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~~DECLARATION~~  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**BEARSLIDE SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter "Declaration"), made on the date hereinafter set forth by MAHOGANY HOLDING COMPANY, an Indiana General Partnership (hereinafter referred to as "Declarant").

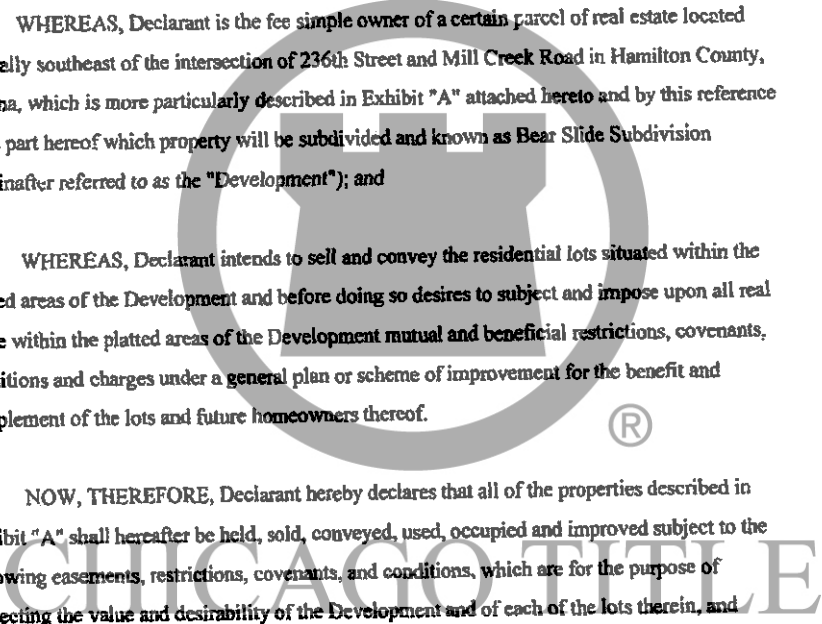
WITNESSETH:

9809810552  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 03-04-1998 At 10:29 a.m.  
DEC COV RES 49.00

WHEREAS, Declarant is the fee simple owner of a certain parcel of real estate located generally southeast of the intersection of 236th Street and Mill Creek Road in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made part hereof which property will be subdivided and known as Bear Slide Subdivision (hereinafter referred to as the "Development"); and

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 and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and future homeowners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall hereafter be held, sold, conveyed, used, occupied and improved subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Development and of each of the lots therein, and which shall run with the land and be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.



**ARTICLE I**

**NAME**

This subdivision shall be known and designated as Bear Slide Subdivision, a subdivision located in Hamilton County, Indiana, the Plat of which will be recorded in the Office of the Recorder of Hamilton County, Indiana.

**ARTICLE II**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to Bear Slide Homeowners' Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3. "Common Area" shall mean and refer to any and all real estate and facilities and all personal property leased or owned by the Association for the benefit, use and enjoyment of its members, including any areas denominated as "Common Area" on the Plat.

Section 4. "Declarant" shall mean and refer to Mahogany Holding Company, an Indiana General Partnership, its successors and assigns as a declarant or developer.

Section 5. "Development Period" shall mean the earlier of: (i) the period of time during which Declarant owns at least one (1) Lot in the Development, or (ii) August 1, 2000.

Section 6. "Landscape Easement" means the area, if any, within the Development denoted as "Landscape Easement" or as "L.S.E." on the Plat.

Section 7. "Lot" shall mean and refer to any parcel of land shown upon the Plat other than areas designated as Common Area or parcels conveyed to the Association as Common Area.

Section 8. "Owner" shall mean and refer to the record owner, whether one of more persons or entities, of a fee simple title to any lot which is part of the Development, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Plat" shall mean and refer to the subdivision plat or plats of Bear Slide recorded in the Office of the Recorder of Hamilton County, Indiana, as the same may be

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hereinafter amended or supplemented.

Section 10. "Regular Assessments" shall mean and refer to the regular monthly or annual assessments levied pursuant to Article VII hereof.

