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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

BARRINGTON RIDGE

RECEIVED  
FOR RECORD  
APR 5 3 39 PM '89  
SARON K. CHERRY  
RECORDER  
HAMILTON COUNTY  
INDIANA

THIS DECLARATION, made on this 28th day of August, 1989, by P. K. T. Development Company, an Indiana general partnership, (hereinafter referred to as "Declarant") and joined in by Paul E. Estridge Corp. (hereinafter referred to as "Developer");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as "Property");

WHEREAS, Declarant desires to subdivide and develop the Property as generally shown on the Secondary Plat for Barrington Ridge (hereinafter sometimes referred to as "Barrington Ridge" and sometimes referred to as the "Development"), hereafter intended to be recorded by Declarant, by designating certain portions of the Property as Utility Easement (UE) (as hereinafter defined); by designating certain portions of the Property as Drainage Easement (DE) (as hereinafter defined); by designating certain portions of the Property as Private Drive (PD) (as hereinafter defined); by designating certain portions of the Property as Sewer Drainage and Utility Easement (SD&UE) (as hereinafter defined); by designating certain portions of the Property as Landscape Easement (LE) (as hereinafter defined); by designating certain other portions of the Property as Lots (as hereinafter defined); and by dedicating that certain portion of the Property as a public street shown on the Plat as River Glen Drive.

This instrument Recorded 915 1989  
Sharon K. Cherry, Recorder, Hamilton County, IN

WHEREAS, Declarant intends to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions"), under a

general plan or scheme of improvement for the benefit and  
compliment of the lots and lands in the Development and future  
home owners thereof;

WHEREAS, Declarant has agreed to sell and convey residential  
lots situated within the platted area of the Development to Paul  
E. Estridge Corp., an Indiana Corporation (hereinafter referred  
to as "Developer");

NOW, THEREFORE, Declarant hereby declares that all of the  
lots and lands located within the Development are held and shall  
be held, conveyed, hypothecated or encumbered, leased, rented,  
used, occupied and improved, subject to the following  
Restrictions, all of which are declared and agreed to be in  
furtherance of a plan for the improvement and sale of said lots  
and lands in the Development and are established and agreed upon  
for the purpose of enhancing and protecting the value,  
desirability and attractiveness of the Development as a whole and  
of each of said lots situated therein. All of the Restrictions  
shall run with the land and shall be binding upon Declarant and  
upon the parties having or acquiring any right, title or  
interest, legal or equitable, in and to the real property or any  
part or parts thereof subject to such Restrictions, and shall  
inure to the benefit of Declarant's successors in title to any  
real estate in the Development.

#### ARTICLE I

##### NAME

The Property shall be known and designated as Barrington  
Ridge, a subdivision located in Hamilton County, Indiana, the  
legal description for which is more particularly described on  
Exhibit A attached hereto and by reference made a part hereof.

#### ARTICLE II

##### DEFINITIONS AND APPROVALS

Section 2.1. "Association" shall mean Barrington Ridge  
Homeowners Association, Inc., an Indiana not-for-profit  
corporation and its membership shall consist of the Owners of all

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lots in the Development, all of whom (except for the owners of lots numbered 1 and 2 as shown on the Plat) shall be required to pay mandatory assessments for liability insurance, maintenance, repair and snow removal of the Private Drive and other expenses directly relating to the Private Drive, and all of whom (including the owners of said lots numbered 1 and 2 as shown on the Plat) shall be required to pay mandatory assessments for such other expenses of the Association as deemed appropriate by the Association.

Section 2.2. "Articles" means the Articles of Incorporation of the Association filed or to be filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.3. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of any obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the Declarant shall own any lot.

Section 2.4. "Property" means the real estate described in Exhibit "A".

Section 2.5. "Plat" means the subdivision plat of the Property identified as Secondary Plat of Barrington Ridge hereafter intended to be recorded in the Office of the Recorder of Hamilton County Indiana, as the same may be hereafter amended or supplemented.

