rees, Attorney at Law, 8355 Rockville Road, Indianapolis, IN 46234.



**SCRIVENER'S AFFIDAVIT**

970002610  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 02-12-1997 At 11:06 am.  
SCAF 20.00  
Vol. 159 Pg. 137 - 141

William T. Rees, Affiant herein being first duly sworn upon his oath, deposes and states:

1. That Affiant prepared Declaration of Covenants, Conditions, and Restrictions of Whittington VillageHomes, dated April 25, 1995 and recorded May 10, 1995 in Miscellaneous Record 147, pages 77-118, in the office of the Recorder of Hendricks County, Indiana.
2. That the second paragraph of said document references Exhibit "A" which was to be attached to said document.
3. That said Exhibit "A" was inadvertently not recorded with said document.
4. That the purpose of this Affidavit is to attach the Exhibit "A", which describes the real estate to be affected, to said Declarations of Covenants, Conditions, and Restrictions of the Whittington VillageHomes.

FURTHER, Affiant sayeth naught,

  
\_\_\_\_\_  
William T. Rees


STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

970002596  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 02-12-1997 At 10:21 am.  
SCAF 20.00  
Vol. 159 Pg. 131 - 135

Before me, a Notary Public in and for said County and State, personally appeared William T. Rees, who acknowledged the execution of the foregoing Scrivener's Affidavit, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 3<sup>rd</sup> day of February, 1997.

My Commission Expires:

  
\_\_\_\_\_  
Signature of Notary Public

County of Residence:

\_\_\_\_\_  
Printed Name of Notary Public



DONNA L. WHEELER, Notary Public  
My Commission Expires: 11-18-97  
Residing in Marion County

This instrument prepared by Amy Comer Broderick, Attorney-at-Law, 71 West Marion Street, P.O. Box 207, Danville, IN 46122 (317) 745-4300.

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EXHIBIT "A"

Land Description

Whittington Village Homes, Sections 1 and 2  
Brownsburg, Indiana

A part of the Northeast Quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Northeast Quarter of said Section 2; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Section 2 a distance of 1,091.93 feet to the Northwest corner of that certain 48.57 acre tract of land described in deed recorded in Deed Record 257, Page 236 of the Deed Records of Hendricks County, Indiana; thence South 00 degrees 27 minutes 06 seconds West along the West line of said 48.57 acre tract a distance 1,548.78 feet to the Northeast corner of that certain 15.52 acre tract of land described in deed from MGL, Inc. to Image Real Estate Developers, Inc. as recorded in Instrument Number 94-18153 of the Deed Records of Hendricks County, Indiana; thence North 89 degrees 07 minutes 41 seconds West along the North line of said 15.52 acre tract a distance of 286.20 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 52 minutes 19 seconds East, 114.36 feet; thence North 89 degrees 22 minutes 29 seconds East, 8.48 feet; thence South 00 degrees 27 minutes 06 seconds West, 448.58 feet; thence South 17 degrees 36 minutes 06 seconds West, 50.00 feet to a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 36 minutes 06 seconds West; thence Westerly 37.21 feet along an arc of said curve having a radius of 6,358.99 feet and a central angle of 00 degrees 20 minutes 07 seconds to a point on a non-tangent line; thence South 17 degrees 15 minutes 59 seconds West, 120.00 feet to a point on the North right-of-way line of Interstate Highway 74, said point being a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 15 minutes 59 seconds West; thence Westerly 458.25 feet along an arc of said curve having a radius of 6,236.99 feet and a central angle of 04 degrees 11 minutes 24 seconds to a point of tangency; thence North 78 degrees 55 minutes 25 seconds West, 310.64 feet; thence North 00 degrees 28 minutes 31 seconds East, 337.25 feet; thence North 89 degrees 07 minutes 41 seconds East along a line parallel with the South line of said Northeast Quarter a distance of 394.80 feet; thence North 38 degrees 30 minutes 00 seconds East, 348.85 feet; thence North 58 degrees 08 minutes 42 seconds East, 24.75 feet to a point on a non-tangent curve concave Southwesterly, a radial from said point bears South 48 degrees 34 minutes 06 seconds West; thence Northwesterly 18.04 feet along an arc of said curve having a radius of 176.00 feet

**SCRIVENER'S AFFIDAVIT**

970002510  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 02-12-1997 At 11:06 a.m.  
SCAF 20.00  
Vol. 159 Pg. 137 - 141

William T. Rees, Affiant herein being first duly sworn upon his oath, depones and states:

1. That Affiant prepared Declaration of Covenants, Conditions, and Restrictions of Whittington Village Homes, dated April 25, 1995 and recorded May 10, 1995 in Miscellaneous Record 147, pages 77-110, in the office of the Recorder of Hendricks County, Indiana.