### ARTICLE III

#### COMMON AREAS

Section 1. Obligations of the Association. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners, of the Common Area, if any, conveyed or leased to it and all improvements thereon including any responsibilities that may be assumed by the Association, and for the care and maintenance of any improvements within the Landscape Easements, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

Section 2. Owners' Rights and Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area, if any, which may be delegated to family members, lessees and guests of every such Owner (subject to any reasonable and nondiscriminatory rules and regulations which may be enacted by the Association) which shall be appurtenant to and shall pass with membership in the Association, subject to the following provisions:

- (a) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area;
- (b) The rights of Declarant as provided in this Declaration;
- (c) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented;
- (d) The right of the Association to grant reasonable access, parking, utility, and drainage easements across and through the Common Area for the Benefit of its members.

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**ARTICLE IV**

**LOTS**

**Section 1. Land Use.** All lots shall be used exclusively for single family residential purposes (except that portions of Lots may be used for drainage, utility and access easements and other uses which are subordinate to or related with the primary residential use). Declarant shall have the right, but not the obligation, to subdivide, dedicate or otherwise convey or use a portion of any one or more lots which it owns for recreational uses for the benefit of all Owners and other members of the Association. In the event any portion of any Lot or Lots is so used, reasonable rules and regulations shall be promulgated and enforced so that the use and enjoyment of adjacent lots by the Owners thereof shall not be unreasonably disturbed.

**Section 2. Subdivision of Lots.** No Lot shall be subdivided to form more residential lots than the number shown on the Plat.

**Section 3. Conveyance of Lots.** Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

**Section 4. Dedication of Streets.** The streets shown on the Plat are hereby dedicated to the public.

**ARTICLE V**

**USE RESTRICTIONS**

**Section 1. Type, Size and Nature of Improvements.** During the Development Period, no dwelling, garage, wall, mini-barn, fence or other structure including, without limitation, patios, porches, satellite dishes or receivers, radio or television antennas, or other structures shall be erected, placed or constructed on any Lot except in a manner approved in writing prior to the commencement of construction by Declarant, or the Architectural Committee specified in Article XI hereof, as to the type of materials, exterior facade, design, layout, location, finished grade elevations, aesthetic consideration and the like. Approval shall be considered based upon satisfactory plans and specifications providing such detail as may be reasonably required (which approval shall be strictly adhered to throughout construction unless modified or amended with

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further written approval). In any event, the improvements on any Lot shall satisfy the following minimum standards:

- (a) No structure or building shall be erected, placed or constructed on any Lot other than one (1) single-family dwelling unit, one (1) private garage, barn, or other accessory outbuilding which, unless otherwise approved by Declarant, shall not be oriented towards the right-of-way abutting the Lot and any structures accessory thereto. Each driveway shall be of hard surface material.
- (b) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be erected, placed or constructed on any lot for use as a residence or place for human occupancy or habitation, either temporarily or permanently, or at any time be used for such purpose.
- (c) 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. The determination of whether the house shall have been substantially completed shall be made by the Declarant and such decision shall be binding on all parties.
- (d) The minimum square footage of living space of single story dwellings constructed on each Lot in the Development, exclusive of porches, terraces, garages, carports, accessory buildings, or basements shall be 1,800 sq. ft.
- (e) The minimum square footage of living space of multiple story dwellings constructed on each Lot in the Development, exclusive of porches, terraces, garages, carports, accessory buildings, or basements shall be 1,800 sq. ft. with a minimum of 1,000 sq. ft. on the main or ground floor.
- (f) An accessory structure may be permitted on any lot in accordance with the following provisions. An accessory structure:
  1. shall be incidental and subordinate to, and commonly associated with the principal dwelling;
  2. shall be owned and maintained under the same ownership as the principal dwelling;
  3. shall be clearly subordinate in height, area, bulk, extent, and purpose to the principal dwelling, and shall not exceed:
    - a. Fifty percent (50%) of the square footage of the principal building or one thousand five hundred (1,500) square feet, whichever is less; and
    - b. Seventeen and one-half (17.5) feet in height but no higher than the principal building.
  4. shall have on all sides the same architectural features as, or shall be

architecturally compatible with, the principal dwelling with which it is associated;

