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Instrument  
9709755716

DECLARATION OF COVENANTS AND RESTRICTIONS

BLUESTONE

This Declaration (hereafter "Declaration"), made as of the 23 day of December, 1997, by Bluestone, LLC, an Indiana limited liability company ("Declarant")

WITNESSETH:

9709755716  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 12-24-1997 at 11:20 a.m.  
DEC COV RES 57.00

WHEREAS, the following facts are true:

WHEREAS, Declarant is the owner of the real estate located in Hamilton County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which Declarant intends to develop a residential subdivision to be known as Bluestone.

WHEREAS, Declarant is the owner of part of that real estate which is more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Additional Real Estate"), and may become the owner of more or all of the Additional Real Estate;

WHEREAS, Declarant has or will construct certain improvements and amenities which shall constitute Community Area;

WHEREAS, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate and may plat some (or all) of the Additional Real Estate and may make some of the Additional Real Estate subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at any time subject to this Declaration;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Bluestone and for the maintenance of the Property and the improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future owners thereof;

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in Bluestone, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a not-for-profit corporation known as The Bluestone/Wintercove Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Property, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of

Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Property and those portions of the Additional Real Estate as are intended to be benefited hereby or any part or parts thereof.

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

(a) "Architectural Review Board" means that entity established pursuant to Paragraph 13 of this Declaration for the purposes therein stated.

(b) "Articles" mean the Articles of Incorporation of the Corporation, as amended from time to time.

(c) "Assessments" means all sums lawfully assessed against the Members of the Corporation, as amended from time to time.

(d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

(e) "By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

(f) "Bluestone" means the name by which the Property shall be known.

(g) "Common Area" means any area referred to on a Plat as a Common Area.

(h) "Community Area" means (i) the Lake Control Structures (ii) the Drainage System, (iii) the Lakes and Lake Maintenance Easements and/or Lake Common Areas, (iv) the Entry Ways, (v) the Roadways to the extent not maintained by public authority, (vi) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (vii) any area of land (1) shown on the Plat or shown on any plat of any portion of the Additional Real Estate, whether or not such portion of the Additional Real Estate is made subject to this Declaration, as a Common Area, Landscape Area or Preserve (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

(i) "Corporation" or "Association" means The Bluestone/Wintercove Homeowners Association, Inc., an Indiana not-for-profit, its successors and assigns.

(j) "Declarant" means Bluestone, LLC, its successors and assigns to its interest in the Property other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

(k) "Development Period" means the period of time commencing with the execution of this Declaration and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate in the Property or of that portion of the Additional Real Estate which is intended to be developed as a subdivision named Wintercove subject to its own declaration but sharing in ownership of the Corporation with the owners of the Real Estate.

(l) "Drainage Board" means the drainage board of the Town of Fishers, its successors or assigns.

(m) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in the Property and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board

(n) "Entry Ways" means the structures which may be located within a Common Area constructed as an entrance to Allisonville Road or Easy Street or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Property.

(o) "Landscape Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Corporation.

(p) "Landscape Preservation Easement" means a portion of the Property denoted on the Plat or otherwise by recorded instrument as an area to be preserved

(q) "Lake" means any lake as depicted on the Plat and "Lakes" means all such lakes. A numerically designated Lake means the Lake so designated by such number on the Plat.

(r) "Lake Maintenance Easement" or "Lake Common Area" means an area designated on the Plat as a means of access, for purposes of maintenance, to a Lake or a Lake Control Structure.

(s) "Lake Control Structures" means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.

(t) "Lot" means a platted lot as shown on the Plat.

(u) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot

(including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(v) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

(w) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.

(x) "Mortgagee" means the holder of a first mortgage on a residence.

(y) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

(z) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(aa) "Plat" means the final secondary plat of the Property recorded in the Office of the Recorder of Hamilton County, Indiana.

(bb) "Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

(cc) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

(dd) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

(ee) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

(ff) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not been accepted for maintenance by a public authority.

(gg) "Wintercove" means the subdivision intended to be developed upon a portion of the Additional Real Estate to be known and platted as Wintercove.



(hh) "Zoning Authority" with respect to any action means the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act.

2. Declaration. Declarant expressly declares that the Property shall be held, transferred, and occupied subject to the Restrictions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such restrictions and agreement.

3. Declarant shall have, and hereby reserves the right, at any time, and from time to time, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations and privileges herein, when Declarant places of record in Hamilton County, Indiana, an instrument so declaring the same to be part of the Property, which declaration may be made as part of a subdivision plat of any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Upon the recording of any such instrument the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add to and expand the Property, as described herein as to any part or parts of the Additional Real Estate, shall preclude Declarant thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished during the Development Period. Such expansion of the Property is entirely at the discretion of Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or any other portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration. Further, Declarant reserves the right to grant the benefit of the easements described in paragraph 15 hereof to all or a portion of the Additional Real Estate without burdening those portions with the obligations of this Declaration. Declarant shall do so from time to time by recordation of an instrument in the Office of the Recorder of Hamilton County, Indiana signed solely by Declarant.

4. The Lakes. Declarant shall convey title to the Lakes to the Corporation. The Corporation shall be responsible for maintaining the Lakes. One hundred percent (100%) of the Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot which abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of a Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No

boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structure may be extended into a Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming or ice skating will be permitted in a Lake except if and to the extent authorized by the Board of Directors. Except as otherwise provided herein, no individual using a Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Declarant, the Corporation and their employees, agents and assigns as set forth in the Declaration. Declarant shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion.

5. The Lake Control Structures. Declarant shall convey title to the Lake Control Structures to the Corporation. The Corporation shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots

6. Drainage System - Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of the completion of its development activities within the Real Estate or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment

7. Maintenance of Entry Ways, Landscape Easements and Common Area Easements and Common Area. The Corporation shall maintain the Entry Ways and the Landscape Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs, and other plantings located on an Entry Way or a Landscape Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Easy Street or a part thereof, or a planting area within extending both east and west from the Entry Ways to the full extent of Easy Street as it from time to time exists. All entrance signs located on an Entry Way shall be maintained at all times in good condition appropriate to a first-class residential subdivision.

8. Roadways.

(a) Maintenance. Declarant shall maintain each Roadway in good condition satisfactory for the purpose for which it was constructed until the Roadway has been accepted as a public roadway

(b) Landscaping. All landscaping within the road right-of-way is subject to the approval of the appropriate governmental authority.

(c) Cul-de-sac Parking. There shall be no parking on the Cul-de-sacs shown on the Plat.

9. Construction of Residences.

(a) Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the Town of Fishers, Indiana. No portion of any Lot may be sold or

subdivided such that there will be thereby a greater number of Residences in Bluestone than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of one thousand three hundred (1300) square feet if a one-story structure, or one thousand six hundred (1600) square feet if a higher structure.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on the Plat and the front Lot line and no structure or part thereof may be built or erected nearer than seven and one-half (7.5) feet to any side Lot line or nearer than twenty-five (25) feet to any rear Lot line. No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation, shown on the development plan for Bluestone, has been established for each Lot depicted on the Plat and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.

(e) Driveways. All driveways shall be paved and maintained dust free.

(f) Yard Lights. If street lights are not installed in Bluestone, then the builder on each Lot shall supply and install a yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Lot Owner.

(g) Storage Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Landscaping shall include a minimum of two 2" deciduous trees planted near the street right-of-way, taking care to avoid existing utilities and not to violate site distance requirements.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(j) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by the Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) Water Systems. Each Owner shall connect to such water line maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot.

(l) Drainage. 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. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Bluestone may be included in a legal drain established by the Drainage Board. In such event, each Lot in Bluestone will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereon. Declarant and the Corporation shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots.

(n) Out buildings and sheds are specifically prohibited except that Declarant may allow them on a case by case basis.

10. Maintenance of Lots.

(a) Vehicle Parking. No camper, motor home, business or service truck or truck larger than one (1) ton, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of Bluestone and the sale of Lots therein and such signs as may be located in any Common Area or Community Area, no sign of any kind shall be displayed to the public view on any Lot except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. A builder shall display a "sold" sign on the Lot when he has sold the property.

(c) Fencing. No fence shall be permitted on any Lot except as authorized in advance by the Architectural Review Board. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No free standing walls shall be permitted upon any Lot. No wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this restriction, the Architectural Review Board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. 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 neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any residential Lot without the written approval of the Architectural Review Board, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

(l) Tennis Courts. No tennis court shall be installed or maintained on any Lot.

(m) Swimming Pools. No swimming pool or equipment or building related thereto shall be constructed upon any Lot except as authorized in advance by the Architectural Review Board.

#### 11. Bluestone/Wintercove Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments. Each Owner of Wintercove shall automatically be a Member upon the addition of Wintercove to the Property.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, together with all other powers that belong to it by law.

(c) Classes of Membership and Voting Rights. The Association shall have the following two (2) classes of voting membership:

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

Class B. The Class B member shall be the Declarant. The Declarant shall exercise one hundred twenty (120) votes for each lot owned in either Bluestone or Wintercove until the earlier of (i) the date on which the written resignation of Declarant as a Class B member is delivered to the Secretary of the Association, or (ii) the date Declarant no longer owns any Lot in the Property or Wintercove, at which time Declarant's rights shall be converted to a Class A membership and Declarant shall have voting rights based upon its ownership of Lots.

(d) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(e) Limitations on Action by the Corporation. Unless the Class B Member and (i) at least two-thirds of the Mortgagees of record (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting or easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(f) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

(g) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time

as the Class B Membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 16(b), 16(f), 17, or 20(b).

(h) Board of Directors. During the Development Period, the Declarant shall appoint all directors, shall fill all vacancies in the Board of Directors, and shall have the right to remove any Director at any time, with or without cause. After 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. Directors need not be members of the Association.

12. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Corporation the following: (1) General Assessments, (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the Community Area and all sign easements and landscape easements. The General Assessment shall also be levied for the payment of real estate taxes allocable to the Community Areas, which real estate taxes shall be paid by the Corporation from the date hereof, notwithstanding that the Declarant may retain title to all or part of the Community Area. It shall further be the obligation of the Corporation to (i) maintain and pay all costs of maintenance of all public lighting installed and existing in any right-of-way (ii) pay the costs of all electricity and energy usage attributable to public lighting installed and existing any right-of-way and (iii) maintain and pay the costs of maintenance of any sidewalks which abut a right-of-way but are not within the right-of-way, and the General Assessment shall also be levied by the Corporation to comply and pay for with the foregoing maintenance requirements and obligations.

(ii) Basis for Assessment

(1) Lots Generally. Each Lot owned by a person shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(3) Change in Basis. The basis for assessment may be changed with the assent of the Class B Member and of (i) two-thirds (2/3) of the Class A Members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees of



record (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Area shall be allocated equally among owners of all Lots and shall be uniformly assessed.

(c) Special Assessment. The Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B Member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(e) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(f) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from any assessments thereafter becoming due or from the lien thereof.

(g) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(h) Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and (2) the Community Area.

(i) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

### 13. Architectural Control.

(a) The Architectural Review Board. Until the end of the Development Period, an Architectural Review Board consisting of three (3) Persons shall be appointed by the Declarant. After the expiration of the Development Period, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such manner as to preserve values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant or a builder to an individual homeowner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by an Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Bluestone, and no Owner shall undertake any construction activity within Bluestone unless legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than 30 inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors' approval

will be deemed granted. If Declarant is no longer a Class B member, a decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

(c) Guidelines and Standards. The Architectural Review Board shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. If Declarant is no longer a Class B member, any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

#### 14. Community Area.

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of any instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes

(b) Density of Use or Adequacy. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or the adequacy thereof for the purpose intended.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of lots abutting the Lake may use the Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use such parts of the Community Area as are reasonably required to afford access to and from such Owner's Lot.

(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area;

(ii) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and (i) two-thirds (2/3) of the votes of the Class A members

(excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees of record (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and

(iii) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and (i) the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgages (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvement thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the lakes and Lake Control Structures to the Corporation, free and clear of all liens and financial encumbrances. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

#### 15. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, sign easements, entry way easements, landscaping easements, lake maintenance access easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utilities companies and governmental agencies as follows:

(i) Drainage Easements. (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Bluestone and the Additional Real Estate and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by

the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. In the event the Declarant or the Architectural Review Board undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no circumstances shall the Declarant be liable for any damage or destruction to any fences, structures, or other improvements which are damaged, destroyed or remodeled by Declarant, or its agents or employees as a result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(u) Sewer Easements (SE) are created for the use of the local government agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Bluestone and the Additional Real Estate for the purpose of installation and maintenance of sewers that are a part of said system.