Section 2.6. "Lot" means any parcel of land shown upon the Secondary Plat of Barrington Ridge and identified by a number 1 through 13 inclusive.

Section 2.7. "Declarant" shall mean P.K.T. Development Company, an Indiana general partnership, its successors and assigns.

Section 2.8. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 2.9. "Developer" shall mean Paul R. Estridge Corp., an Indiana Corporation.

Section 2.10. "Private Drive" means the part of the Property (including improvements thereto) owned by the Association from time to time for the common use, benefit and enjoyment of its members and designated as Private Drive on the Secondary Plat of Barrington Ridge. The Private Drive is to be owned by the Association at the time of the conveyance of the first lot to an Owner other than Declarant.

Section 2.11. "Development Period" means the period of time commencing with the date of execution of this Declaration and ending August 1, 1993.

Section 2.12. "Committee" shall mean the "Barrington Ridge Development Control Committee"; being the committee or entity established pursuant to Section 6.7 of this Declaration to perform the functions herein provided to be performed by it. During the Development Period, and so long as Developer is not in default under the Contract, the Committee shall be composed of three (3) members appointed by Developer who shall be subject to removal by Developer at any time with or without cause, and any vacancies from time to time existing shall be filled by appointment of Developer. If Developer defaults under the Contract, the Committee shall thereafter be composed of three (3) members appointed by Declarant who shall be subject to removal by Declarant at any time with or without cause, and any vacancies from time to time existing shall be filled by appointment of Declarant. After the end of the Development Period, the Board of the Association shall act as the Committee, or shall appoint from the membership of the Association not more than three (3) persons to act as the Committee. The initial members of the Committee appointed by Developer are Paul R. Estridge, Sr., Gary L. McNutt and Michael Rovey.

Section 2.13. Approvals, determinations, permissions or consents required herein of the Declarant shall be deemed given only if they are given in writing and signed by the Declarant.

Section 2.14. Approvals, determinations, permissions or consents required herein of the Developer shall be deemed given only if they are given in writing and signed by the Developer.

Section 2.15. "Contract" shall mean that certain agreement by and between Declarant and Paul E. Estridge Corp., dated the 14th day of December, 1988, providing for the sale of those lots in Barrington Ridge described therein by Declarant to Paul E. Estridge Corp.

Section 2.16. "By-Laws" shall mean the Code of By-Laws of the Association adopted or to be adopted by the Board, as the same may be amended from time to time.

Section 2.17. Approvals, determinations, permissions or consents required herein of the Committee shall be deemed given only if they are given in writing and signed by the Committee.

#### ARTICLE III

##### PROPERTY RIGHTS

Section 3.1. Owners' Easement of Ingress and Egress over Private Drive. Every Owner (other than the owners of Lots 1 and 2 shown on the Plat) shall have a non-exclusive right and easement of ingress and egress, in common with all other such Owners, on and over the portion of the Private Drive, as designated on the Plat which is improved as the private street known as "Barrington Place", which right and easement shall be appurtenant to and shall pass with title to every benefited lot subject to the following provisions:

- (a) all other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
- (b) the rights of Declarant as provided in this Declaration;
- (c) the easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Private Drive for the benefit of its members;
- (d) the right of the Association to dedicate or transfer all or any part of the Private Drive to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association; and,

(e) the rights of Developer as provided in this Declaration.

The provisions of this Declaration and this Section 3.1 notwithstanding, the right of ingress and egress on and over the Private Drive shall extend to the Association, the tenants, guests, and invitees of such Owners, and public and quasi-public vehicles, including but not limited to police, fire, emergency, trash collection, post office and privately owned delivery vehicles.

Section 3.2. Certain Obligations and Access Rights of the Association. The Association shall be responsible for the maintenance of the private street (including curbs) located in the Private Drive and shall keep same in good condition, order and repair. The Owner of each lot abutting the Private Drive shall be responsible for the maintenance of those portions of the Private Drive which lie between the front lot line of his lot and the curb of the private street in front of his lot, and shall keep such areas in good order and repair and in an attractive condition.

Section 3.3. Drainage, Utility, Sewer and Other Development Easements.