2. That the second paragraph of said document references Exhibit "A" which was to be attached to said document.

3. That said Exhibit "A" was inadvertently not recorded with said document.

4. That the purpose of this Affidavit is to attach the Exhibit "A", which describes the real estate to be affected, to said Declarations of Covenants, Conditions, and Restrictions of the Whittington Village Homes.

FURTHER, Affiant sayeth naught,

  
\_\_\_\_\_  
William T. Rees

STATE OF INDIANA )  
COUNTY OF HENDRICKS )

SS: )

970002596  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 02-12-1997 At 10:21 a.m.  
SCAF 20.00  
Vol. 159 Pg. 131 - 135

Before me, a Notary Public in and for said County and State, personally appeared William T. Rees, who acknowledged the execution of the foregoing Scrivener's Affidavit, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 3<sup>rd</sup> day of February, 1997.

My Commission Expires: \_\_\_\_\_

  
\_\_\_\_\_  
Signature of Notary Public

County of Residence: \_\_\_\_\_

Printed Name of Notary Public \_\_\_\_\_



DONNA L. WHEELER, Notary Public  
My Commission Expires: 11-18-97  
Residing in Marion County

This instrument prepared by Amy Comer Broderick, Attorney-at-Law, 71 West Marion Street, P.O. Box 207, Danville, IN 46122 (317) 745-4100.

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and a central angle of 05 degrees 54 minutes 27 seconds to a point of tangency; thence North 47 degrees 20 minutes 21 seconds West, 225.02 feet to a point on a tangent curve concave Northeastly, a radial from said point bears North 42 degrees 39 minutes 39 seconds East; thence Northwestly 278.70 feet along an arc of said curve having a radius of 525.03 feet and a central angle of 30 degrees 24 minutes 50 seconds to a point on a non-tangent line, said point being the Southeast corner of Lot 8, Whittington Subdivision, Section One, as described by plat recorded in Plat Cabinet 1, Slide 52, Page 2 and Slide 53, Page 1 in the Office of the Recorder of Hendricks County, Indiana, said point also being in the Southwest right-of-way line of Whittington Drive, as established by said plat; thence North 73 degrees 04 minutes 29 seconds East, 50.00 feet to a point on the Northeast right-of-way line of said Whittington Drive, said point also being a point on a non-tangent curve concave Northeastly, a radial from said point bears North 73 degrees 04 minutes 29 seconds East; thence Southeastly 252.16 feet along an arc of said curve having a radius of 475.03 feet and a central angle of 30 degrees 24 minutes 50 seconds to a point of tangency; thence South 47 degrees 20 minutes 21 seconds East, 225.02 feet to a point on a tangent curve concave Southwestly, a radial from said point bears South 42 degrees 39 minutes 39 seconds West; thence Southeastly 22.59 feet along an arc of said curve having a radius of 225.00 feet and a central angle of 05 degrees 45 minutes 08 seconds to a point on a non-tangent line; thence North 42 degrees 39 minutes 39 seconds East, 26.13 feet; thence South 47 degrees 20 minutes 21 seconds East, 15.08 feet to a point on a tangent curve concave Southwestly, a radial from said point bears South 42 degrees 39 minutes 39 seconds West; thence Southeastly 195.22 feet along an arc of said curve having a radius of 450.00 feet and a central angle of 24 degrees 51 minutes 20 seconds to a point on a non-tangent line; thence North 89 degrees 07 minutes 41 seconds East, 19.43 feet to the POINT OF BEGINNING, containing 10.901 acres of land, more or less.