(ui) Utility Easements (UE) are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements (EWE) are hereby created in the area of the Entry Ways for the use of Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Maintenance Easements or Lake Common Area (LMAE) are created for the use of Declarant, the Corporation, the Drainage for the purpose of gaining access to the Lake, the Lake Control Structures, the Drainage System in the course of maintenance, repair or replacement of any thereof.

(vii) Non-Access Easements (NAE) are depicted on the Plat and are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be created or maintained in the area of such easements.

(viii) Sign Easements - There may be strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, such easements for the purposes of providing signs which either (i) advertise the Property, and the availability of Lots the identity of participating builders, or events, or (ii) identify the Property. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements, except as may be installed by the Declarant.

(ix) Landscape Preservation Easement (L.P.E) There may be areas shown on the Plat as "Landscape Preservation Easements". All evergreen trees that have a trunk diameter (measured at ground level) of at least one inch, and larger, and all non evergreen trees that have a trunk diameter (measured at ground level) of at least two inches, and larger, shall be preserved. Mowing and normal maintenance within the Irregular Landscape Easement shall be permitted subject to preservation of trees of the above type and size designation and larger. No utility easements, drainage easements or drainage swales shall be permitted in the Landscape Preservation Easement. Notwithstanding the above, the removal of dead or potentially hazardous trees from the Landscape Preservation Easement may be performed upon written approval of the Association. Except as provided above, no improvements shall be installed or maintained in or upon a Landscape Preservation Easement. No Fencing shall be installed within a Landscape Preservation Easement. Additional landscaping trees and foliage may be installed in and upon the Landscape Preservation Easement by Declarant or Owner of a Lot subject to the prior written approval of the Association.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of (i) pathways, sidewalks or similar installations as Declarant deems desirable during the Development Period or thereafter as determined by the Association, and (ii) underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and Declarant shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Property to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, Declarant or the Corporation shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket

easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any legal drain.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Maintenance Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways or Lake Maintenance Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Property, Declarant reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. If such grading or cutting of trees, bushes or shrubbery is in an area designated on the Plat as a Drainage Easement, then Declarant's obligation to restore the affected real estate shall be limited to re-grading and re-seeding, and neither the Declarant nor its agents, employees or assignees shall be liable for any damage or destruction to any improvements, structures or fencing located on or in such existing Drainage Easement. If such grading or cutting of trees, bushes or shrubbery is not in an area already designated on the Plat as a Drainage Easement, Declarant will restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

16 Declarant's Use During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Property, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices

17. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration, such party shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

18. Approvals by Declarant. As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: the dedication or transfer of the Community Area; the merger or consolidation of the Property with other real estate; mortgaging of the Community Area; amendment of this Declaration; and changes in the basis for assessment or the amount, use and time of payment of any Assessment.

19. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, (ii) the Declarant, so long as the Declarant still owns at least one (1) Lot.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration and/or to modify, terminate or grant additional easements, restrictions, covenants and to create additional obligations during the period prior to December 31, 2015. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. Declarant shall give notice in writing to such Owners and Mortgagees of record of any amendments. Except to the extent authorized in Paragraph 15(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the office of the Recorder of Marion County, Indiana.

20. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

21. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right,



title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2055, and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

22. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

23. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

24. Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

25. Access Rights. Declarant hereby declares, creates and reserves an access license over and across all the Real Estate (subject to the limitations hereinafter provided in this Paragraph 13.1) for the use of Declarant and its representatives, agents, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this Paragraph 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

IN TESTIMONY WHEREOF, witness the signatures of Declarant as of the date set forth above.

BLUESTONE, LLC

By: Richard J. Wells  
Richard J. Wells, member

"Declarant"

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF Marion    )

Before me, a Notary Public, in and for said County and State, personally appeared Richard J. Wells, a Member of Bluestone, LLC, who acknowledged the foregoing Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 22<sup>nd</sup> day of December, 1997.

*Linda J. Tolon*  
Notary Public  
A Resident of Marion Co, IN

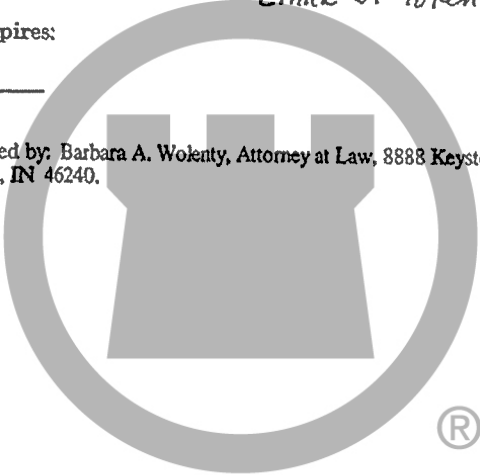
*Linda J. Tolon*

My Commission Expires:

12/26/99

This instrument prepared by: Barbara A. Wojenty, Attorney at Law, 8888 Keystone Crossing, Suite 710, Indianapolis, IN 46240.

c:\wojenty\well\bluestone\covcants  
revised - 12/1997



CHICAGO TITLE

EXHIBIT "A"

The Real Estate

BLUESTONE SECTION ONE  
LAND DESCRIPTION:

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase 1 as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North Line of the South Half of the Northeast Quarter of said Section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 1177.11 feet; thence South 00 degrees 11 minutes 58 seconds East 1368.03 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 29 minutes 02 seconds East 150.00 feet; thence South 00 degrees 30 minutes 58 seconds East 50.00 feet; thence South 89 degrees 29 minutes 02 seconds West 28 52 feet; thence South 29 degrees 11 minutes 04 seconds West a distance of 23.02 feet; thence South 00 degrees 13 minutes 31 seconds West 315.25 feet; thence South 52 degrees 15 minutes 41 seconds West 105.76 feet; thence South 00 degrees 13 minutes 31 seconds West 125.01 feet; thence North 89 degrees 35 minutes 38 seconds East 19.40 feet to the point of curvature of a tangent curve the left, said curve having a central angle of 30 degrees 53 minutes 38 seconds and a radius of 125.00 feet, thence Northeasterly along said curve an arc distance of 67.40 feet, said arc being subtended by a long chord bearing North 74 degrees 08 minutes 49 seconds East and a length of 66.59 feet; thence South 00 degrees 13 minutes 31 seconds West 192.75 feet; thence South 89 degrees 35 minutes 38 seconds West 606.94 feet; thence North 89 degrees 55 minutes 13 seconds West 242.90 feet; thence North 88 degrees 58 minutes 27 seconds West 410.10 feet to the centerline of Allisonville Road as established per plans thereof for F.A. Project Number 297 Section B(1938), the following two (2) described courses being along said centerline; thence North 25 degrees 36 minutes 43 seconds East 372.37 feet to the point of curvature of a tangent curve to the left, said curve having a central angle of 05 degrees 52 minutes 18 seconds and a radius of 4774.46 feet; thence Northerly along said curve an arc distance of 489.28 feet, said arc being subtended by a long chord having a bearing of North 22 degrees 40 minutes 34 seconds East and a length of 489.06 feet; thence South 70 degrees 15 minutes 35 seconds East 45.00 feet to a point on a non-tangent curve to the left, said curve having a central angle of 110 degrees 15 minutes 24 seconds and a radius of 25.00 feet; thence Southeasterly along said curve an arc distance of 48.11 feet to the point of tangency thereof, said arc being subtended by a long chord having a bearing of South 35 degrees 23 minutes 16 seconds East and a length of 41.02 feet; thence North 89 degrees 29 minutes 02 seconds East 736.24 feet to the POINT OF BEGINNING and containing 18.485 acres (805,203 square feet), more or less.

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EXHIBIT "B"

Additional Real Estate

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Section; thence South 89 degrees 57 minutes 32 seconds West along the North line of said Section 805.88 feet; thence South 00 degrees 13 minutes 31 seconds West parallel with the East line of the Northeast Quarter of said Section 2 a distance of 1527.90 feet the POINT OF BEGINNING of this description; thence continuing South 00 degrees 13 minutes 31 seconds West parallel with the East line of said Northeast Quarter 1325.45 feet; thence South 00 degrees 06 minutes 49 seconds West parallel with the East line of the Southeast Quarter of said Section 2 a distance of 805.04 feet; thence South 89 degrees 54 minutes 31 seconds West 2395.14 feet to the West right-of-way line of Allisonville Road; thence North 26 degrees 03 minutes 27 seconds East along said right-of-way line 420.30 feet; thence Northeasterly 826.32 feet along said right-of-way along an arc to the left having a radius of 4734.46 feet said arc being subtended by a long chord having a bearing of North 20 degrees 22 minutes 05 seconds East and a length of 826.32 feet; thence North 16 degrees 03 minutes 27 seconds East along said right-of-way 892.82 feet; thence North 89 degrees 57 minutes 32 seconds East 369.22 feet; thence North 00 degrees 13 minutes 31 seconds East parallel with the East line of said Northeast Quarter 127.79 feet; thence North 89 degrees 55 minutes 56 seconds East 1304.12 feet to the Point of Beginning and containing 95.34 acres, more or less.

Except therefrom:

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest Corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitnare Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase, 1, as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North line of the South half of the Northeast Quarter of said Section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 547.11 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 11 minutes 58 seconds East 1199.03 feet; thence South 89 degrees 55 minutes 56 seconds West 480.00 feet; thence South 00 degrees 11 minutes 58 seconds East 172.30 feet; thence South 89 degrees 29 minutes 02 seconds West 150.00 feet; thence North 00 degrees 11 minutes 58 seconds West 1367.03 feet; thence North 89 degrees 31 minutes 32 seconds East 630.01 feet to the Point of Beginning, containing 17.90 acres more or less. Subject to any legal easements, highways, and rights-of-ways of record.

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Except therefrom:

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase 1 as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North Line of the South Half of the Northeast Quarter of said Section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 1177.11 feet; thence South 00 degrees 11 minutes 58 seconds East 1368.03 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 29 minutes 02 seconds East 150.00 feet; thence South 00 degrees 30 minutes 58 seconds East 50.00 feet; thence South 89 degrees 29 minutes 02 seconds West 28.52 feet; thence South 29 degrees 11 minutes 04 seconds West a distance of 23.02 feet; thence South 00 degrees 13 minutes 31 seconds West 315.25 feet; thence South 52 degrees 15 minutes 41 seconds West 105.76 feet; thence South 00 degrees 13 minutes 31 seconds West 125.01 feet; thence North 89 degrees 35 minutes 38 seconds East 19.40 feet to the point of curvature of a tangent curve the left, said curve having a central angle of 30 degrees 53 minutes 38 seconds and a radius of 125.00 feet, thence Northeasterly along said curve an arc distance of 67.40 feet, said arc being subtended by a long chord bearing North 74 degrees 08 minutes 49 seconds East and a length of 66.59 feet; thence South 00 degrees 13 minutes 31 seconds West 192.75 feet; thence South 89 degrees 35 minutes 38 seconds West 606.94 feet; thence North 89 degrees 55 minutes 13 seconds West 242.90 feet; thence North 88 degrees 58 minutes 27 seconds West 410.10 feet to the centerline of Allisonville Road as established per plans thereof for F.A. Project Number 297 Section B(1938), the following two (2) described courses being along said centerline; thence North 25 degrees 36 minutes 43 seconds East 372.37 feet to the point of curvature of a tangent curve to the left, said curve having a central angle of 05 degrees 52 minutes 18 seconds and a radius of 4774.46 feet; thence Northerly along said curve an arc distance of 489.28 feet, said arc being subtended by a long chord having a bearing of North 22 degrees 40 minutes 34 seconds East and a length of 489.06 feet; thence South 70 degrees 15 minutes 35 seconds East 45.00 feet to a point on a non-tangent curve to the left, said curve having a central angle of 110 degrees 15 minutes 24 seconds and a radius of 25.00 feet; thence Southeasterly along said curve an arc distance of 48.11 feet to the point of tangency thereof, said arc being subtended by a long chord having a bearing of South 35 degrees 23 minutes 16 seconds East and a length of 41.02 feet; thence North 89 degrees 29 minutes 02 seconds East 736.24 feet to the POINT OF BEGINNING and containing 18.485 acres (805,203 square feet), more or less.

Instrument  
9809841425

9809841425  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 07-29-1998 At 11:09 a.m.  
AMENDMENT 20.00

20.00  
⑥

FIRST AMENDMENT OF  
DECLARATION OF COVENANTS AND RESTRICTIONS  
BLUESTONE

THIS FIRST AMENDMENT is made as of the 18 day of June, 1998, by BLUESTONE, LLC, an Indiana limited liability company (the "Declarant") and KIRKPATRICK CUSTOM HOMES, INC., as successor in interest to Declarant as to certain lots, each as to their respective interests.