A. Declarant reserves unto itself and Developer during the Development Period, and thereafter unto the Association, an undefined easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Private Drive, so as to permit Declarant, Developer or the Association to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services, antennae and other equipment and facilities to serve the lots and the single family residential dwelling to be constructed on each lot. No improvements or permanent structure (except walkways, pathways, fences, signs, lighting fixtures, landscaping and pavement on streets and driveways) shall be placed within any Drainage, Utility, and Sewer Easement, and any

fences so installed are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair, or remove any necessary facilities and the rights of Declarant, Developer, and the Association to provide for and maintain appropriate drainage.

B. The title of the Association as to the Private Drive and of any Owner of any Lot shall be subject to the rights and easements reserved herein; provided, however, that the rights reserved herein shall not be exercised after the conveyance of any Lot in a manner that unreasonably and adversely affects any single family residential dwelling or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or which unreasonably restricts the rights of ingress and egress to such Lot. The rights and easements reserved by Declarant for itself and Developer herein shall run with the land.

Section 3.4. Private Drive. The portion of the development designated on the Plat as Private Drive is created for the purpose of providing therein an improved private street to provide ingress and egress from the Lots fronting thereon to a public street. Each Lot Owner fronting thereon shall have an easement of ingress and egress on and over the private street located in the Private Drive for the above described purpose and as set forth in Section 3.1 of this Declaration.

Section 3.5. Other Designations. The portions of the plat having designations as Utility Easement (UE), Drainage Easement (DE), and Sewer, Drainage and Utility Easement (SD & UE) are reserved for those purposes.

#### ARTICLE IV

##### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 4.1. Membership. Initially, to satisfy the requirements of the Indiana Not-for-Profit Corporation Act, the three (3) persons who serve as incorporators of the Association shall be the members (the "Initial Members"). The Initial Members shall remain members of the Association until three (3) persons have become Class A or Class B members, at which time the

Initial Members shall cease to be members unless they also qualify as Class A or Class B members. Every Owner of a Lot shall be a member of the Association. Apart from the Initial Members, membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2. Classes of Membership and Voting Rights. This Association shall have three (3) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Developer and the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members, the vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be Paul E. Estridge Corp., the Developer. The Developer shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership at the end of the Development Period.

Class C. The Class C member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. The Class C membership shall cease and be converted to Class A membership at the end of the Development Period.

Section 4.3. Board of Directors. After the end of the Development Period, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Until the end of the Development Period, and so long as Developer is not in default under the Contract, the Board shall consist of three (3) persons designated by Developer. In the event of default by Developer under the Contract, any persons so designated by Developer shall be deemed to have resigned as members of the Board and shall be replaced for the remainder of the Development Period by persons designated by Declarant.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is and shall be deemed to covenant and agree to pay the



Association: (1) Regular Assessments (for maintenance, repairs, insurance and ordinary operating expenses); and, (2) Special Assessments for (a) capital improvements and operating deficits, as provided for herein; and (b) for special maintenance or repairs as provided for herein. Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the owner at the time the assessment accrued. Past due assessments shall run with the land and pass with title. Notwithstanding anything to the contrary contained herein, all costs and expenses for improvement, maintenance, repair and snow removal of the Private Drive, for insurance for the Private Drive, for the creation of a reserve fund for the Private Drive, or otherwise in any way relating to the Private Drive, shall be assessed only against the owners of Lots 3 through 13, inclusive, in the Development, and no part thereof shall be assessed against the owners of Lots 1 and 2 in the Development as Regular Assessments, Special Assessments or otherwise.

Section 5.2. Purpose of Regular Annual Assessments. The Regular Assessments shall be levied by the Association annually and shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the health, safety and welfare of the residents in the Property, for the improvement, maintenance, repair and snow removal of the Private Drive, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the Regular Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Private Drive and other capital improvements which the Association is required to maintain.

Section 5.3. Maximum Regular Assessments. (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Developer, the maximum Regular Assessment on any Lot conveyed by Declarant shall be Three Hundred Dollars (\$300.00).