ALSO

A part of the Northeast Quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Quarter Section a distance of 1,428.16 feet; thence South 00 degrees 09 minutes 40 seconds East a distance of 2,151.36 feet to the Northeast corner of said Lot 8, Whittington Village Homes, Section One, a subdivision of the Town of Brownsburg, Hendricks County, State of Indiana, as per record plat thereof recorded in Plat Cabinet 3, Slide 44 under Instrument No. 7313 in the Records of the Office of the Recorder of Hendricks County, Indiana, and the POINT OF BEGINNING of this description, said point being on a non-tangent curve concave Southerly, a radial from said point bears

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South 17 degrees 15 minutes 59 seconds West; thence Easterly 30.40 feet along an arc of said curve having a radius of 6,358.99 feet and a central angle of 00 degrees 16 minutes 28 seconds to a point on a non-tangent line; thence South 17 degrees 32 minutes 25 seconds West, 120.00 feet to a point on the North right-of-way line of Interstate Highway 74, said point being a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 32 minutes 25 seconds West; thence Westerly 29.83 feet along an arc of said curve having a radius of 6,238.99 feet and a central angle of 00 degrees 16 minutes 26 seconds to a point on a non-tangent line, said point being the Southeast corner of said Lot 8; thence North 17 degrees 15 minutes 59 seconds East along the East line of said Lot 8 a distance of 120.00 feet to the POINT OF BEGINNING, containing 0.083 acres of land, more or less.

ALSO,

A part of the Northeast Quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Quarter Section a distance of 1,091.93 feet to the Northwest corner of a 48.57 acre tract of land as per warranty deed thereof recorded in Deed Record 267, Page 238 in the records of the Recorder of Hendricks County, Indiana; thence South 00 degrees 27 minutes 06 seconds West along the West line of said 48.57 acre tract a distance 1,548.76 feet to the Northeast corner of a 15.52 acre tract of land per warranty deed thereof recorded under Instrument Number 94-18153 in the records of the Recorder of Hendricks County, Indiana, and for the POINT OF BEGINNING of this description; thence continuing South 00 degrees 27 minutes 06 seconds West along the East line of said 15.52 acre tract a distance of 402.07 feet; thence South 01 degree 41 minutes 04 seconds West a distance of 255.11 feet to a point on a non-tangent curve concave Southerly, a radial from said point bears South 20 degrees 08 minutes 28 seconds West; thence Easterly 16.25 feet along an arc of said curve having a radius of 6,408.99 feet and a central angle of 00 degrees 08 minutes 43 seconds to a point on a non-tangent line; thence South 20 degrees 17 minutes 12 seconds West a distance of 170.00 feet to a point on the North right-of-way line of Interstate Highway 74, said point being a point on a non-tangent curve concave Southerly, a radial from said point bears South 20 degrees 17 minutes 12 seconds West; thence Westerly 299.04 feet along said right-of-way line along an arc of said curve having a radius of 6,238.99 feet and a central angle of 02 degrees 44 minutes 47 seconds to a point on a non-tangent line, said point being the southerly corner of Lot 115, Replat of a Portion of Whitlington Village Homes, Section One as per plat thereof recorded under Instrument No. 9800004445 in Plat Cabinet 3, Slide 169, Page 1 in

the records of the Recorder of Hendricks County, Indiana; thence North 17 degrees 32 minutes 26 seconds East a distance of 120.00 feet to a point on the South right-of-way line of Muirfield Drive as delineated on the record plat of Whittington Village Homes, Section One, which is recorded under Instrument No. 9600007313 in Plat Cabinet 3, Slide 44, Page 1 in the records of the Recorder of Hendricks County, Indiana, said point also being a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 32 minutes 26 seconds West; (the next five (5) calls are along the east line of said Whittington Village Homes Section One): (1) thence Easterly 6.80 feet along an arc of said curve having a radius of 6,368.99 feet and a central angle of 00 degrees 03 minutes 41 seconds to a point on a non-tangent line; (2) thence North 17 degrees 36 minutes 08 seconds East a distance of 60.00 feet; (3) thence North 00 degrees 27 minutes 08 seconds East a distance of 440.68 feet; (4) thence South 89 degrees 22 minutes 29 seconds West a distance of 0.48 feet; (5) thence North 00 degrees 52 minutes 19 seconds West a distance of 114.38 feet to the Northeast corner of Lot 67, in said Whittington Village Homes, Section One, said point also being on the north line of said 16.62 acre tract; thence North 89 degrees 07 minutes 41 seconds East along the north line of said 16.62 acre tract a distance of 286.20 feet to the POINT OF BEGINNING, containing 6.0288 acres of land, more or less.