Recitals

A. The Declarant made a Declaration of Covenants and Restrictions dated December 23, 1997 and recorded December 24, 1997 as Instrument No. 9709755716 in the Office of the Recorder of Hamilton County, Indiana (the "Declaration") with respect to a residential subdivision known as Bluestone located in Hamilton County, Indiana.

B. The Declarant desires to amend the Declaration to provide that the homeowner's association described in the Declaration (the "Corporation") will furnish lawn maintenance, snow removal and weekly trash collection services for each Lot within the Bluestone subdivision in exchange for an increase in the General Assessment.

Agreement

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Sections 4 and 5. The Lakes and The Lake Control Structures, respectively. Each of the above sections is hereby amended to provide that any portion of any of the Lakes or Lake Control Structures which is contained within the legal description of a Lot shall be subject to all easements and uses of the Lakes and/or Lake Control Structures, respectively, as set forth in the Declaration and shall be maintained, assessed and otherwise treated as though such portion had been conveyed to the Corporation in accordance with the terms of Sections 4 and 5 of the Declaration.

CHICAGO TITLE

2. Amendment of Section 7. Maintenance of Entry Ways, Landscape Easements, Common Area Easements and Lots Section 7 of the Declaration is hereby deleted in its entirety, and the following is substituted in lieu thereof:

7. Maintenance of Entry Ways, Landscape Easements, Common Area Easements and Lots. The Corporation shall maintain the Entry Ways and the Landscape Easements and all improvements and plantings thereof, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on or in an Entry Way or a Landscape Easement and/or within planting areas extending both east and west from the Entry Ways to the full extent of Easy Street as it from time to time exists shall be kept neatly cut, cultivated and trimmed as reasonably required to maintain an attractive entrance to Easy Street. All entrance signs located on an Entry Way shall be maintained at all times in good condition appropriate to a first-class residential subdivision. Commencing July 1, 1998, the Corporation shall further maintain the lawns and remove snow from the driveways and walkways and provide for weekly removal of trash of the Lots comprising the Bluestone Phase I and Bluestone Phase II portions of the Real Estate and Additional Real Estate, respectively, only, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Bluestone Phase I and Phase II Lots subject to assessment. Grass located on such Lots shall be kept fertilized and neatly cut as reasonably required to maintain an attractive appearance of the Lots, and the snow shall be removed from the sidewalks and driveways on such Lots as reasonably necessary. To enable the Corporation to fulfill its obligations under this Section 7, the Corporation is hereby expressly granted easement rights of entry and access to each Lot within the Real Estate for purposes of maintaining the lawns and removing snow from the driveways and sidewalks thereon. It is expressly understood and agreed that the Corporation's obligation to maintain the lawns and remove snow from the driveways and sidewalks and provide for weekly removal of trash of such Lots comprising the Real Estate does not extend to any lot comprising the Additional Real Estate, except for any of the Additional Real Estate comprising Phase II of Bluestone.

3. Amendment of Section 9(m). Vacant Lots. Section 9(m) of the Declaration is hereby deleted in its entirety, and the following is substituted in lieu thereof:

(m) Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot with the exception of mowing the lawn. The

Corporation shall have the obligation to mow the grass on the Lot and shall be reimbursed for the Maintenance Costs thereof through a General Assessment as set forth in Section 7 hereof. The Declarant and the Corporation shall have the right, but not the obligation, to further maintain vacant Lots.

4. Amendment of Section 12(a). Creation of Lien and Personal Obligation of Assessments. The following sentence is hereby added to the end of the second paragraph of Section 12(a): "No assessment shall be levied against any Lot owned by Declarant."

5. Amendment of Section 12(b). General Assessment. In addition to the purposes and allocation of the General Assessment set forth in Section 12(b) of the Declaration, commencing in the calendar year of 1998, the General Assessment shall further be levied by the Corporation for the Maintenance Costs incurred by the Corporation for the lawn cutting and maintenance and snow removal and trash pickup of the Lots comprising the Real Estate as required under Section 7 of the Declaration. The costs of such lawn maintenance, trash pick up and snow removal shall be allocated equally among the Owners of the Lots comprising the Real Estate and shall be uniformly assessed. The General Assessment shall further be levied by the Corporation for all Maintenance Costs in connection with the maintenance of the landscaping located on the north side of Easy Street contained within the Village Square shopping center and approximately located within the area cross-hatched on Exhibit "A" attached hereto and by reference made a part hereof.

6. Amendment of Section 19(c) Effective Date. The word "Marion" is hereby deleted from Section 19 (c) of the Declaration and the word "Hamilton" is hereby substituted in its place and stead.

7. Representations and Warranties. The Declarant and the Corporation hereby represent and warrant for and on behalf of itself to the other party that (i) it is duly organized, validly existing and in good standing in accordance with the laws of the state under which it was organized; (ii) all action necessary to authorize the execution of this Amendment has been taken by it; and (iii) the individual executing and delivering this Amendment on its behalf has been authorized to do so and such execution and delivery shall bind it.

8. Definitions. Except as otherwise provided herein, the capitalized terms used in this Amendment shall have the definitions set forth in the Declaration.



9. Incorporation. This Amendment shall be incorporated into and made a part of the Declaration, and all provisions of the Declaration not expressly modified or amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant and the Corporation have caused this Amendment to be executed by their duly authorized representatives as of the date and year first above written.

DECLARANT

BLUESTONE, LLC, an Indiana limited liability company

By: Richard J. Wells  
Richard J. Wells, Member

Consented to this 17<sup>th</sup> day of June, 1998.

KIRKPATRICK CUSTOM HOMES, INC.

By: Kevin K. Kirkpatrick  
Kevin K. Kirkpatrick, President

CHICAGO TITLE

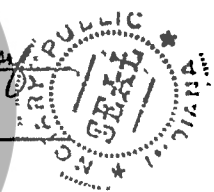
STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Richard J. Wells, known to me to be a Member of Bluestone, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing First Amendment of Declaration of Covenants and Restrictions - Bluestone for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 18<sup>th</sup> day of June, 1998.

*Diane M. Koltzenoff*  
Notary Public - Signature

DIANE M KOLTZENOFF  
Notary Public - Printed



My Commission Expires: FEBRUARY 6, 2000

My County of Residence: MARION



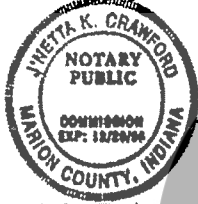
CHICAGO TITLE



STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF Union     )

Before me, a Notary Public in and for said County and State, personally appeared Kevin K. Kirkpatrick, known to me to be the President of Kirkpatrick Custom Homes, Inc., an Indiana corporation, who acknowledged the execution of the foregoing First Amendment of Declaration of Covenants and Restrictions - Bluestone for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 17<sup>th</sup> day of April, 1998.



*J. Netta K. Crawford*  
Notary Public - Signature

\_\_\_\_\_  
Notary Public - Printed

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

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

This instrument prepared by and after recording return to: Diane M. Kortzendorf,  
Attorney-at-Law, Robinson & Wolenty, 8888 Keystone Crossing, Suite 710, Indianapolis,  
Indiana, 46240.



cwolenty\wells\bluestone\1stamend  
rev 6/17/98

CHICAGO TITLE

77.00  
34  
1.00 none

Instrument 9809864360  
9809864360  
9809864360  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 11-12-1998 At 10:54 am.  
AMEND DECL 77.00

AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND RESTRICTIONS

BLUESTONE/WINTERCOVE

This Declaration (hereafter "Declaration"), made as of the 5<sup>th</sup> day of November, 1998, by BLUESTONE, LLC, an Indiana limited liability company ("Bluestone") and WINTERCOVE, LLC, an Indiana limited liability company ("Wintercove") (Bluestone and Wintercove being sometimes hereinafter collectively referred to as "Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

WHEREAS, Declarant is the owner of the real estate located in Hamilton County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which Declarant intends to develop residential subdivisions to be known as Bluestone, Phase I, Bluestone Phase II and Wintercove, Phase I;

WHEREAS, Declarant is the owner of part of that real estate which is more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Additional Real Estate"), and may become the owner of more or all of the Additional Real Estate;

WHEREAS, Declarant has or will construct certain improvements and amenities which shall constitute Community Area;

WHEREAS, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate and may plat some (or all) of the Additional Real Estate and may make some of the Additional Real Estate subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at any time subject to this Declaration;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Bluestone and Wintercove and for the maintenance of the Property and the improvements thereon, and to this end desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future owners thereof;

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in Bluestone and Wintercove, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a not-for-profit corporation known as The Bluestone/Wintercove Homeowners Association, Inc. for the purpose of exercising such functions.

Cross Reference to # 97-55716 ✓  
and # 98-41425 ✓

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Property, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Property and those portions of the Additional Real Estate as are intended to be benefited hereby or any part or parts thereof.

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

(a) "Access Easements" means a portion of a Lot denoted on the Plat as an area to be maintained by the Corporation as a means of access by any Owner to a Common Area.

(b) "Architectural Review Board" means that entity established pursuant to Paragraph 13 of this Declaration for the purposes therein stated.

(c) "Articles" mean the Articles of Incorporation of the Corporation, as amended from time to time.

(d) "Assessments" means all sums lawfully assessed against the Members of the Corporation, as amended from time to time.

(e) "Bluestone" means the name by which the Property described as Parcel 1 in Exhibit "A" shall be known.

(f) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

(g) "By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

(h) "Common Area" means any area referred to on a Plat as a Common Area.

(i) "Community Area" means (i) the Lake Control Structures (ii) the Drainage System, (iii) the Lakes and Lake Maintenance Easements and/or Lake Common Areas, (iv) the Landscape Conservation Easement, (v) the Nature Preserve and Conservation Easement, (vi) the Access Easements, (vii) the Entry Ways, (viii) the Roadways to the extent not maintained by public authority, (ix) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (x) any area of land (1) shown on the Plat or shown on any plat of any portion of the Additional Real Estate, whether or not such portion of the Additional Real Estate is made subject to this Declaration, as a Common Area, Landscape Area or Preserve (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

(j) "Community Area Initial Assessment" means the initial assessment against the Lots within Wintercove for the Reserve of Replacements required by Paragraph 12(d) hereof.

(k) "Corporation" or "Association" means The Bluestone/Wintercove Homeowners Association, Inc., an Indiana not-for-profit, its successors and assigns.

(l) "Declarant" collectively means Bluestone, LLC and Wintercove, LLC, their successors and assigns to their respective interests in the Property other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

(m) "Development Period" means the period of time commencing with the execution of this Declaration and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate in the Property or of that portion of the Additional Real Estate which is intended to be developed as additional phases of the subdivision named Wintercove.

(n) "Drainage Board" means the drainage board of the Town of Fishers, its successors or assigns.

(o) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in the Property and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

(p) "Entry Ways" means the structures and improvements, including but not limited to any irrigation system and landscaping improvements, which may be located within a Common Area constructed as an entrance to Allisonville Road or Easy Street or a part thereof (exclusive of the street pavement, curbs, sidewalks and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Property.

(q) "Lake" means any lake as depicted on the Plat and "Lakes" means all such lakes. A numerically designated Lake means the Lake so designated by such number on the Plat.

(r) "Lake Maintenance Easement" or "Lake Common Area" means an area designated on the Plat as a means of access, for purposes of maintenance, to a Lake or a Lake Control Structure.

(s) "Lake Control Structures" means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.

(t) "Landscape Conservation Easement" means a Common Area or portion of a Lot denoted on the Plat to be landscaped and maintained by the Corporation.

(u) "Landscape Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Corporation.

(v) "Landscape Preservation Easement" means a portion of the Property denoted on the Plat or otherwise by recorded instrument as an area to be preserved.

(w) "Lot" means a platted lot as shown on the Plat.

(x) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(y) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

(z) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.

(aa) "Mortgagee" means the holder of a first mortgage on a residence.

(bb) "Nature Preserve and Conservation Easement" means a Common Area or portion of a Lot denoted on the Plat as an area to be maintained by the Corporation as a wetlands area.

(cc) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

(dd) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(ee) "Plat" means the final secondary plat of the Property recorded in the Office of the Recorder of Hamilton County, Indiana.

(ff) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

(gg) "Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

(hh) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

(ii) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

(jj) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not been accepted for maintenance by a public authority.

(kk) "Sidewalk Easement" means those portions of Lots 22 and 23 in Wintercove, Phase I denoted on the Plat as a sidewalk easement.

(ll) "Wintercove" means the name by which that portion of the Property described as Parcel 2 in Exhibit "A" shall be known.