(b) From and after January 1 of such year, the maximum Regular Assessment may be increased each calendar year on a cumulative basis by 10% above the maximum Regular Assessment for the previous year without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Assessment may not be increased each calendar year on a cumulative basis by more than 10% above the maximum Regular Assessment permitted for the previous year, except with the approval of two-thirds (2/3) of the total votes of members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Assessment, without any vote of the membership, at any amount not in excess of the maximum permitted hereby.

Section 5.4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement or insurance which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of the total votes of members who cast votes in person or by proxy at a meeting duly called for this purpose. The foregoing notwithstanding nor anything else contained herein, neither the Declarant nor the Developer, with respect to any Lots owned by either of them, shall be required to pay any Special Assessments levied for construction, reconstruction, repair or replacement of any capital improvements or for insurance which the Association is required to maintain nor any Regular Assessments.

Section 5.5. Notice and Quorum for Any Action Authorized Under Section 5.3 and 5.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 or 5.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6. Uniform Rate Assessment. Except as otherwise provided herein, Regular Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

Section 5.7. Date of Commencement of Assessments, Due Dates. The Regular Assessment provided for herein shall commence as to each Lot on the date such Lot is first conveyed by Declarant to an Owner other than Developer, or on the date such Lot is first conveyed by Developer to an Owner other than Declarant. The first Owner of each Lot (other than the Declarant and the Developer) shall pay to the Association on the day of conveyance to him in advance his share of the Regular Assessment for the balance of the calendar year in which the conveyance takes place.

The Regular Assessment against each Lot shall be paid in advance on the first day of January of each calendar year. Payment of the Regular Assessment shall be made to the Board of Directors or the managing agent of the Association, as directed by the Board of Directors.

The Board of Directors shall fix any increase in the amount of any assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment and such other assessment notices as the Board

of Directors shall deem appropriate, shall be sent to every Owner subject thereto not less than 10 days prior to the due date thereof. The due dates for all assessments, and the assessment and collection period for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.8: Effect of Nonpayment of Assessments, Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to Section 5.7 hereof, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as hereinafter provided and as provided in Section 5.1) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessments relate, binding upon the then Owner, his or her devisees, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve per cent (12%) per annum and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event, there shall be added to the amount of such assessment the costs of preparing, filing and prosecuting the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

Section 5.9. Subordination of the Lien to Mortgages, Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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 all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer, except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 5.7, as to whether or not such assessments have been paid.

## ARTICLE VI

### USE RESTRICTIONS AND ARCHITECTURAL CONTROL

Section 6.1. Lot Use and Conveyance. All Lots shall be used exclusively for single-family residential purposes, except that Declarant and Developer, during the Development Period, reserve the rights provided herein respecting the Property generally. No Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions, and restrictions contained herein.

Section 6.2. Accessory Outbuilding Prohibited. No accessory outbuildings shall be erected on any Lot or Lots without the prior written approval of the Committee.

Section 6.3. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been

substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 6.4. Other Restrictions. The Property 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.

Section 6.5. Restrictions Concerning Size, Placement and Maintenance of Dwelling Houses and Other Structures.

A. Minimum Living Space Areas. All two-story dwellings on Lots 1 through 13 inclusive shall have a minimum of 1900 square feet of finished main floor living area and a minimum of 3400 square feet of finished living area in the aggregate. All one story dwellings on Lots 1 through 13 inclusive shall have a minimum of 3000 square feet of finished living area. For the purposes of calculating the aggregate square feet of living area, the square footage of a lower level may not be added unless the lower level is finished, has windows and has a door leading directly to the outside.

B. Fences, Lights, Fixtures, Mailboxes, Lawns, and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence or light fixtures not located within a dwelling must be approved by the Committee in writing, as to size, location, height and composition before it may be installed. A standard mailbox and post and yard light post and structure shall be selected for each Lot by the Committee.