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**EXHIBIT "A"**

**Land Description**

**Whittington Village Homes, Sections 1 and 2  
Brownsburg, Indiana**

A part of the Northeast Quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Northeast Quarter of said Section 2; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Section 2 a distance of 1,091.93 feet to the Northwest corner of that certain 48.57 acre tract of land described in deed recorded in Deed Record 257, Page 236 of the Deed Records of Hendricks County, Indiana; thence South 00 degrees 27 minutes 08 seconds West along the West line of said 48.57 acre tract a distance 1,548.78 feet to the Northeast corner of that certain 15.52 acre tract of land described in deed from MGL, Inc. to Image Real Estate Developers, Inc. as recorded in Instrument Number 94-18153 of the Deed Records of Hendricks County, Indiana; thence North 89 degrees 07 minutes 41 seconds West along the North line of said 15.52 acre tract a distance of 288.20 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 52 minutes 19 seconds East, 114.38 feet; thence North 89 degrees 22 minutes 29 seconds East, 8.48 feet; thence South 00 degrees 27 minutes 08 seconds West, 446.58 feet; thence South 17 degrees 36 minutes 08 seconds West, 50.00 feet to a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 36 minutes 08 seconds West; thence Westerly 37.21 feet along an arc of said curve having a radius of 8,358.99 feet and a central angle of 00 degrees 20 minutes 07 seconds to a point on a non-tangent line; thence South 17 degrees 15 minutes 59 seconds West, 120.00 feet to a point on the North right-of-way line of Interstate Highway 74, said point being a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 15 minutes 59 seconds West; thence Westerly 456.25 feet along an arc of said curve having a radius of 8,238.98 feet and a central angle of 04 degrees 11 minutes 24 seconds to a point of tangency; thence North 78 degrees 55 minutes 25 seconds West, 310.64 feet; thence North 00 degrees 28 minutes 31 seconds East, 337.25 feet; thence North 89 degrees 07 minutes 41 seconds East along a line parallel with the South line of said Northeast Quarter a distance of 394.80 feet; thence North 36 degrees 30 minutes 00 seconds East, 348.85 feet; thence North 56 degrees 08 minutes 42 seconds East, 24.75 feet to a point on a non-tangent curve concave Southwesterly, a radial from said point bears South 48 degrees 34 minutes 08 seconds West; thence Northwesterly 18.04 feet along an arc of said curve having a radius of 175.00 feet

and a central angle of 05 degrees 54 minutes 27 seconds to a point of tangency; thence North 47 degrees 20 minutes 21 seconds West, 225.02 feet to a point on a tangent curve concave Northeastly, a radial from said point bears North 42 degrees 39 minutes 39 seconds East; thence Northwesterly 278.70 feet along an arc of said curve having a radius of 525.03 feet and a central angle of 30 degrees 24 minutes 50 seconds to a point on a non-tangent line, said point being the Southeast corner of Lot 6, Whittington Subdivision, Section One, as described by plat recorded in Plat Cabinet 1, Slide 52, Page 2 and Slide 53, Page 1 in the Office of the Recorder of Hendricks County, Indiana, said point also being in the Southwest right-of-way line of Whittington Drive, as established by said plat; thence North 73 degrees 04 minutes 29 seconds East, 50.00 feet to a point on the Northeast right-of-way line of said Whittington Drive, said point also being a point on a non-tangent curve concave Northeastly, a radial from said point bears North 73 degrees 04 minutes 29 seconds East; thence Southwesterly 212.16 feet along an arc of said curve having a radius of 475.03 feet and a central angle of 30 degrees 24 minutes 50 seconds to a point of tangency; thence South 47 degrees 20 minutes 21 seconds East, 225.02 feet to a point on a tangent curve concave Southwestly, a radial from said point bears South 42 degrees 39 minutes 39 seconds West; thence Southeastly 22.59 feet along an arc of said curve having a radius of 225.00 feet and a central angle of 05 degrees 45 minutes 08 seconds to a point on a non-tangent line; thence North 42 degrees 39 minutes 39 seconds East, 26.13 feet; thence South 47 degrees 20 minutes 21 seconds East, 15.08 feet to a point on a tangent curve concave Southwestly, a radial from said point bears South 42 degrees 39 minutes 39 seconds West; thence Southeastly 195.22 feet along an arc of said curve having a radius of 450.00 feet and a central angle of 24 degrees 51 minutes 20 seconds to a point on a non-tangent line; thence North 89 degrees 07 minutes 41 seconds East, 19.43 feet to the POINT OF BEGINNING, containing 10.901 acres of land, more or less.