(mm) "Zoning Authority" with respect to any action means the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act.

2. **Declaration.** Declarant expressly declares that the Property shall be held, transferred, and occupied subject to the Restrictions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such restrictions and agreement.

3. Declarant shall have, and hereby reserves the right, at any time, and from time to time, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations and privileges herein, when Declarant places of record in Hamilton County, Indiana, an instrument so declaring the same to be part of the Property, which declaration may be made as part of a subdivision plat of any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Upon the recording of any such instrument the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add to and expand the Property, as described herein as to any part or parts of the Additional Real Estate, shall preclude Declarant thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished during the Development Period. Such



expansion of the Property is entirely at the discretion of Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or any other portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration. Further, Declarant reserves the right to grant the benefit of the easements described in paragraph 15 hereof to all or a portion of the Additional Real Estate without burdening those portions with the obligations of this Declaration. Declarant shall do so from time to time by recordation of an instrument in the Office of the Recorder of Hamilton County, Indiana signed solely by Declarant.

4. The Lakes. Declarant shall convey title to the Lakes to the Corporation. The Corporation shall be responsible for maintaining the Lakes. One hundred percent (100%) of the Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot which abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of a Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structure may be extended into a Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming or ice skating will be permitted in a Lake except if and to the extent authorized by the Board of Directors. Except as otherwise provided herein, no individual using a Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Declarant, the Corporation and their employees, agents and assigns as set forth in the Declaration. Declarant shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion. Any portion of any of the Lakes or Lake Control Structures which is contained within the legal description of a Lot shall be subject to all easements and uses of the Lakes and/or Lake Control Structures, respectively, and shall be maintained, assessed and otherwise treated as though such portion had been conveyed to the Corporation.

5. The Lake Control Structures. Declarant shall convey title to the Lake Control Structures to the Corporation. The Corporation shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots. Any portion of any of the Lakes or Lake Control Structures which is contained within the legal description of a Lot shall be subject to all easements and uses of the Lakes and/or Lake Control Structures, respectively, and shall be maintained, assessed and otherwise treated as though such portion had been conveyed to the Corporation.

6. Drainage System. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of the completion of its development activities within the Real Estate or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment.

7. Maintenance of Entry Ways, Landscape Easements, Common Area Easements, Lots, Nature Preserve and Conservation Easements, Landscape Conservation Easements and Access Easements. The Corporation shall maintain the Entry Ways and the Landscape Easements and all improvements and plantings thereof, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on or in an Entry Way or a Landscape Easement and/or within planting areas

extending both east and west from the Entry Ways to the full extent of Easy Street as it from time to time exists shall be kept neatly cut, cultivated and trimmed as reasonably required to maintain an attractive entrance to Easy Street. All entrance signs located on an Entry Way shall be maintained at all times in good condition appropriate to a first-class residential subdivision.

The Corporation shall further maintain the Nature Preserve and Conservation Easements, Landscape Conservation Easements and Access Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, paths, trees, shrubs and vegetation shall be maintained to provide landscaping within such easement areas and to create and maintain a nature trail and provide for the preservation of wetland areas within the Nature Preserve and Conservation Easements.

Commencing July 1, 1998, the Corporation shall maintain the lawns and remove snow from the driveways and walkways and provide for weekly removal of trash of the Lots comprising the Bluestone, Phase I and Bluestone, Phase II portions of the Real Estate only, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Bluestone, Phase I and Phase II Lots subject to assessment. Grass located on such Lots shall be kept fertilized and neatly cut as reasonably required to maintain an attractive appearance of the Lots, and the snow shall be removed from the sidewalks and driveways on such Lots as reasonably necessary. To enable the Corporation to fulfill its obligations under this Section 7, the Corporation is hereby expressly granted easement rights of entry and access to each Lot within Bluestone, Phase I and Bluestone, Phase II of the Real Estate for purposes of maintaining the lawns and removing snow from the driveways and sidewalks thereon. It is expressly understood and agreed that the Corporation's obligation to maintain the lawns and remove snow from the driveways and sidewalks and provide for weekly removal of trash of such Lots comprising Bluestone, Phase I and Bluestone, Phase II of the Real Estate does not extend to any lot comprising additional phases of Bluestone, any phase of Wintercove or the Additional Real Estate.

The Corporation shall provide for weekly removal of trash of the Lots comprising Wintercove, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Wintercove Lots.

8. Roadways. (a) Maintenance. Declarant shall maintain each Roadway in good condition satisfactory for the purpose for which it was constructed until the Roadway has been accepted as a public roadway.

(b) Landscaping. All landscaping within the road right-of-way is subject to the approval of the appropriate governmental authority.

(c) Cul-de-sac Parking. There shall be no parking on the Cul-de-sacs shown on the Plat.

#### 9. Construction of Residences.

(a) Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the Town of Fishers, Indiana. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Bluestone or Wintercove, as applicable, than the number of Lots depicted on the Plat for such applicable subdivision. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use"

that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a minimum ground floor area of:

Bluestone, Phase I	one thousand three hundred (1,300) square feet if a
Bluestone, Phase II (Lot 45 only)	one-story structure, or one thousand six hundred (1,600) square feet if a higher structure;
Wintercove	one thousand eight hundred (1,800) square feet if a
Bluestone, Phase II (except Lot 45)	one-story structure, or two thousand two hundred (2,200) square feet if a higher structure.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. Unless further restricted by the Plat, no building may be erected between the building line shown on the Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than:

Bluestone, Phase I	seven and one-half (7.5) feet to any side Lot line or
Bluestone, Phase II (Lot 45 only)	twenty-five (25) to any rear or front Lot line;
Wintercove	ten (10) feet to any side Lot line, thirty (30) feet to any
Bluestone, Phase II (except Lot 45)	rear Lot line or twenty-five (25) feet to any front Lot line.

No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation, shown on the development plan for Bluestone and Wintercove, respectively, has been established for each Lot depicted on the Plat and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.

(e) Driveways. All driveways shall be paved and maintained dust free.

(f) Yard Lights. If street lights are not installed in Bluestone, then the builder on each Lot shall supply and install a yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Lot Owner.

(g) Storage Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Landscaping shall include a minimum of two 2" deciduous trees planted near the street right-of-way, taking care to avoid existing utilities and not to violate site distance requirements.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(j) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by the Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) Water Systems. Each Owner shall connect to such water line maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot.

(l) Drainage. 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. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Bluestone or Wintercove may be included in a legal drain established by the Drainage Board. In such event, each Lot in Bluestone or Wintercove, as applicable, will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Vacant Lots. Within Bluestone, Phase I and Bluestone, Phase II it shall be the duty of the Owner of a vacant Lot to maintain such Lot with the exception of mowing the lawn. The Corporation shall have the obligation to mow the grass on any vacant Lot within Bluestone, Phase I and Bluestone, Phase II and shall be reimbursed for the Maintenance Costs thereof through a General Assessment as set forth in Section 7 hereof. Within Wintercove, it shall be the duty of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereon. Declarant and the Corporation shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots comprising any portion of the Real Estate..

(n) Out buildings and sheds are specifically prohibited except that Declarant may allow them on a case by case basis.

#### 10. Maintenance of Lots.

(a) Vehicle Parking. No camper, motor home, business or service truck or truck larger than one (1) ton, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of Bluestone and the sale of Lots therein and such signs as may be located in any Common Area or Community Area, no sign of any kind shall be displayed to the public view on any Lot, without the prior approval of the Corporation and subject to the requirements of the Town of Fishers, except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. A builder shall display a "sold" sign on the Lot when he has sold the property.

(c) Fencing. No fence shall be permitted on any Lot except as authorized in advance by the Architectural Review Board. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No free standing walls shall be permitted upon any Lot. No wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times, except those portion of Lots which are contained within the Landscape Conservation Easements and the Nature Preserve and Conservation Easements, which areas shall be maintained by the Corporation pursuant to Section 7 hereof. If an Owner fails to comply with this restriction, the Architectural Review Board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. 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 neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any residential Lot without the written approval of the Architectural Review Board, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

(l) Tennis Courts. No tennis court shall be installed or maintained on any Lot.

(m) Swimming Pools. No swimming pool or equipment or building related thereto shall be constructed upon any Lot except as authorized in advance by the Architectural Review Board.

CHICAGO TITLE

11. Bluestone/Wintercove Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments. Each Owner of Wintercove shall automatically be a Member upon the addition of Wintercove to the Property.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, together with all other powers that belong to it by law.

(c) Classes of Membership and Voting Rights. The Association shall have the following two (2) classes of voting membership:

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

Class B. The Class B member shall be the Declarant. The Declarant shall exercise one hundred twenty (120) votes for each lot owned in either Bluestone or Wintercove until the earlier of (i) the date on which the written resignation of Declarant as a Class B member is delivered to the Secretary of the Association, or (ii) the date Declarant no longer owns any Lot in the Property or Wintercove, at which time Declarant's rights shall be converted to a Class A membership and Declarant shall have voting rights based upon its ownership of Lots.

(d) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the expiration of the Development Period, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the cost of periodic maintenance, repairs or replacements of the Community Area.

(e) Limitations on Action by the Corporation. Unless the Class B Member and (i) at least two-thirds of the Mortgagees of record (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting or easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current

replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (ii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(f) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

(g) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time as the Class B Membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 15(b), 15(f), (16(a) or 19(b).

(h) Board of Directors. During the Development Period, the Declarant shall appoint all directors, shall fill all vacancies in the Board of Directors, and shall have the right to remove any Director at any time, with or without cause. After 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. Directors need not be members of the Association.

## 12. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Corporation the following: (1) General Assessments, (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. No assessment shall be levied against any Lot owned by Declarant.

### (b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots



and for the improvement, maintenance and operation of the Community Area and all sign easements and landscape easements. The General Assessment shall also be levied for the payment of real estate taxes allocable to the Community Areas, which real estate taxes shall be paid by the Corporation from the date hereof, notwithstanding that the Declarant may retain title to all or part of the Community Area. It shall further be the obligation of the Corporation to (i) maintain and pay all costs of maintenance of all public lighting installed and existing in any right-of-way, (ii) pay the costs of all electricity and energy usage attributable to public lighting installed and existing any right-of-way, (iii) maintain and pay the costs of maintenance of any sidewalks which abut a right-of-way but are not within the right-of-way, and the General Assessment shall also be levied by the Corporation to comply and pay for with the foregoing maintenance requirements and obligations, (iv) to maintain the Lots as set forth in Paragraph 7 hereof, which maintenance costs shall be allocated equally among the Owners of the Lots in the respective subdivisions comprising the Real Estate and shall be uniformly assessed, and (v) maintain the landscaping located on the north side of Easy Street contained within the Village Square shopping center and approximately located within the area cross-hatched on Exhibit "C" attached hereto and by reference made a part hereof.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a person shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Change in Basis. The basis for assessment may be changed with the assent of the Class B Member and of (i) two-thirds (2/3) of the Class A Members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees of record (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Area shall be allocated equally among owners of all Lots and shall be uniformly assessed.

(c) Special Assessment. The Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B Member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Community Area Initial Assessment. On the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which

constitutes a deed in lieu of foreclosure), there shall be due and payable to the Corporation (or the Declarant in the event the Corporation has not yet been formed) by the Owner of such Lot the sum of One Hundred Fifty and No/100 Dollars (\$150.00) which shall be deposited in the Reserve for Replacements maintained by the Corporation.

(e) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(f) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(g) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from any assessments thereafter becoming due or from the lien thereof.

(h) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(i) Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and (2) the Community Area.

(j) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

### 13. Architectural Control.

(a) The Architectural Review Board. Until the end of the Development Period, an Architectural Review Board consisting of three (3) Persons shall be appointed by the Declarant. After the expiration of the Development Period, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such manner as to

preserve values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, removal of trees, or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant or a builder to an individual homeowner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by an Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Bluestone and Wintercove, and no Owner shall undertake any construction activity within Bluestone or Wintercove unless legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than 30 inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors' approval will be deemed granted. If Declarant is no longer a Class B member, a decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. Specific architectural standards are or will be in place for Wintercove, and the Architectural Review Board shall have the power to establish or modify such architectural and landscaping design guidelines and standards as it may deem appropriate for Bluestone or Wintercove to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. If Declarant is no longer a Class B member, any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

#### 14. Community Area.

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of any instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use or Adequacy. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or the adequacy thereof for the purpose intended.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of lots abutting the Lake may use the Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use such parts of the Community Area as are reasonably required to afford access to and from such Owner's Lot.