C. Exterior Construction. All utility facilities in the Development will be underground. Each driveway in the Development will be of concrete, asphalt or paving brick material. No additional parking will be permitted on a Lot other than in the driveway and any paved area approved by the Committee. Each dwelling will have a continuous concrete sidewalk from the

driveway to the front porch. The exterior of fireplace chimneys shall be brick or stone. All garage doors in the Development will be of a Masonite or wood material. All windows must be wood or wood windows with clad exterior. No outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted above or below ground in the Development. All gutters and downspouts in the Development, other than copper, will be painted.

All roofing in the Development will be no less than a heavy textured fiberglass or asphalt shingle roof to be approved by the Committee. All roof pitches will be 6/12 or greater. Plumbing vent stacks, metal furnace flues and roof attic vents shall be painted to blend with roof color and shall be located on the rear of the home. No metal, fiberglass or similar type material awnings or patio covers will be permitted in the Development. No above-ground swimming pools will be permitted in the Development.

D. Heating Plants. Every dwelling in the Development must contain a heating plant installed in compliance with the required codes. No heat pumps, A/C units, gas meters or any other structures shall be located forward of the front plane of the dwelling and if in view from a street shall be screened by fence or landscaping.

E. Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

F. Prohibition of Used Structures and Modular Homes. All structures constructed or placed on any lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot, nor shall modular constructed structures be placed on any lot.

G. Maintenance of Lots and Improvements. The owner of each lot shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly, and, specifically, such owner shall:

(i) Remove all debris or rubbish,

(ii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development,

(iii) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly,

(iv) Maintain the portion of the Private Drive between the front lot line and the curb of the private street located in the Private Drive.

**H. Right to Perform Certain Maintenance.** In the event that the Owner of any lot in the Development shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Declarant or Developer shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, clean or perform such other acts as may be reasonably necessary to make such lot and improvements thereon, if any, conform to the requirements of these Restrictions. The cost therefor to Declarant or Developer shall be collected in a reasonable manner from Owner. Neither Declarant, Developer nor any of their agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Following the end of the Development Period, the Association shall succeed to and be vested with the rights of the Declarant and Developer provided for in subsection (H).

**Section 6.6. Restrictions as to Owners.** The Owners, further, shall be subject to the following use restrictions:

(i) **Obstructions.** There shall be no obstruction of the Private Drive nor shall anything be kept or stored on any part of the Private Drive without the prior written consent of the Association except during the construction period or except as specifically provided herein.

(ii) **Fences, Walls and Partios.** No Owner shall relocate, heighten, lower or otherwise move or change any fence or wall upon the Property except with approval of the Committee.

(iii) **No Unsightly Uses.** No clothes, sheets, blankets or laundry of any kind or other articles shall be hung out on a lot so as to be visible from outside the lot.

(iv) **Animals.** No animals, rabbits, livestock, fowl, farm animals, horses, or poultry of any kind shall be raised, bred or kept in or on any lot or any part hereof, except that household pets may be kept on lots, subject to rules and regulations adopted by the Board provided that



they are not kept, bred, or maintained for any commercial purposes, provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these Restrictions upon three days' written notice from the Board, and provided, further, that upon written request of 51% of the voting power of the Association, the Board of Directors shall have the authority to and shall order the removal of any pet.

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

(vi) Storage. Outside storage of any items, except outdoor cooking equipment, including but without limiting the generality of the foregoing, sporting equipment, toys, yard and garden tools and equipment shall not be allowed. Temporary outside storage of trash and garbage shall be permitted if it is totally screened from view. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort, or serenity of residents is prohibited. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles shall at any time be stored or parked on any Lot outside of a garage.

(vii) Antennae. Except with the prior written approval and authorization of the Committee, no exterior television or radio antennae of any sort, including dishes shall be placed, allowed or maintained on the Property or upon any portion of the improvements or structures to be located upon the Property.

(viii) Window Coverings. Owners shall install and maintain window coverings such as curtains or blinds on all windows and such window coverings shall not be unsightly from the exterior, including garage windows if visible from the street.

(ix) Mailboxes. All mailboxes shall be of the same style and color as selected by the Committee.