5. shall be used for private residential purposes which are clearly accessory and not for commercial purposes.
  - (g) 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.
  - (h) At least twenty percent (20%) of the finished exterior of every dwelling house constructed or placed on any such Lot in the Development shall be of brick or similar masonry material unless otherwise approved by Declarant.
  - (i) Each Owner shall install and maintain a light in operable condition on his Lot at a location, having a height and of a style and manufacture approved by Declarant prior to the installation thereof. Each such light fixture shall be equipped with a photo cell or similar device to insure automatic illumination from dusk to dawn each day.
  - (j) No overhead utilities shall be permitted on any such Lot in the Development.
  - (k) Any fence must be approved by Declarant as to size, location, height and composition before it may be installed.
  - (l) Radio, cable, and television antennas and/or satellite dishes (Parabolic Receivers and Transmitters) shall be permitted within the Development subject to the following:
    1. All cables and connections from antennas and/or satellite dishes shall be buried underground when any antenna and/or satellite dish is located on the ground, or appropriately concealed when the device is located on the dwelling.
    2. The maximum height for any portion of a satellite dish shall be twelve (12) feet above ground.
    3. Satellite dishes larger than twenty-four (24) inches in diameter shall be prohibited from being mounted on any portion of any structure on the lot.
    4. Ground mounted satellite dishes shall be screened by a tight evergreen vegetative screen no less than the height of the satellite dish, at maturity provided, however, that in no circumstance shall screening be required that would interfere with the satellite dish's line of sight to the satellite.
    5. When the setback of the satellite dish exceeds twenty (20) times the height of the satellite dish, no screening is required.
    6. No radio or television antennas shall exceed forty (40) feet in height.
    7. Radio or television antennas and/or satellite dishes shall be located behind
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the front facade of the dwelling.

- (m) Every building whose construction or placement on any Lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which was 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.
- (n) It shall be the duty of the Owner on every Lot in the Development on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this section. All Owners, if necessary, shall install dry culverts between the road rights-of-way and their Lots in conformity with specifications and recommendations of the Declarant and of the appropriate governmental agencies.
- (o) In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. The elevation of a Lot shall not be changed so as to affect materially the surface elevation of grade of surrounding Lots. perimeter foundation drains, sump pump drains, downspouts and water softener drains shall not be outletted into streets or street rights-of-way.
- (p) All Lots in the Development shall be subject to the easements, restrictions and limitations of record appearing on the Plat, on recorded easements, right-of-way, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference. ®

Section 2. Animals.

- (a) Horses and ponies may be permitted on any Lot within the Development provided that no more than one (1) horse or two (2) ponies shall be stabled, maintained, pastured, grazed, or kept in any manner, per acre of the Lot.
  - (b) In addition to the standards established in Article V, Section 1. (a) of this declaration, structures for housing horses or ponies shall be fifty (50) feet from an adjoining property line of other Lots within the Development.
  - (c) No livestock or poultry of any kind shall be raised, bred or kept on any Lot.
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- (d) Dogs, cats or other household pets may be kept on any lot provided that they are not kept, bred or maintained for profit. No kennel shall be permitted on any lot in the Development.

**Section 3. Waste Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste matter or materials shall be kept only in sanitary containers and all incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**Section 4. Prohibited Activities.** No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Development.

**Section 5. Water and Sewer Systems.** An individual water supply system and sanitary sewer system shall be required on all Lots. All dwelling houses constructed on any lot shall be equipped with a sanitary sewer system which meets the prior written approval of Declarant and which shall be installed and maintained at each Owner's sole cost and expense.

**Section 6. Signs.** Except for such signs as Declarant may in its absolute discretion display or authorize builders to display in connection with the development of the Development and the sale of Lots therein, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than eight (8) square feet may be displayed at any time for the purpose of advertising the property for sale or such signage as may be otherwise approved by Declarant.

**Section 7. Required Lot Landscaping.** Each Lot Owner shall install and maintain a row of deciduous shade trees in healthy condition on his Lot centered along a parallel line within five feet of the front lot line (property line/public right-of-way line). Said trees shall have a minimum trunk diameter of two (2) inches measured at a point on said trunk twelve (12) inches above ground level at the time of planting and shall be installed at a distance of forty feet on-center prior to final inspection of the home under construction on said Lot by authorized personnel of the Hamilton County Plan Commission (i.e., Building Inspector). Said trees shall not be planted within ten feet of a side property line or private driveway. The type (oak, honey locust, hard maple, ginko, or other long-lived shade tree) and size of said trees shall be consistent from lot to