(e) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area;

(ii) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and (i) two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees of record (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and

(iii) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and (i) the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications

of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the lakes and Lake Control Structures to the Corporation, free and clear of all liens and financial encumbrances. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

#### 15. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, sign easements, entry way easements, landscaping easements, lake maintenance access easements, non-access easements, access easements, landscape conservation easement, landscape preservation easement and nature preserve and conservation easement, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utilities companies and governmental agencies as follows:

(i) Drainage Easements. (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Bluestone, Wintercove, and the Additional Real Estate and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. In the event the Declarant or the Architectural Review Board undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no circumstances shall the Declarant be liable for any damage or destruction to any fences, structures, or other improvements which are damaged, destroyed or remodeled by Declarant, or its agents or employees as a result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements. (SE) are created for the use of the local government agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Bluestone, Wintercove and the Additional Real Estate for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements. (UE) are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies,

for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements. (EWE) are hereby created in the area of the Entry Ways for the use of Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements. (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Maintenance Easements or Lake Common Area. (LME, LCA) are created for the use of Declarant, the Corporation, the Drainage for the purpose of gaining access to the Lake, the Lake Control Structures, the Drainage System in the course of maintenance, repair or replacement of any thereof.

(vii) Non-Access Easements. (NAE) are depicted on the Plat and are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements.

(viii) Sign Easements. There may be strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, such easements for the purposes of providing signs which either (i) advertise the Property, and the availability of Lots the identity of participating builders, or events, or (ii) identify the Property. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements, except as may be installed by the Declarant.

(ix) Landscape Preservation Easement. (LPE) There may be areas shown on the Plat as "Landscape Preservation Easements" and are created in order to preserve the integrity of the existing woods, vegetation, and natural habitat. All trees and vegetation within the Landscape Preservation Easement shall remain in its natural state. No utility easements, drainage easement, or swales shall be permitted in the Landscape Prevention Easement unless such easements or swales are required to connect to existing utilities or swales on the surrounding subdivisions. All evergreen trees that have a trunk diameter (measured at ground level) of at least one inch, and larger, and all non evergreen trees that have a trunk diameter (measured at ground level) of at least two inches, and larger, shall be preserved. Mowing and normal maintenance within the Irregular Landscape Easement shall be permitted subject to preservation of trees of the above type and size designation and larger. Notwithstanding the above, the removal of dead or potentially hazardous trees or

vegetation from the Landscape Preservation Easement may be performed upon written approval of the Association. Except as provided above, no improvements shall be installed or maintained in or upon a Landscape Preservation Easement. No Fencing shall be installed within a Landscape Preservation Easement. Additional landscaping, trees and foliage may be installed in and upon the Landscape Preservation Easement by Declarant or Owner of a Lot subject to the prior written approval of the Association.

(x) Access Easements. (AE) Access easements are created across portions of certain Lots for the use of all Owners to provide pedestrian access to and from the Nature Preserve and Conservation Easement or Common Area.

(xi) Landscape Conservation Easement. (LCE) are hereby created to preserve the integrity of Declarant-installed landscape improvements, existing vegetation, tree cover and to promote nature wildlife habitat. There shall be no removal of landscape improvements, trees, shrubs or vegetation, except for removal of those that may be dead or potentially hazardous. In order to encourage the growth of desirable plant growth, mowing within the Landscape Conservation Easement shall be limited to one (1) time per year or additional mowing or trimming, as determined by the Corporation, that is necessary to maintain the integrity of new or existing plant materials. The Landscape Conservation Easement may not be altered except to maintain or improve the integrity of the easement, subject to the approval of the Corporation. Except as performed by Declarant or the Corporation and as provided above, no improvements, permanent structures or fencing shall be installed in or upon any portion of the Landscape Conservation Easement.

(xii) Nature Preserve and Conservation Easements. (NPCE) are created in order to preserve the integrity of existing natural features, woods and vegetation and to protect and encourage natural wildlife habitat. No trees, shrubs or vegetation shall be cut, mowed or removed except those that may be potentially hazardous or require necessary maintenance to maintain the integrity of the preserve. Except as performed by Declarant or the Corporation, the Nature Preserve and Conservation Easement shall not be "filled," drained or altered to impair its existing condition. No permanent structures, fencing or other improvements shall be installed in or upon the Nature Preserve and Conservation Easement except the continued maintenance of the nature trail.

(xiii) Sidewalk Easement. (SWE) A sidewalk easement is hereby created across portions of Lots 22 and 23 in Wintercove, Phase I as depicted on the Plat for the use of all Owners and the general public to provide pedestrian access to and from the public sidewalk system and the subdivision adjoining such Lots immediately to the east.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of (i) pathways, sidewalks or similar installations as Declarant deems desirable during the Development Period or thereafter as determined by the Association, and (ii) underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on

the Property and to excavate for such purposes if Declarant or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and Declarant shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Property to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, Declarant or the Corporation shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any legal drain.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Maintenance Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways or Lake Maintenance Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Property, Declarant reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. If such grading or cutting of trees, bushes or shrubbery is in an area designated on the Plat as a Drainage Easement, then Declarant's obligation to restore the affected real estate shall be limited to re-grading and re-seeding, and neither the Declarant nor its agents, employees or assignees shall be liable for any damage or destruction to any improvements, structures or fencing located on or in such existing Drainage Easement. If such grading or cutting of trees, bushes or shrubbery is not in an area already designated on the Plat as a Drainage Easement, Declarant will restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

#### 16. Use of Lots During Construction



(a) By Declarant. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Property, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

(b) By Builders. Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Bluestone or Wintercove may, with the prior consent of the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, vacant Lots owned by Declarant adjacent to or in proximity to such model home may be used for parking by visitors to such model home.

17. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration, such party shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

18. Approvals by Declarant. As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: the dedication or transfer of the Community Area; the merger or consolidation of the Property with other real estate; mortgaging of the Community Area; amendment of this Declaration; and changes in the basis for assessment or the amount, use and time of payment of any Assessment.

19. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, (ii) the Declarant, so long as the Declarant still owns at least one (1) Lot.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration and/or to modify, terminate or grant additional easements, restrictions, covenants and to create additional obligations during the period prior to December 31, 2015. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. Declarant shall give notice in writing to such Owners and Mortgagees of record of any amendments. Except to the extent authorized in Paragraph 15(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish

any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the office of the Recorder of Hamilton County, Indiana.

20. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

21. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2055, and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

22. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

23. Not Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

24. Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

25. Access Rights. Declarant hereby declares, creates and reserves an access license over and across all the Real Estate (subject to the limitations hereinafter provided in this Paragraph 13.1) for the use of Declarant and its representatives, agents, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this Paragraph 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

26. Amendment and Restatement. This Amended and Restated Declaration of Covenants and Restrictions completely amends, restates, and supersedes, in its entirety, that certain Declaration of

Covenants and Restrictions dated December 23, 1997 and recorded December 24, 1997 as Instrument No. 9709755716 in the Office of the Recorder of Hamilton County, Indiana, as amended by a certain First Amendment to Declaration of Covenants and Restrictions dated June 18, 1998 and recorded July 29, 1998 as Instrument No. 9809841425 in the aforesaid Recorder's Office.

IN TESTIMONY WHEREOF, witness the signatures of Declarant as of the date set forth above.

BLUESTONE, LLC

By: Richard J. Wells  
Richard J. Wells, Member  
"Declarant"

WINTERCOVE, LLC

By: Richard J. Wells  
Richard J. Wells, Member  
"Declarant"




CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Marion )

Before me, a Notary Public, in and for said County and State, personally appeared Richard J. Wells, a Member of Bluestone, LLC, who acknowledged the foregoing Amended and Restated Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 5th day of November, 1998.

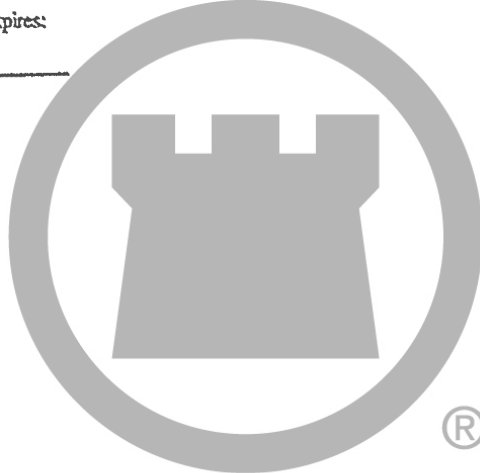


  
Notary Public  
A Resident of Hancock Co., IN

Printed: Michael K. Terry

My Commission Expires:

13 Sep 99



CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Marion )

Before me, a Notary Public, in and for said County and State, personally appeared Richard J. Wells, a Member of Wintercove, LLC, who acknowledged the foregoing Amended and Restated Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 5<sup>th</sup> day of November, 1998.



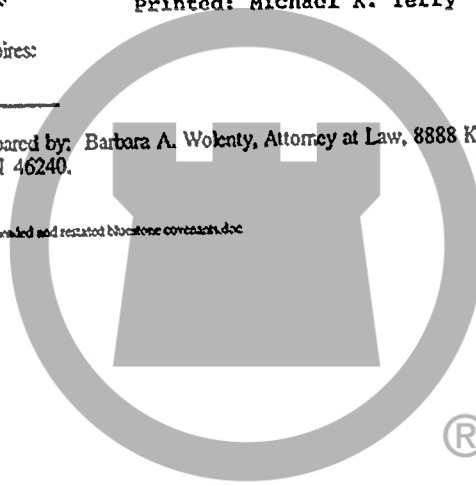
Michael K. Terry  
Notary Public  
A Resident of Hancock Co., IN  
Printed: Michael K. Terry

My Commission Expires:

13 Sep 99

This instrument prepared by: Barbara A. Wolenty, Attorney at Law, 8888 Keystone Crossing, Suite 710, Indianapolis, IN 46240.

c:\wolenty\wells\wintercove\amended and restated wintercove covenants.doc  
revised - 11/5/98



CHICAGO TITLE

EXHIBIT "A"

The Real Estate

BLUESTONE SECTION ONE  
LAND DESCRIPTION:

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 305.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase 1 as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North Line of the South Half of the Northeast Quarter of said Section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 1177.11 feet; thence South 00 degrees 11 minutes 58 seconds East 1368.03 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 29 minutes 02 seconds East 150.00 feet; thence South 00 degrees 30 minutes 58 seconds East 50.00 feet; thence South 89 degrees 29 minutes 02 seconds West 28.52 feet; thence South 29 degrees 11 minutes 04 seconds West a distance of 23.02 feet; thence South 00 degrees 13 minutes 31 seconds West 315.25 feet; thence South 52 degrees 15 minutes 41 seconds West 105.76 feet; thence South 00 degrees 15 minutes 31 seconds West 125.01 feet; thence North 89 degrees 35 minutes 38 seconds East 19.40 feet to the point of curvature of a tangent curve the left, said curve having a central angle of 30 degrees 53 minutes 38 seconds and a radius of 125.00 feet, thence Northeasterly along said curve an arc distance of 67.40 feet, said arc being subtended by a long chord bearing North 74 degrees 08 minutes 49 seconds East and a length of 66.59 feet; thence South 00 degrees 13 minutes 31 seconds West 192.75 feet; thence South 89 degrees 35 minutes 38 seconds West 606.94 feet; thence North 89 degrees 55 minutes 13 seconds West 242.90 feet; thence North 88 degrees 58 minutes 27 seconds West 410.10 feet to the centerline of Alliscuville Road as established per plans thereof for F.A. Project Number 297 Section B(1938), the following two (2) described courses being along said centerline; thence North 25 degrees 36 minutes 43 seconds East 372.37 feet to the point of curvature of a tangent curve to the left, said curve having a central angle of 05 degrees 52 minutes 18 seconds and a radius of 4774.46 feet; thence Northerly along said curve an arc distance of 489.28 feet, said arc being subtended by a long chord having a bearing of North 22 degrees 40 minutes 34 seconds East and a length of 489.06 feet; thence South 70 degrees 15 minutes 35 seconds East 45.00 feet to a point on a non-tangent curve to the left, said curve having a central angle of 110 degrees 15 minutes 24 seconds and a radius of 25.00 feet; thence Southeasterly along said curve an arc distance of 48.11 feet to the point of tangency thereof, said arc being subtended by a long chord having a bearing of South 35 degrees 23 minutes 16 seconds East and a length of 41.02 feet; thence North 89 degrees 29 minutes 02 seconds East 736.24 feet to the POINT OF BEGINNING and containing 18.485 acres (805,203 square feet), more or less.

also including:

**BLUESTONE, SECTION TWO  
LAND DESCRIPTION**

Part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.85 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, Page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point in the West line of Hickory Woods, Phase 1 as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North line of the South half of the Northeast quarter of said section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 13.51 feet; thence South 00 degrees 04 minutes 19 seconds East 2118.60 feet; thence South 89 degrees 35 minutes 38 seconds West 644.94 feet to the POINT OF BEGINNING; thence continuing South 89 degrees 35 minutes 38 seconds West 408.52 feet to the southeast corner of Bluestone, Section 1 as per plat thereof recorded in Plat Cabinet 2, Slide 61 in the Office of the Recorder of said County, the following six (6) described courses being along the easterly line of said Bluestone, Section 1: (1) thence North 00 degrees 13 minutes 31 seconds East 192.75 feet to a point on a non-tangent curve concave northwesterly having a central angle of 30 degrees 53 minutes 38 seconds and a radius of 125.00 feet; (2) thence Southwesterly along the arc of said curve 67.40 feet (said arc being subtended by a chord having a bearing of South 74 degrees 08 minutes 49 seconds West and a length of 66.59 feet) (3) thence South 89 degrees 35 minutes 38 seconds West tangent to last described curve 19.40 feet; (4) thence North 00 degrees 13 minutes 31 seconds East 125.01 feet; (5) thence North 52 degrees 15 minutes 41 seconds East 105.76 feet; (6) thence North 00 degrees 13 minutes 31 seconds East 173.71 feet; thence South 70 degrees 04 minutes 32 seconds East 310.42 feet; thence South 36 degrees 52 minutes 15 seconds East 187.64 feet; thence South 00 degrees 24 minutes 22 minutes East 279.09 feet to the Point Of Beginning. Containing 4.470 Acres (194,721 Square Feet) more or less.