(x) Yard Lights. All yard lights shall be of the same style and kind as selected by the Committee and must be placed within 10 feet of the front property line and contain a dusk to dawn switch.

(xi) Garage Doors. All garages opening to a street shall have automatic door controls. Lot Owners shall keep garage doors closed at all times except during times of actual use of the garage.

(xii) Water Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made to permit such drainage to continue without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on the Plat.

(xiii) Fences. No fence shall be erected in this development between the building lines and the property

lines of the streets as shown on the Plat, except with approval of the Committee, which fences shall not exceed 42 inches in height and shall be of a decorative nature. No fences shall be erected within the areas designated on the Plat for drainage purposes.

(xiv) Additional Buildings. No buildings shall be erected on lots closer than 25 feet to the side of such lots. Where buildings are erected on more than one single lot this restriction shall apply to the side lines of the extreme boundaries of the multiple lots. The foregoing notwithstanding, the Committee shall approve the location of each building on a lot.

(xv) Sump Pump Outlets. Outlets for sump pump water will be provided for each lot in this subdivision by the Developer, Declarant or home builder at the time of lot development. If during excavation of the foundation for crawl space or basement, ground water is encountered, or if the house location is in an area of high water table (as per the Hamilton County Surveyor or the Town of Fishers, Indiana), an outlet will be provided directly to a storm sewer or approved open ditch with plastic pipe. The route of outlet will be via platted easements and approved by proper agencies. Where a storm sewer exists on or directly adjacent to a lot, all sump pumps shall tie directly to such storm sewer via underground pipe. Lots not located in an area of high water table may outlet sump pump water in the rear yard, no closer than 25 feet from the established lot lines or platted easements.

(xvi) Construction of Sump Pump Outlets. Construction of any sump pump outlet will commence only when appropriate construction plans have been submitted and approved by the proper agencies and applicable permits issued from the local building authority. Where construction will be in established drainage and/or utility easements, approval must be obtained from Town of Fishers or the Hamilton County Surveyor. The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the Owner.

(xvii) Geo-Thermal Heat Pumps. Geothermal heat pumps shall be of the closed loop type unless an open loop system and design, including water discharge is approved by the Committee.

Section 6.7. Architectural Control. There shall be, and hereby is, created and established the "Barrington Ridge Development Control Committee" (the "Committee") to perform the functions provided to be performed by it hereunder and under the Plat. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee. Any change in the

appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. In the event that written approval is not received as required hereunder within twenty one (21) days from the date requested, the failure to issue such written approval shall be construed as the disapproval of the request made. For the purpose of this Section, structures shall include swimming pools, tennis courts and any other accessory buildings, improvements or appurtenances.

Section 6.8. Signs. No sign of any kind (other than designations in such styles and materials as the Committee shall by rule or regulation approve, of street addresses) shall be displayed to the public view on any lot, except that a "For Sale" sign may be displayed provided that it is in such form as the Committee may require, and except that Declarant and Developer shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale periods.

Section 6.9. Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of lots. A majority of the total votes of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors after the end of the Development Period. Copies of rules and regulations shall be furnished by the Board to the Owners prior to the time when the same shall be effective.

Section 6.10. Development and Sale Period. Nothing contained in this Article VI shall be construed or interpreted to restrict the activities of Declarant and Developer in connection with the development of the Property and sale of lots. During the Development Period, Declarant and Developer shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or Developer, as in the sole opinion of Declarant and Developer may be reasonably required, or convenient or incidental to, the development of the Property and

sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.3d. Buildings. No buildings shall be erected on Lots 1 through 13 inclusive closer than 25 feet to the side of such lots at the building line, except that with the prior approval of the Committee this restriction may be reduced to 15 feet as to Lots 1, 2, 3 and 13. Where buildings are erected on more than one single lot, this restriction shall apply to the side lines of the extreme boundaries of the multiple lot. With the foregoing notwithstanding, the Committee shall approve the location of each building on a lot.