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lot and shall be approved by the Declarant or Association prior to the installation thereof. In the event said trees are not installed or properly maintained by the Lot Owner, the Declarant or Association shall notify the Lot Owner and require the installation and appropriate maintenance of said trees. If, after notice from the Declarant or Association, the Lot Owner fails to install or maintain the trees in the manner required, the Declarant or the Association shall enter onto said Owner's Lot and install or maintain the trees. Any costs incurred in the installation or maintenance of the trees shall be made a lien upon the Lot pursuant to Section 10 of these Restrictions. It shall be the Declarant's exclusive right and responsibility to enforce this section so long as the Declarant still holds title to any Lot in the subdivision. Subsequent to the transfer of title of the last Lot in the subdivision from the Declarant to an Owner, the rights and responsibilities for enforcing this section shall become the Association's.

Section 8. Required Yard Lighting. Each Lot Owner shall install and maintain a free-standing dusk-to-dawn yard light activated by a photo cell that shall be installed in the front yard of each Lot near the front of the Lot so as to provide adequate illumination for the improvement of night-time security and partial illumination of the street. Said yard lights shall be of a uniform design, style, and size and shall be approved by the Declarant or Association prior to installation.

#### ARTICLE VI

##### HOMEOWNERS ASSOCIATION

Every Owner of a Lot shall be a member of the Association as otherwise provided in the Articles of Incorporation and By-Laws of the Association. No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party, with or without cause, without any termination fee by written notice of ninety (90) days or less.

#### ARTICLE VII

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of

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any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or changes; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. No assessments shall be made for any Lots owned by Declarant or a builder until such Lot is actually used as a single family residence. The Regular Assessments and special 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 person who was the Owner of such property at the time when the assessment accrued. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Development and for the improvement and maintenance of the Common Area and other areas of the Development and other purposes as specifically provided herein.

**Section 3. Regular Assessments.** The Board of Directors shall fix the Regular Assessment at an amount necessary to provide sufficient funds for the Association and may determine whether the Regular Assessment shall be payable annually or monthly. A portion of such Regular Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area or of any capital improvement which the Association is required to maintain.

**Section 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 which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Uniform Rate of Assessment.** Both Regular Assessments and special

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assessments for Common Area expenses, Common Area capital improvements and operating deficits must be fixed at a uniform rate for all Lots.

Section 6. Date of Commencement of Monthly Assessments; Due Dates. The Regular Assessment provided for herein shall commence for any Lot on the first day of the first month following the date of conveyance by Declarant or a builder to an Owner of a Lot. The Board of Directors shall fix any increase in the amount of the Regular Assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all 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 7. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 6 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

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No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; 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 proceeding or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

**ARTICLE VIII**  
**MAINTENANCE**

Section 1. Maintenance Obligations of Association. The Association may provide for snow removal from the paved portions of streets if the Board of Directors determines that such function is appropriate. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and improvements thereon including, but not limited to the repair and replacement of the landscaping and improvements located within the Park Area. The Park Area as shown on the Plat shall run in favor of the Association, its agents, officers, employees and contractors as well as any governmental agencies having jurisdiction. The Association shall also be responsible for the placement, replacement, care and maintenance of all markers located in the Development.

Section 2. Maintenance Obligations of Each Owner. ®

(a) the Owner of any lot in the Development shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or any improvements situated thereon from becoming unsightly and, specifically, each such Owner shall:

- (i) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (ii) Remove all debris or rubbish;

CHICAGO TITLE

- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
  - (iv) Cut down and remove dead trees;
  - (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and
  - (vi) Within sixty (60) days following completion of a house on a Lot, the Owner shall landscape the Lot, weather permitting.
- (b) 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 hereof, the Association shall have the right, but not the obligation, by and through its agents of employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and any improvements situated thereon, if any, conform to the requirements hereof. The cost therefor to the Association shall be added to and become a part of the Regular Assessment to which said Lot is subject and may be collected in any manner in which such Regular Assessment may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.
- (c) Owners of a Lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by Declarant. Declarant may require, for the purpose of uniformity and appearance, that the mailbox be purchased from Declarant or its designee.

## CHICAGO TITLE

ARTICLE IX  
INSURANCE

**Section 1. Casualty Insurance.** The Association may purchase such casualty insurance policy or policies insuring the Common Area as the Board of Directors deems appropriate. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the

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first mortgagee of each Lot. Such casualty insurance policy 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 Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured.