CHICAGO TITLE

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also including:

**WINTERCOVE – SECTION ONE  
LAND DESCRIPTION:**

Part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89°43'44" West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, Page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00°00'00" East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1 Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase One as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North line of the South half of the Northeast quarter of said section; thence South 89°31'32" West along said North line thereof 13.51 feet; thence South 00°04'19" East 721.87 feet to the POINT OF BEGINNING; thence continuing South 00°04'19" East 637.75 feet; thence South 53°07'45" West 807.44 feet; thence North 36°52'15" West 187.64 feet; thence North 70°04'32" West 310.42 feet to a point on the East line of Bluestone, Section One per plat thereof recorded in Plat Cabinet 2, Slide 61 in the Office of the Recorder of said County (the following four (4) described courses being along the Easterly line of said Bluestone, Section One); (1) thence North 00°13'31" East 141.53 feet; (2) thence North 29°11'04" East 23.02 feet; (3) thence North 89°29'02" East 28.52 feet; (4) thence North 00°30'58" West 50.00 feet; thence North 00°11'58" West 172.30 feet; thence North 89°55'56" East 480.00 feet; thence North 00°11'58" West 519.98 feet; thence North 89°48'02" East 390.98 feet to a point on a curve concave Northwesterly having a central angle of 13°27'37" and a radius of 175.00 feet; thence Southwesterly along said curve on arc distance of 41.11 feet (said arc being subtended by a chord bearing South 13°03'30" West and a length of 41.02 feet); thence North 89°55'41" East on a non-tangent line to last described curve 150.41 feet to the Point of Beginning. Containing 16.314 Acres (710,638 Square Feet) more or less.

®

CHICAGO TITLE



EXHIBIT "B"

Additional Real Estate

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Section; thence South 89 degrees 57 minutes 32 seconds West along the North line of said Section 805.88 feet; thence South 00 degrees 13 minutes 31 seconds West parallel with the East line of the Northeast Quarter of said Section 2 a distance of 1527.90 feet the POINT OF BEGINNING of this description; thence continuing South 00 degrees 13 minutes 31 seconds West parallel with the East line of said Northeast Quarter 1525.45 feet; thence South 00 degrees 06 minutes 49 seconds West parallel with the East line of the Southeast Quarter of said Section 2 a distance of 805.04 feet; thence South 89 degrees 54 minutes 31 seconds West 2395.14 feet to the West right-of-way line of Allisonville Road; thence North 26 degrees 03 minutes 27 seconds East along said right-of-way line 420.50 feet; thence Northeasterly 826.32 feet along said right-of-way along an arc to the left having a radius of 4734.46 feet said arc being subtended by a long chord having a bearing of North 20 degrees 22 minutes 05 seconds East and a length of 826.32 feet; thence North 16 degrees 03 minutes 27 seconds East along said right-of-way 392.82 feet; thence North 89 degrees 57 minutes 52 seconds East 369.22 feet; thence North 00 degrees 13 minutes 31 seconds East parallel with the East line of said Northeast Quarter 127.79 feet; thence North 89 degrees 55 minutes 56 seconds East 1304.12 feet to the Point of Beginning and containing 95.34 acres, more or less.

Except therefrom:

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest Corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitnire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase, 1, as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North line of the South half of the Northeast Quarter of said Section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 547.11 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 11 minutes 58 seconds East 1199.03 feet; thence South 89 degrees 55 minutes 56 seconds West 480.00 feet; thence South 00 degrees 11 minutes 58 seconds East 172.50 feet; thence South 89 degrees 29 minutes 02 seconds West 150.00 feet; thence North 00 degrees 11 minutes 58 seconds West 1368.03 feet; thence North 89 degrees 31 minutes 32 seconds East 630.01 feet to the Point of Beginning, containing 17.90 acres more or less. Subject to any legal easements, highways, and rights-of-ways of record.

Except therefrom:

A part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase 1 as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North Line of the South Half of the Northeast Quarter of said Section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 1177.11 feet; thence South 00 degrees 11 minutes 58 seconds East 1368.03 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 29 minutes 02 seconds East 150.00 feet; thence South 00 degrees 30 minutes 58 seconds East 50.00 feet; thence South 89 degrees 29 minutes 02 seconds West 28.52 feet; thence South 29 degrees 11 minutes 04 seconds West a distance of 23.02 feet; thence South 00 degrees 13 minutes 31 seconds West 315.25 feet; thence South 52 degrees 15 minutes 41 seconds West 105.76 feet; thence South 00 degrees 13 minutes 31 seconds West 125.01 feet; thence North 89 degrees 35 minutes 38 seconds East 19.40 feet to the point of curvature of a tangent curve to the left, said curve having a central angle of 30 degrees 53 minutes 38 seconds and a radius of 125.00 feet, thence Northeasterly along said curve an arc distance of 67.40 feet, said arc being subtended by a long chord bearing North 74 degrees 08 minutes 49 seconds East and a length of 66.59 feet; thence South 00 degrees 13 minutes 31 seconds West 192.75 feet; thence South 89 degrees 35 minutes 38 seconds West 606.94 feet; thence North 89 degrees 55 minutes 13 seconds West 242.90 feet; thence North 88 degrees 58 minutes 27 seconds West 410.10 feet to the centerline of Allisonville Road as established per plans thereof for E.A. Project Number 297 Section B(1938), the following two (2) described courses being along said centerline; thence North 25 degrees 36 minutes 43 seconds East 372.37 feet to the point of curvature of a tangent curve to the left, said curve having a central angle of 05 degrees 52 minutes 18 seconds and a radius of 4774.46 feet; thence Northerly along said curve an arc distance of 489.28 feet, said arc being subtended by a long chord having a bearing of North 22 degrees 40 minutes 34 seconds East and a length of 489.06 feet; thence South 70 degrees 15 minutes 35 seconds East 45.00 feet to a point on a non-tangent curve to the left, said curve having a central angle of 110 degrees 15 minutes 24 seconds and a radius of 25.00 feet; thence Southeasterly along said curve an arc distance of 48.11 feet to the point of tangency thereof, said arc being subtended by a long chord having a bearing of South 35 degrees 23 minutes 16 seconds East and a length of 41.02 feet; thence North 89 degrees 29 minutes 02 seconds East 736.24 feet to the POINT OF BEGINNING and containing 18.485 acres (805,203 square feet), more or less.

except therefrom:

**BLUESTONE, SECTION TWO  
LAND DESCRIPTION**

Part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89 degrees 43 minutes 44 seconds West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, Page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1, Slide 42 in the Office of the Recorder of said County to a point in the West line of Hickory Woods Phase 1 as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North line of the South half of the Northeast quarter of said section; thence South 89 degrees 31 minutes 32 seconds West along said North line thereof 13.51 feet; thence South 00 degrees 04 minutes 19 seconds East 2118.60 feet; thence South 89 degrees 35 minutes 38 seconds West 644.94 feet to the POINT OF BEGINNING; thence continuing South 89 degrees 35 minutes 38 seconds West 408.52 feet to the southeast corner of Bluestone, Section 1 as per plat thereof recorded in Plat Cabinet 2, Slide 61 in the Office of the Recorder of said County, the following six (6) described courses being along the easterly line of said Bluestone, Section 1: (1) thence North 00 degrees 13 minutes 31 seconds East 192.75 feet to a point on a non-tangent curve concave northwesterly having a central angle of 30 degrees 53 minutes 38 seconds and a radius of 125.00 feet; (2) thence Southwesterly along the arc of said curve 67.40 feet (said arc being subtended by a chord having a bearing of South 74 degrees 08 minutes 49 seconds West and a length of 66.59 feet) (3) thence South 89 degrees 35 minutes 38 seconds West tangent to last described curve 19.40 feet; (4) thence North 00 degrees 13 minutes 31 seconds East 125.01 feet; (5) thence North 52 degrees 15 minutes 41 seconds East 105.76 feet; (6) thence North 00 degrees 13 minutes 31 seconds East 173.71 feet; thence South 70 degrees 04 minutes 32 seconds East 310.42 feet; thence South 36 degrees 52 minutes 15 seconds East 187.64 feet; thence South 00 degrees 24 minutes 22 minutes East 279.09 feet to the to Point Of Beginning. Containing 4.470 Acres (194,721 Square Feet) more or less.

CHICAGO TITLE

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except therefrom:

WINTERCOVE — SECTION ONE  
LAND DESCRIPTION:

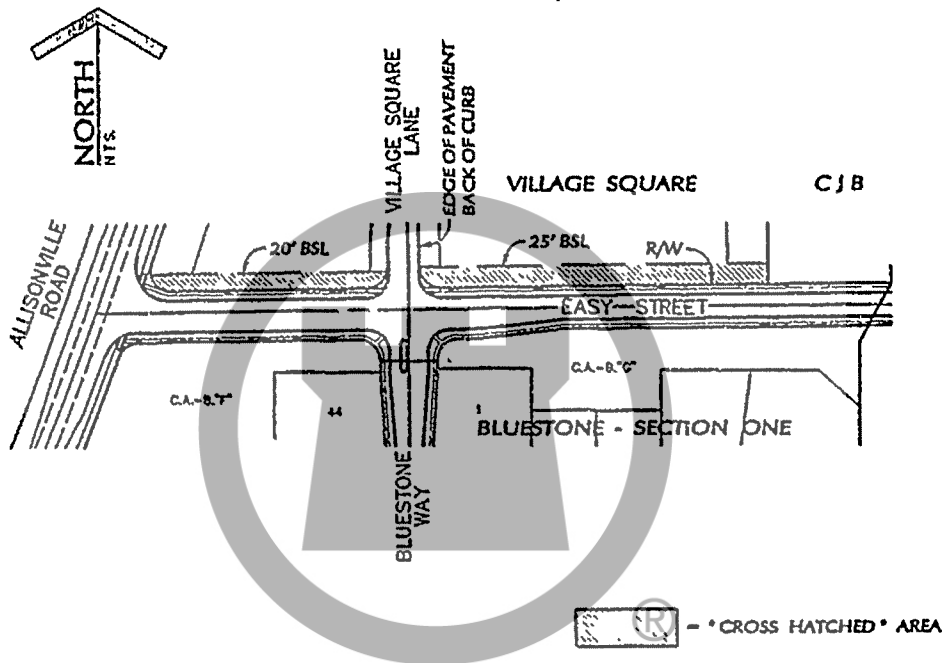
Part of Section 2, Township 17 North, Range 4 East in Hamilton County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Section; thence South 89°43'44" West (assumed bearing) along the North line of said Section 805.86 feet to the Northwest corner of Timber Lane Estates as per plat thereof recorded in Plat Book 2, Page 149 in the Office of the Recorder of Hamilton County, Indiana; thence South 00°00'00" East 1527.17 feet along the West line of said Timber Lane Estates and the West line of Whitmire Glen as per plat thereof recorded in Plat Cabinet 1 Slide 42 in the Office of the Recorder of said County to a point on the West line of Hickory Woods Phase One as per plat thereof recorded in Plat Book 13, pages 149-150, said point being on the North line of the South half of the Northeast quarter of said section; thence South 89°31'32" West along said North line thereof 13.51 feet; thence South 00°04'19" East 721.87 feet to the POINT OF BEGINNING; thence continuing South 00°04'19" East 637.75 feet; thence South 53°07'45" West 807.44 feet; thence North 36°52'15" West 187.64 feet; thence North 70°04'32" West 310.42 feet to a point on the East line of Bluestone, Section One per plat thereof recorded in Plat Cabinet 2, Slide 61 in the Office of the Recorder of said County (the following four (4) described courses being along the Easterly line of said Bluestone, Section One); (1) thence North 00°13'31" East 141.53 feet; (2) thence North 29°11'04" East 23.02 feet; (3) thence North 89°29'02" East 28.52 feet; (4) thence North 00°30'58" West 50.00 feet; thence North 00°11'58" West 172.30 feet; thence North 89°55'56" East 480.00 feet; thence North 00°11'58" West 519.98 feet; thence North 89°48'02" East 390.98 feet to a point on a curve concave Northwesterly having a central angle of 13°27'37" and a radius of 175.00 feet; thence Southwesterly along said curve an arc distance of 41.11 feet (said arc being subtended by a chord bearing South 13°03'30" West and a length of 41.02 feet); thence North 89°55'41" East on a non-tangent line to last described curve 150.41 feet to the Point of Beginning. Containing 16.314 Acres (710,638 Square Feet) more or less.