#### ARTICLE VII

##### MAINTENANCE OF BUILDINGS

Section 7.1. Maintenance by Owners. The Owner of each Lot shall furnish and be responsible for at his or her own expense all the maintenance and repair of such Owner's residence and the maintenance of such Owner's Lot.

Section 7.2. Maintenance Obligations of Association with Respect to Private Drive. The exclusive management and control of the Private Drive shall be vested with the Association who shall keep the same in a good, clean and attractive manner, order and repair, except for those portions thereof as to which individual Lot Owners have maintenance obligations as set forth in Section 3.2 and Subsection 6.5.G(iv) hereof.

#### ARTICLE VIII

##### INSURANCE

Section 8.1. Liability Insurance. The Association shall 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 relating to the Private Drive. Such comprehensive public liability insurance policy shall cover the Association, all persons acting or who may come to act as agents or employees of the Association and all Owners.

Section 8.2. Miscellaneous Insurance Provisions. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workman's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors, and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 8.3. Payment of Insurance. The premiums for the insurance described above shall be paid by the Association.

Section 8.4. Additional Insurance. Each Owner shall be solely responsible for and obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his real and personal property and his personal liability.

## ARTICLE IX

### GENERAL PROVISIONS

Section 9.1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association, or any Owner, and all parties claiming under them shall have the right to enforce the covenants, conditions, and restrictions contained herein, and 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.

Section 9.2. Severability. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 9.3. Amendment. During the first twenty (20) years following its execution, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, approved by at least seventy five per cent (75%) of the total cumulative vote of the then Owners and thereafter by the approval of at least 66 2/3% of the cumulative vote of the then Owners. Provided however, that none of the rights or duties of Declarant or Developer reserved or set out hereunder may be amended or changed without Declarant's or Developer's prior written approval as the case may be so long as Declarant or Developer own a lot or lots. This Declaration may also be amended by Developer or Declarant at any time prior to the end of the Development Period, if either of them has an ownership interest in the Property, except that any such amendment by Declarant and Developer shall require the consent of the other as the case may be.

The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of its execution, and thereafter shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 9.4. Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges of lien against the Private Drive or any property owned by the Association, and may pay any overdue premiums on any hazard, casualty, liability or other insurance

policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.5. Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided for herein.

#### ARTICLE X

#### ADDITIONAL COVENANTS AND RESTRICTIONS

Section 10.1. River Glen Declaration. In addition to the covenants, limitations and restrictions contained in this Declaration, portions of all of the real estate described in this Declaration are or may in the future become subject to certain additional covenants and restrictions contained or to be contained in a separate instrument which Declarant may record in the office of the Recorder of Hamilton County, Indiana (the "River Glen Declaration"), providing for the maintenance, upkeep, repair, operation and administration by a not-for-profit corporation incorporated under the laws of the State of Indiana by Declarant under the name "River Glen Homeowners Association, Inc.", or any name similar thereto (herein referred to as the "Homeowners Association"), of installations and improvements made or to be made by Declarant in the Landscape Easement so

designated on the Plat (and in similar landscape easements which may have been or may hereafter be created in certain lands located generally to the north, east and south of the real estate described in this Declaration), and for the sharing of the costs thereof by the owners of certain lots and properties benefited thereby, and subject further to all of the rights, powers, duties and obligations of the Homeowners Association, as set forth or to be set forth in the River Glen Declarations.

Section 10.2. River Glen Lake Declaration. In addition to the covenants, limitations and restrictions contained in this Declaration, Lots 8 through 13, inclusive, in the Development (the "Lake Lots") are or may in the future become subject to certain additional covenants and restrictions contained or to be contained in a separate instrument which Declarant may record in the office of the Recorder of Hamilton County, Indiana (the "River Glen Lake Declaration"), providing for the maintenance, upkeep, repair, operation and administration by a not-for-profit corporation incorporated under the laws of the State of Indiana by Declarant under the name "River Glen Lake Association, Inc.", or any name similar thereto (herein referred to as the "Lake Association"); of the water detention pond or lake and adjacent perimeter shoreline created by Declarant partially on the Lake Lots and partially on certain adjacent land located to the northeast of the Lake Lots, in areas designated or to be designated as Drainage Easements, and for the sharing of the costs thereof by the owners of the Lake Lots and said adjacent land, and subject further to all of the rights, powers, duties and obligations of the Lake Association, as set forth or to be set forth in the River Glen Lake Declaration.