**ALSO**

A part of the Northeast Quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Quarter Section a distance of 1,428.16 feet; thence South 00 degrees 09 minutes 40 seconds East a distance of 2,151.36 feet to the Northeast corner of said Lot 8, Whittington Villagotomas, Section One, a subdivision of the Town of Brownburg, Hendricks County, State of Indiana, as per record plat thereof recorded in Plat Cabinet 3, Slide 44 under Instrument No. 7313 in the Records of the Office of the Recorder of Hendricks County, Indiana, and the POINT OF BEGINNING of this description, said point being on a non-tangent curve concave Southerly, a radial from said point bears

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South 17 degrees 18 minutes 59 seconds West; thence Easterly 30.40 feet along an arc of said curve having a radius of 6,368.99 feet and a central angle of 00 degrees 18 minutes 26 seconds to a point on a non-tangent line; thence South 17 degrees 32 minutes 25 seconds West, 120.00 feet to a point on the North right-of-way line of Interstate Highway 74, said point being a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 32 minutes 25 seconds West; thence Westerly 29.83 feet along an arc of said curve having a radius of 6,238.99 feet and a central angle of 00 degrees 16 minutes 26 seconds to a point on a non-tangent line, said point being the Southeast corner of said Lot 8; thence North 17 degrees 15 minutes 59 seconds East along the East line of said Lot 8 a distance of 120.00 feet to the POINT OF BEGINNING, containing 0.083 acres of land, more or less.

ALSO,

A part of the Northeast Quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian, Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Quarter Section; thence North 89 degrees 50 minutes 20 seconds West along the North line of said Quarter Section a distance of 1,091.93 feet to the Northwest corner of a 48.57 acre tract of land as per warranty deed thereof recorded in Deed Record 257, Page 236 in the records of the Recorder of Hendricks County, Indiana; thence South 00 degrees 27 minutes 08 seconds West along the West line of said 48.57 acre tract a distance 1,548.76 feet to the Northeast corner of a 15.52 acre tract of land per warranty deed thereof recorded under Instrument Number 94-18163 in the records of the Recorder of Hendricks County, Indiana, and for the POINT OF BEGINNING of this description; thence continuing South 00 degrees 27 minutes 08 seconds West along the East line of said 15.52 acre tract a distance of 402.07 feet; thence South 01 degrees 41 minutes 04 seconds West a distance of 255.11 feet to a point on a non-tangent curve concave Southerly, a radial from said point bears South 20 degrees 08 minutes 29 seconds West; thence Easterly 18.25 feet along an arc of said curve having a radius of 6,408.99 feet and a central angle of 00 degrees 08 minutes 43 seconds to a point on a non-tangent line; thence South 20 degrees 17 minutes 12 seconds West a distance of 170.00 feet to a point on the North right-of-way line of Interstate Highway 74, said point being a point on a non-tangent curve concave Southerly, a radial from said point bears South 20 degrees 17 minutes 12 seconds West; thence Westerly 299.04 feet along said right-of-way line along an arc of said curve having a radius of 6,238.99 feet and a central angle of 02 degrees 44 minutes 47 seconds to a point on a non-tangent line, said point being the southerly corner of Lot 115, Replat of a Portion of Whitlington Village/Homas, Section One as per plat thereof recorded under Instrument No. 9800004445 in Plat Cabinet 3, Slide 169, Page 1 in

the records of the Recorder of Hendricks County, Indiana; thence North 17 degrees 32 minutes 25 seconds East a distance of 120.00 feet to a point on the South right-of-way line of Multifield Drive as delineated on the record plat of Whittington Village Homes, Section One, which is recorded under Instrument No. 950007313 in Plat Cabinet 3, Slide 44, Page 1 in the records of the Recorder of Hendricks County, Indiana, said point also being a point on a non-tangent curve concave Southerly, a radial from said point bears South 17 degrees 32 minutes 25 seconds West; (the next five (5) calls are along the east line of said Whittington Village Homes Section One); (1) thence Easterly 6.80 feet along an arc of said curve having a radius of 6,358.99 feet and a central angle of 00 degrees 03 minutes 41 seconds to a point on a non-tangent line; (2) thence North 17 degrees 36 minutes 08 seconds East a distance of 50.00 feet; (3) thence North 00 degrees 27 minutes 08 seconds East a distance of 446.58 feet; (4) thence South 89 degrees 22 minutes 29 seconds West a distance of 8.48 feet; (5) thence North 00 degrees 52 minutes 19 seconds West a distance of 114.30 feet to the Northeast corner of Lot 67, in said Whittington Village Homes, Section One, said point also being on the north line of said 15.52 acre tract; thence North 89 degrees 07 minutes 41 seconds East along the north line of said 15.52 acre tract a distance of 286.20 feet to the POINT OF BEGINNING, containing 5.0288 acres of land, more or less.

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