**Section 2. Liability Insurance.** The Association may also purchase public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such liability insurance policy shall cover the Association, its Board of Directors, any committee of organ of the Association or Board of Directors, all persons acting or whom may come to act as agents or employees of any of the foregoing with respect to the Association, all Owners and all other persons entitled to occupy any Lot.

The Association may also obtain any other insurance required by law to be maintained including, but not limited to, workmen'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 3. Assessment for Insurance.** The premiums for all such insurance hereinafter described shall be paid by the Association and the cost thereof shall be a part of the Regular Assessment to which each Lot conveyed by Declarant shall be subject under the terms and provisions hereof.

**Section 4. Casualty and Restoration.** Damage to or destruction of the Common Area due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any shall be applied for that purpose.

**Section 5. Insufficiency of Insurance Proceeds.** If the insurance proceeds received by the Association 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, the cost for

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restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

**Section 6. Surplus of Insurance Proceeds.** In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Development, or, in the discretion of the Board of Directors, may be distributed to the Owners and their mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

**ARTICLE X  
EASEMENTS**

**Section 1. Drainage, Utility, and Sewer Easements.** There are areas of ground depicted on the Plat and so marked "D.U. & S.E." (Drainage, Utility, and Sewer Easements) that are reserved for the non-exclusive use of public utility companies, including cable television companies, but not including transportation companies for the installation and maintenance of mains, ducts, poles, lines, wires, sewers and drainage facilities, subject at all times to the proper authorities and to the easements herein reserved. No permanent or other structures shall be erected or maintained on or within said areas of ground including fences, patios, decks, driveways, walkways, landscaping, and trees. The Owners of such Lots in this Addition, however, shall take title subject to the non-exclusive rights of the public utilities and other owners of said Lots in this Addition to said easements herein granted for ingress and egress in, along and through the areas of ground so reserved. There shall be reserved a ten (10) foot minimum drainage, utility, and sewer easement along the front of each Lot unless otherwise depicted on the Plat (said 10 foot D.U. & S.E. shall apply to both frontages on corner lots).

**Section 2. Drainage Easements.** There are areas of ground depicted on the Plat and so marked "Drainage Easement". The Drainage Easements are hereby created and reserved: (1) for

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the use of the developer to gain access to Lots within the Addition for the express purpose of installation, repair, or removal of a drainage system, either by surface drainage or appropriate underground installations for the real estate and adjoining properties during the development period as defined herein, and (2) for the non-exclusive use of the Association, the Hamilton County Drainage Board or other applicable governmental authority for access to and maintenance, repair and replacement of such drainage system and common areas: provided, however, the owner of any Lot in the subdivision subject to a drainage easement shall be required to keep the portion of said easement on his Lot free from obstructions or restrictions so that the surface water drainage will be unimpeded. The delineation of the drainage easement areas depicted on the Plat shall not be deemed a limitation of the right of any entity for whose use of any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonable necessary for the exercise of the rights granted to by this paragraph. No permanent or other structures shall be erected or maintained on or within said areas of ground including fences, patios, decks, driveways, walkways, landscaping, and trees. The Owners of such Lots in this Addition, however, shall take title subject to the non-exclusive rights of Hamilton County Drainage Board and other owners of said Lots in this Addition to said easements herein granted for ingress and egress in, along and through the areas of ground so reserved.

**Section 3. Drainage Swales.** Drainage swales (ditches) along dedicated roadways and within the right-of-way or on dedicated easements, are not to be altered, dug out, filled in, tiled, or otherwise changed without the written permission of the Hamilton County Drainage Board and/or the Hamilton County Highway Department. Property Owners must maintain these swales as sodded grassways or other non-eroding surfaces. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Hamilton County Drainage Board and/or the Hamilton County Highway Department. Culverts must be protected especially at the ends by headwalls or end sections, and, if damaged enough to retard water flow, must be replaced. Any Property Owner altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by registered mail to repair said damage, after which time,

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if no action is taken, the County may cause said repairs to be made and the bill for said repairs will be sent to the affected Property Owner(s) for immediate payment.