#### ARTICLE XI

##### JOINER BY DEVELOPER

Developer joins herein, as the purchaser of Lots in the Development pursuant to the Contract, to evidence its agreement to all of the terms and provisions of this Declaration, and to agree that any Lots in the Development purchased by it shall be subject to this Declaration.

8919.364



IN WITNESS WHEREOF, this Declaration is executed as of the date first written above.

DECLARANT:

P.K.T. DEVELOPMENT COMPANY  
an Indiana general partnership

By: K.E. Thompson, Inc., an  
Indiana corporation, Partner

By: *Kenneth E. Thompson*  
Kenneth E. Thompson  
President

DEVELOPER:

PAUL E. ESTRIDGE CORP.

By: *Paul E. Estridge*  
Paul E. Estridge  
President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said county and state, personally appeared Kenneth E. Thompson, known to me as the President of K.E. Thompson, Inc., the general partner of P.K.T. Development Company, an Indiana general partnership, who, having been first duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said corporation in its capacity as a partner of said partnership and for and on behalf of said partnership.

WITNESS my hand and seal this 30<sup>th</sup> day of August, 1989.

My Commission Expires: 10/30/90  
Residing in Hamilton County.

*Paul E. Estridge*  
Notary Public

Paul E. Estridge  
Printed Name

8919364



Part of the Southwest Quarter of Section 35, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Southwest Quarter Section, thence along the South line thereof South 89 degrees 39 minutes 22 seconds West (assumed bearing) 609.82 feet; thence North 00 degrees 20 minutes 38 seconds West 390.02 feet to a curve having a radius of 1595.00 feet, the radius point of which bears North 09 degrees 39 minutes 22 seconds East; thence Northerly along said curve 273.28 feet to a point which bears North 80 degrees 31 minutes 38 seconds West from said radius point; thence North 09 degrees 28 minutes 22 seconds East 109.96 feet to a curve having a radius of 700.00 feet, the radius point of which bears North 80 degrees 31 minutes 38 seconds West; thence Northerly along said curve 217.84 feet to the Point of Beginning which point bears North 81 degrees 38 minutes 33 seconds East from said radius point; thence South 83 degrees 41 minutes 21 seconds West 325.05 feet; thence North 06 degrees 18 minutes 39 seconds West 50.00 feet; thence North 37 degrees 05 minutes 48 seconds West 79.96 feet; thence South 80 degrees 00 minutes 00 seconds West 11.80 feet; thence North 43 degrees 59 minutes 45 seconds West 438.65 feet; thence North 77 degrees 51 minutes 58 seconds West 247.68 feet; thence North 24 degrees 22 minutes 05 seconds East 486.89 feet; thence North 12 degrees 00 minutes 00 seconds East 135.00 feet; thence North 52 degrees 00 minutes 00 seconds East 270.38 feet; thence South 45 degrees 31 minutes 42 seconds East 1016.97 feet; thence South 57 degrees 34 minutes 50 seconds East 70.00 feet to a point on a curve having a radius of 475.00 feet, the radius point of which bears South 57 degrees 34 minutes 50 seconds East; thence southerly along said curve to the left 355.08 feet to the point of tangency which point bears South 79 degrees 35 minutes 22 seconds West from the radius point of said curve; thence South 10 degrees 24 minutes 38 seconds East 198.38 feet to a curve having a radius of 700.00 feet, the radius point of which bears South 79 degrees 35 minutes 22 seconds West; thence southerly along said curve to the right 25.08 feet to the Point of Beginning, containing 19.711 acres, more or less.

This instrument recorded 9-5-15  
Sharon K. Cherry, Recorder, Hamilton County, IN

EXHIBIT "A"

89193/64