CHICAGO TITLE

MELTON-PACKARD & ASSOCIATES  
CIVIL ENGINEERS • LAND SURVEYORS  
6910 N. Shadeland Avenue • Indianapolis, Indiana 46220



CHICAGO TITLE

EXHIBIT \* C \*

6

HAMILTON COUNTY, INDIANA  
JENNIFER J HAYDEN  
07-18-2005 At 02:51 PM.  
AMEND DECL 20.00

FIRST AMENDMENT TO THE AMENDED AND  
RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS  
OF BLUESTONE/WINTERCOVE

This amendment to the Amended and Restated Declaration of Covenants/Restrictions of Bluestone/Wintercove is made this 14<sup>th</sup> day of July, 2005 by Bluestone, LLC an Indiana limited liability company ("Bluestone") and Wintercove, LLC an Indiana limited liability company ("Wintercove") (hereinafter collectively referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant caused to be recorded with the Office of the Recorder of Hamilton County, Indiana a certain "Declaration of Covenants and Restrictions of Bluestone/Wintercove" on December 24, 1997 as Instrument No. 9709755716 ("Declaration"); and

WHEREAS, the Declarant amended and restated the Declaration and caused to be recorded with the Office of the Recorder of Hamilton County, Indiana on November 5, 1998 as Instrument No. 9809864360 the "Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove" ("Restated Declaration"); and

WHEREAS, pursuant to Section 11(c) of the Restated Declaration, the Declarant is still a Class "B" Member of the Bluestone/Wintercove Homeowners Association, Inc.

("Association"); and

WHEREAS, pursuant to Section 19(b) of the Restated Declaration the Declarant may unilaterally amend and revise the standards, covenants and restrictions contained in the Restated Declaration.

NOW, THEREFORE the Declaration and Restated Declaration which are applicable to all owners, members, residents, occupants and builders within Bluestone/Wintercove is hereby amended by adding the following:

To section 10 entitled "Maintenance of Lots" subsections (n) and (o) are hereby added as follows:

"(n) Recreational and Outdoor Structures. Playground Equipment, Hot Tubs, Statues and other outdoor structures and/or seasonal and celebration displays must have prior approval of the "Architectural Review Board" prior to erecting/placement. The type, location/placement must have prior approval of the "Architectural Review Board". In order to preserve the natural quality and aesthetics appearance of the existing geographic area within the Real Estate, no outdoor structures of any type will be allowed in the front or side yards of any residence, with the exception of basketball goals, which shall have clear back boards and have prior approval of the "Architectural Review Board". Request for permission is not necessary to display small traditional ordinary seasonal items, such as wreaths."

AND

®

"(o) Leasing Property. The leasing of lots and/or the residences thereon in Bluestone and Wintercove is strictly prohibited. However, the following exceptions shall apply:

(i) Current Lease. Any owner/member whose lot/residence is leased pursuant to a written lease agreement on the effective date of this amendment shall be allowed to

continue to lease his lot/residence, until such time said owner/member sells, grants or conveys his lot/residence or whenever title to the lot changes. This exception shall apply only if:

(1) the owner/member provides a copy of the current lease agreement to the Association within thirty (30) days of the effective date of this amendment and provides copies of all future lease agreements to the Association within thirty (30) days of the date of the lease agreement; and

(2) the current lease is dated prior to the date of the enactment of this amendment; and

(3) all future lease agreements have a term of not less than six (6) months and not more than twelve (12) months; and

(4) all future lease agreements have a condition stated within the lease agreement that the tenant shall comply with the Restated and all amendments thereto or be subject to eviction by the Association.

(ii) Relocation of Owner/Member. Any owner/member who has personally occupied the residence for at least one (1) year prior to leasing the lot/residence may lease his lot/residence for not less than six (6) months and not more than twelve (12) months. This exception shall apply only if one of the following conditions is applicable:

(1) the owner/member is relocating and will re-occupy the lot/residence within eighteen (18) months of the date of the lease agreement; or

(2) the owner/member has attempted to sell the lot/residence at fair market value for six (6) consecutive months or more in good faith and has received no acceptable offers to buy at fair market value.

The owner/member who leases his residence under this exception shall be required to provide to the Association a copy of the lease agreement and shall have a condition stated within the lease agreement that the tenant shall comply with the Restated Declaration and all amendments thereto or be subject to eviction by the Association.

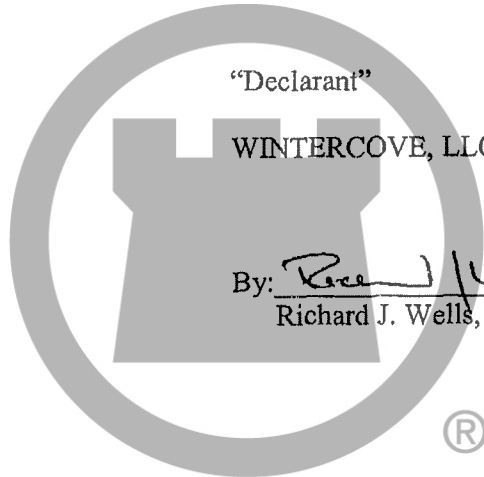


(iii) Hardships. Any owner/member may apply to the Association for special permission to lease his lot/residence under this hardship clause. The owner/member must prove that leasing his lot/residence would be an undue hardship on him and he must provide reasons for and specifics of the hardship. In the event a hardship request is granted the Association shall have the right to set forth conditions under which the lot/residence shall be leased. However, there shall be no obligation upon the Association to grant hardship requests.”

“Declarant”

BLUESTONE, LLC

By: Richard J. Wells  
Richard J. Wells, Member



“Declarant”

WINTERCOVE, LLC

By: Richard J. Wells  
Richard J. Wells, Member

CHICAGO TITLE


STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for said County and State, personally appeared Richard J. Wells, a member of Bluestone, LLC, who being duly sworn, acknowledged the execution of the foregoing First Amendment to Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove.

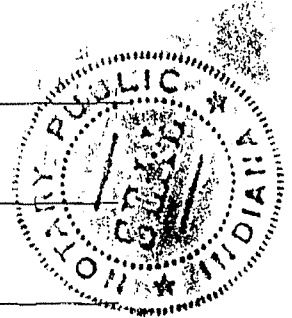
Witness my hand and Notarial Seal this 14<sup>th</sup> day of July, 2005.

My Commission Expires:

December 4, 2011

  
Notary Public

Daniel W. Parker  
Printed



County of Residence:

Boone



CHICAGO TITLE

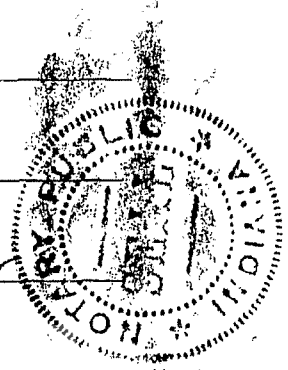
STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Richard J. Wells, a member of Wintercove, LLC, who being duly sworn, acknowledged the execution of the foregoing First Amendment to Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove.

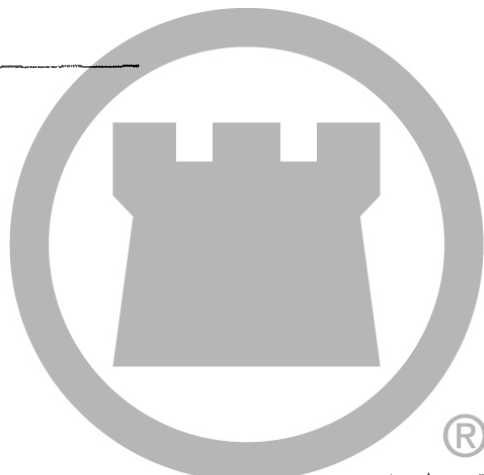
Witness my hand and Notarial Seal this 14<sup>th</sup> day of July, 2005.

My Commission Expires:  
December 4, 2011

[Signature]  
Notary Public  
Daniel W. Parker  
Printed



County of Residence:  
Boone



This instrument prepared by and after recording return to: Robert D. Roache, II, Attorney-at-Law, 8144 Bowline Court, Indianapolis, IN 46236-8869. Telephone (317) 823-0660 Facsimile (317) 823-1707.

CHICAGO TITLE

recorded with the Recorder of Hamilton County, Indiana, on the 24<sup>th</sup> day of December 1997, as Instrument Number 9709755716; (2) Amended and Restated Declaration of Covenants and Restriction of Bluestone/Wintercove, recorded with the Recorder of Hamilton County, Indiana, on the 12<sup>th</sup> day of November 1998 as Instrument Number 9809864360; and (3) First Amendment to the Amended and Restated Declaration of Covenants and Restriction of Bluestone/Wintercove, recorded with the Recorder of Hamilton County, Indiana, on the 18<sup>th</sup> day of July 2005 as Instrument Number 200500044567.

**SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF BLUESTONE/WINTERCOVE**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF BLUESTONE/WINTERCOVE ("Amendment") is made as of this 31 day of March, 2008 by The Bluestone/Wintercove Homeowner Association, Inc., ("Bluestone/Wintercove") an Indiana Corporation, witnesses as follows:

WHEREAS, the original Declaration of Covenants and Restrictions for Bluestone/Wintercove ("Declaration") was recorded on December 24, 1997 as Instrument 9709755716 in the Office of the Recorder of Hamilton County, Indiana, and

WHEREAS, the Amended and Restated Declaration of Covenants and Restrictions for Bluestone/Wintercove ("Amended Declaration") was recorded on November 12, 1998 as Instrument 9809864360 in the Office of the Recorder of Hamilton County, Indiana, and

WHEREAS, the First Amendment to the Amended and Restated Declaration of Covenants and Restrictions for Bluestone/Wintercove was recorded on July 18, 2005 as Instrument 200500044567 in the Office of the Recorder of Hamilton County, Indiana, and

WHEREAS, paragraph (a) of Section 19 entitled "Amendments" of the Amended Declaration, provides the Declaration may be amended by the appropriate officers of the corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending the Declaration; and

WHEREAS, a meeting for the purpose to amend the Declaration was held on September 27, 2007 at which a proper quorum attended and two-thirds (2/3) of the members of Lot Owners voted and approved to amend the Declaration.

2008020257 AMND DECL \$22.00  
04/16/2008 09:40:10A 4 PGS  
Jennifer J Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

NOW THEREFORE, pursuant to the foregoing, The Bluestone/ Wintercove Homeowners Association, Inc. amended the Amended Declaration, as follows:

1. Section 12 (b) (ii), (iii) and (iv) of the Declaration reads, as follows:

“(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a person shall be assessed according to this section 12 entitled Assessments.

(2) Change in Basis. The basis for assessment may be changed with the assent of two-thirds (2/3) of the Members in good standing, who vote in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due and the manner in which it shall be paid.

(iv) Allocation of Assessment. Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Areas shall be allocated equally among owners of all Lots and shall be uniformly assessed. Other expenses attributable to Wintercove will be divided equally among owners of all Lots in Wintercove and shall be uniformly assessed among the owners of Lots in Wintercove. Other expenses attributable to Bluestone will be divided equally among owners of all Lots in Bluestone and shall be uniformly assessed among the owners of Lots in Bluestone.”