**Section 4. Easement for Signs and Landscape Easements.** Declarant reserves unto itself, for so long as it owns any Lot, and thereafter reserves and grants to the Association, the right and easement to erect and maintain an entryway sign or signs, walls, fences, landscape areas and the like within the Common Area and within the Landscape Easements. Declarant reserves unto itself, for so long as it owns any Lot, and thereafter reserves and grants to the Association, the right and easement to erect and maintain directional signs upon the Common Area.

## ARTICLE XI

### ARCHITECTURAL CONTROL

**Section 1. Architectural Committee.** Declarant may, but shall not be obligated to, appoint an Architectural Committee consisting of three (3) or more persons selected by Declarant to perform the approval process described in Article V. If appointed, the Architectural Committee shall exercise the approval rights delegated to it by Declarant. After the expiration of the Development Period, the Architectural Committee, if any, shall terminate and the responsibility of approving subsequent improvements and of enforcing the provision hereof shall vest in the Association.

**Section 2. Procedures.** In the event Declarant, the Architectural Committee or the Association, as the case may be, fails to approve, modify or disapprove in writing an application within thirty (30) days after receipt of an application, approval will be deemed to have been given. In the event Declarant, the Architectural Committee or the Association, as the case may be, denies an application, such entity shall give the Owner a written list of deficiencies or objections.

**Section 3. Cost of Enforcement.** In the event Declarant, the Architectural Committee or the Association, as the case may be, is required to take action to remove any unapproved structures, to perform any maintenance obligations on behalf of the defaulting Owner or to otherwise enforce the provisions of this Declaration, then all costs and expenses, including

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attorneys' fees, incurred by Declarant, the Architectural Committee or the Association shall be the responsibility of the defaulting Owner and may be recovered by such entity in the same manner as the collection of delinquent assessments under Article VII.

## ARTICLE XII

### GENERAL PROVISIONS

**Section 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 persons in ownership from time to time of Lots 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 providing 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 2. Amendment.** This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, signed or approved in writing by at least two-thirds (2/3rds) of the then Owners; provided, however, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-five (25) years from the date of recordation in the office of the Recorder of Hamilton County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless it is amended or changed in whole or in part as hereinabove provided. Provided, however, no amendment which materially and adversely affects the easement rights set forth herein shall be effective without the written consent of any Owner or other person affected thereby (unless substantially equivalent easement rights shall have been substituted in lieu thereof). Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

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General Partnership, who after first been duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said Partnership.

Witness my hand and Notarial Seal this 23<sup>rd</sup> day of February, 1998.



JULIE A. ASH  
MY COMMISSION EXPIRES: 02-26-2000  
MY COUNTY OF RESIDENCE IS: HAMILTON

Julie A. Ash  
Notary Public  
Julie A. Ash

Printed Name  
Residing in County of: Hamilton

My Commission Expires:  
2-26-2000

This instrument was prepared by Douglas B. Floyd, Attorney at Law, 970 Logan Street, Noblesville, Indiana 46060.



CHICAGO TITLE

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### EXHIBIT "A"

Beginning at the Northwest corner of said Northeast 1/4, said point also being in the center of 236th Street, as now located thence North 88 degrees, 46 minutes, 37 seconds East, (assumed bearing), along the North line of said Northeast 1/4 and said center of 236th Street, 1247.51 feet thence South 00 degrees, 06 minutes, 19 seconds East, 688.45 feet thence South 78 degrees, 06 minutes, 51 seconds West, 183.90 feet to a point in the center of Bear Slide Creek as now located, (the next 42 courses being with said center of Bear Slide Creek):

thence South 28 degrees, 33 minutes, 17 seconds East, 62.33 feet  
thence South 37 degrees, 46 minutes, 20 seconds East, 09.85 feet  
thence South 42 degrees, 44 minutes, 29 seconds East, 143.01 feet  
thence South 00 degrees, 00 minutes, 00 seconds East, 57.02 feet  
thence South 33 degrees, 17 minutes, 01 seconds East, 30.29 feet  
thence South 37 degrees, 53 minutes, 03 seconds East, 102.66 feet  
thence South 15 degrees, 28 minutes, 32 seconds East, 90.29 feet  
thence South 00 degrees, 00 minutes, 00 seconds East, 68.02 feet  
thence South 49 degrees, 46 minutes, 22 seconds West, 34.08 feet  
thence South 16 minutes, 11 minutes, 39 seconds East, 32.29 feet  
thence South 83 degrees, 39 minutes, 43 seconds East, 36.24 feet  
thence South 23 degrees, 16 minutes, 47 seconds West, 101.27 feet  
thence South 42 degrees, 43 minutes, 07 seconds West, 53.18 feet  
thence South 06 degrees, 27 minutes, 39 seconds West, 53.36 feet  
thence South 18 degrees, 06 minutes, 33 seconds West, 54.73 feet  
thence South 02 degrees, 02 minutes, 46 seconds West, 84.88 feet  
thence South 16 degrees, 11 minutes, 39 seconds West, 32.29 feet  
thence South 82 degrees, 27 minutes, 18 seconds West, 77.87 feet  
thence South 49 degrees, 43 minutes, 02 seconds East, 60.34 feet  
thence South 06 degrees, 25 minutes, 29 seconds East, 64.17 feet  
thence South 20 degrees, 58 minutes, 32 seconds East, 64.03 feet  
thence South 04 degrees, 37 minutes, 20 seconds East, 63.01 feet  
thence South 51 degrees, 51 minutes, 07 seconds East, 35.63 feet  
thence South 21 degrees, 55 minutes, 42 seconds East, 08.42 feet  
thence South 30 degrees, 21 minutes, 59 seconds West, 01.16 feet  
thence South 85 degrees, 22 minutes, 54 seconds East, 99.39 feet  
thence South 12 degrees, 00 minutes, 55 seconds East, 48.07 feet  
thence South 39 degrees, 19 minutes, 09 seconds West, 143.11 feet  
thence South 13 degrees, 06 minutes, 18 seconds West, 74.98 feet  
thence South 74 degrees, 41 minutes, 55 seconds East, 98.55 feet  
thence South 12 degrees, 14 minutes, 07 seconds East, 146.37 feet  
thence South 58 degrees, 17 minutes, 24 seconds West, 169.38 feet  
thence South 24 degrees, 01 minutes, 42 seconds West, 133.08 feet  
thence South 06 degrees, 13 minutes, 04 seconds East, 101.63 feet  
thence South 49 degrees, 44 minutes, 48 seconds East, 120.49 feet  
thence South 01 degrees, 44 minutes, 21 seconds East, 120.42 feet  
thence South 22 degrees, 12 minutes, 36 seconds West, 52.94 feet  
thence South 33 degrees, 41 minutes, 55 seconds West, 72.14 feet  
thence South 26 degrees, 50 minutes, 24 seconds East, 63.98 feet  
thence South 51 degrees, 59 minutes, 25 seconds East, 69.85 feet  
thence South 72 degrees, 36 minutes, 16 seconds East, 119.33 feet  
thence South 63 degrees, 51 minutes, 06 seconds East, 123.76 feet to a point on the South line of said Northeast 1/4, said point also being in the center of 231st Street, as now located; thence South 87 degrees, 39 minutes, 20 seconds West, along the South line of said Northeast 1/4, and in said 231st Street, 1789.80 feet to the Southwest corner of said Northeast 1/4, said point also being in the intersection of said 231st Street and Mill Creek Road thence North 00 degrees, 11 minutes, 00 seconds West, along the West line of said Northeast 1/4, 3157.84 feet, to a point on the dividing line between Townships 19 and 20, said point being on the South line of the Southwest 1/4 of Section 34, Township 20 North, in said Range, said point also being in the center of 236th Street; thence North, 88 degrees, 43 minutes, 34 seconds East, along said South line and dividing line, 1011 feet to the POINT OF BEGINNING, containing 975686 acres, more or less.

The above tract subject to the right-of-ways for 231st Street, 236th Street and Mill Creek Road, assumed to be 165 feet in width off the north, west and south sides of the subject tract.

subject also to the easements for Legal Drain purposes for the M. Bunton Legal Drain and the Ed Veltz Legal Drain, both being in the northwest quadrant of the subject tract, subject also, to all easement, highways, rights-of-way and restrictions of record.

This subdivision contains 33 lots numbered 1 through 33, inclusive, and common area denoted Park Area. The locations and dimensions of the Lots, Streets, and Easements are shown on the Plat. All dimensions are shown in feet and decimal parts thereof.