2. Section 10 (o) (iii) of the Covenants is amended to correct an omission of the word “not” in a previous amendment and to read as follows: ®

“(iii) Hardships. Any owner/member may apply to the Association for special permission to lease his lot/residence under this hardship clause. The owner/member must prove that not leasing his lot/residence would be an undue hardship on him and he must provide reasons for and specifics of the hardship....”

IN WITNESS WHEREOF, The Bluestone/Wintercove Homeowners Association, Inc., has executed this Amendment as of the date first written above.

THE BLUESTONE/WINTERCOVE  
HOMEOWNERS ASSOCIATION, INC.

By: *[Signature]*  
Gary Humphrey, President

Attest:

*[Signature]*  
Jim White, Secretary

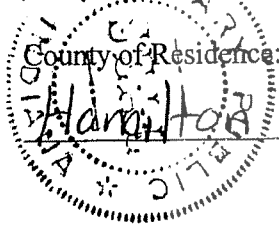
STATE OF INDIANA )  
 ) SS:  
COUNTY OF Hamilton )

Before me, a Notary Public in and for said County and State, personally appeared Gary Humphrey, President of Bluestone/Wintercove Homeowners Association, Inc., who acknowledged the execution of the foregoing Second Amendment to the Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove.

WITNESS my hand and notarial seal this 31 day of March, 2008.

My Commission Expires:

02-16-2015



County of Residence:

*[Signature]*  
Notary Public

Christine S. Wagner  
Printed



Christine S. Wagner  
Notary Public  
State of Indiana  
County of Hamilton  
My Commission Expires: February 21, 2015

CHICAGO TITLE

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Hamilton )

Before me, a Notary Public in and for said County and State, personally appeared Jim White, Secretary of Bluestone/Wintercove Homeowners Association, Inc., who acknowledged the execution of the foregoing Second Amendment to the Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove.

WITNESS my hand and Notarial seal this 31 day of March, 2008.

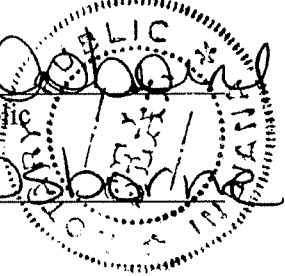
My Commission Expires:

Jan. 8, 2015

County of Residence:

Hamilton

Stacy A. Osborne  
Notary Public  
Stacy A. Osborne  
Printed



Stacy A. Osborne  
Notary Public  
State of Indiana  
County of Hamilton  
My Commission Expires January 8, 2015



I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document unless required by law.

**CHICAGO TITLE**  
Robert D. Roache, II  
Robert D. Roache, II, Attorney-at-Law

This document was prepared by Robert D. Roache, II, Attorney-at-Law, 8144 Bowline Court, Indianapolis, IN 46236-8869, (317) 823-0660, facsimile (317) 823-1707.

288.00  
137  
1.00  
NONE

2010046551 DECLARATIO \$289.00  
09/21/2010 01:33:48P 137 PGS  
Jennifer J Hayden  
HAMILTON County Recorder IN  
Recorded as Presented

Cross-References: 1997-55716; 1998-41425; 1998-64360; 2005-44567; 2008-20257

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**BLUESTONE**

This Declaration (hereafter "Declaration") is made as of the date set forth below.

**WITNESSETH:**

WHEREAS, the following facts are true:

WHEREAS, Bluestone, LLC, an Indiana limited liability company, and Wintercove, LLC, an Indiana limited liability company (collectively referred to as the "Original Developer"), was the owner of certain real estate located in Hamilton County, Indiana, that was subjected to the "Declaration of Covenants and Restrictions of Bluestone/Wintercove" that was recorded on December 24, 1997, as Instrument No. 1997-55716 in the Office of the Recorder of Hamilton County, Indiana (the "Original Declaration"), upon which the Original Developer developed certain phases of residential subdivisions that became known as Bluestone and Wintercove;

WHEREAS, the Original Developer constructed certain improvements and amenities which constitute Community Area (hereafter defined);

WHEREAS, the Original Developer desired to provide for the preservation and enhancement of the property values, amenities and opportunities in Bluestone and Wintercove and for the maintenance of the property and the improvements thereon, and to this end subjected the property to the covenants, restrictions, easements, charges and liens set forth in the Original Declaration, each of which was and is for the benefit of the Lots and lands in the property and the future owners thereof;

WHEREAS, the Original Developer deemed it desirable, for the efficient preservation of the values and amenities in Bluestone and Wintercove, to create an agency to which was delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots;

WHEREAS, the Original Developer incorporated under the laws of the State of Indiana a not-for-profit corporation known as The Bluestone/Wintercove Homeowners Association, Inc. for the purpose of exercising such functions;

WHEREAS, the Original Declaration was subsequently superseded and replaced by the "Amended and Restated Declaration of Covenant and Restrictions for Bluestone/Wintercove" that was recorded on November 12, 1998, as Instrument No. 1998-64360 in the Office of the Recorder of Hamilton County, Indiana (the "Bluestone/Wintercove Amended and Restated Declaration");



WHEREAS, the Bluestone/Wintercove Amended and Restated Declaration was subsequently amended by the "First Amendment to the Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove" that was recorded on July 18, 2005, as Instrument No. 2005-44567 in the Office of the Recorder of Hamilton County, Indiana, and the "Second Amendment to the Amended and Restated Declaration of Covenants and Restrictions of Bluestone/Wintercove" that was recorded on April 16, 2008, as Instrument No. 2008-20257 in the Office of the Recorder of Hamilton County, Indiana. The Bluestone/Wintercove Amended and Restated Declaration, as amended by the First Amendment and the Second Amendment, shall be referred to hereafter as the "Bluestone/Wintercove Declaration";

WHEREAS, the sections of the property consisting of Bluestone and Wintercove are different in certain respects and are clearly distinguishable from each other;

WHEREAS, the Owners within both Bluestone and Wintercove desire to separate the two communities so that they are no longer subject to the same covenants and restrictions, and so that they each have their own homeowners association.

WHEREAS, to accomplish said desires, the Owners of Lots within both Bluestone and Wintercove desire to amend certain provisions of the Bluestone/Wintercove Declaration and to restate the same for the convenience of the Owners such that this Declaration in no way nullifies or changes the Bluestone/Wintercove Declaration or the effective date of the Bluestone/Wintercove Declaration. However, upon the date of recording of this Declaration with the Office of the Recorder of Hamilton County, Indiana, the Bluestone/Wintercove Declaration shall no longer be in effect as to the Lots and Property within Bluestone and shall be replaced by the following. THE RESULT WILL BE THAT THIS DECLARATION WILL ONLY APPLY TO THE LOTS WITHIN BLUESTONE. THE OWNERS WITHIN WINTERCOVE ARE SIMULTANEOUSLY APPROVING A SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS THAT WILL ONLY APPLY TO THE OWNERS AND LOTS WITHIN WINTERCOVE.

NOW, THEREFORE, the Owners of Lots in Bluestone hereby consent to and adopt this Declaration such that all of the platted dwellings, Lots and lands located within Bluestone as they have been platted 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 dwellings, Lots and lands in Bluestone. Such restrictions below 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 dwellings and Lots situated therein. All of the restrictions shall run with the land and shall be binding upon the Owners 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 all successors in title to any real estate in the development. Now, therefore, the Declaration which is applicable to all Owners and residents within Bluestone hereby states as follows:

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

(a) "Access Easements" means a portion of a Lot denoted on the Plat as an area to be maintained by the Association as a means of access by any Owner to a Common Area.

(b) "Architectural Review Board" means that entity established pursuant to Paragraph 12 of this Declaration for the purposes therein stated.

(c) "Articles" mean the Articles of Incorporation of the Association, as amended from time to time.

(d) "Assessments" means all sums lawfully assessed against the Members of the Association, as amended from time to time.

(f) "Board of Directors" means the governing body of the Association elected by the Members of Lots within Bluestone in accordance with the By-Laws.

(g) "By-Laws" means the Code of By-Laws of the Association, as amended from time to time.

(h) "Common Area" means any area referred to on a Plat as a Common Area.

(i) "Community Area" means (i) the Lake Control Structures (ii) the Drainage System, (iii) the Lakes and Lake Maintenance Easements and/or Lake Common Areas, (iv) the Landscape Conservation Easement, (v) the Nature Preserve and Conservation Easement, (vi) the Access Easements, (vii) the Entry Ways, (viii) the Roadways to the extent not maintained by public authority, (ix) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (x) any area of land (1) shown on the Plat as a Common Area, Landscape Area or Preserve (2) described in any recorded instrument prepared by the Original Developer or its agents, or (3) conveyed to or acquired by the Association, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots within Bluestone. Upon the filing of (1) the Second Amended and Restated Declaration applicable solely to Wintercove with the Hamilton County Recorder, (2) this new Declaration of Covenants and Restrictions for Bluestone with the Hamilton County Recorder, (3) the Amended and Restated Articles of Incorporation of The Wintercove Homeowners Association, Inc. with the Indiana Secretary of State, and (4) the new Articles of Incorporation for The Bluestone Homeowners Association, Inc. with the Indiana Secretary of State, the Community Area shall be deeded by the original nonprofit corporation known as "The Bluestone/Wintercove Homeowners Association, Inc." to The Wintercove Homeowners Association, Inc. and The Bluestone Homeowners Association, Inc. so that ownership of said Community Area shall lie with the homeowners association where the portions of the Community Area are situated.

(k) "Homeowners' Association" or "Association" means The Bluestone Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns. Originally, "the Bluestone/Wintercove Homeowners Association, Inc." was formed upon the filing of Articles of Incorporation with the Indiana Secretary of State on April 19, 1999. Upon the filing of this Declaration with the Hamilton County Recorder, the Articles of Incorporation will be filed with the Indiana Secretary of State to create the new corporation known as "The Bluestone Homeowners Association, Inc." and that said corporation shall only apply to the Owners and Lots within Bluestone. Also, Amended and Restated Articles of Incorporation will be filed with the Indiana Secretary of State for the corporation to be named "The Wintercove Homeowners Association, Inc." that shall only apply to the Owners and Lots within Wintercove.

(l) "Declarant" or "Original Developer" collectively means Bluestone, LLC and Wintercove, LLC, their successors and assigns.

(m) "Drainage Board" means the drainage board of the Town of Fishers, its successors or assigns.

(n) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in the Property and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

(o) "Entry Ways" means the structures and improvements, including but not limited to any irrigation system and landscaping improvements, which may be located within a Common Area constructed as an entrance to Allisonville Road or Easy Street or a part thereof (exclusive of the street pavement, curbs, sidewalks and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Property.

(p) "Lake" means any lake as depicted on the Plat and "Lakes" means all such lakes. A numerically designated Lake means the Lake so designated by such number on the Plat.

(q) "Lake Maintenance Easement" or "Lake Common Area" means an area designated on the Plat as a means of access, for purposes of maintenance, to a Lake or a Lake Control Structure.

(r) "Lake Control Structures" means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.

(s) "Landscape Conservation Easement" means a Common Area or portion of a Lot denoted on the Plat to be landscaped and maintained by the Association.

(t) "Landscape Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Association.

(u) "Landscape Preservation Easement" means a portion of the Property denoted on the Plat or otherwise by recorded instrument as an area to be preserved.

(v) "Lot" means a platted lot as shown on the Plat.

(w) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(x) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

(y) "Member" means a member of the Association and "Members" means members of the Association.

(z) "Mortgagee" means the holder of a first mortgage on a residence.

(aa) "Nature Preserve and Conservation Easement" means a Common Area or portion of a Lot denoted on the Plat as an area to be maintained by the Association as a wetlands area.

(bb) "Owner" means a Person who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

(cc) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(dd) "Plat" means the final secondary plat of the Property recorded in the Office of the Recorder of Hamilton County, Indiana.

(ee) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

(ff) "Reserve for Replacements" means a fund established and maintained by the Association to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

(gg) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

(hh) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

(ii) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not been accepted for maintenance by a public authority.

(jj) "Sidewalk Easement" means those portions of Lots 22 and 23 in Wintercove, Phase I denoted on the Plat as a sidewalk easement.

(kk) "Bluestone" means the name by which the Property shall be known.

(ll) "Zoning Authority" with respect to any action means the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act.

(mm) "Property" means the Bluestone subdivision consisting of the real estate described in Exhibit "A" attached hereto.

2. Declaration. The Bluestone Property shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Original Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of the Association with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with the Association, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such restrictions and agreement.

3. The Lakes. The Original Developer has conveyed title to the Lakes to the Association. The Association shall be responsible for maintaining the Lakes. One hundred percent (100%) of the Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot which abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of a Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structure may be extended into a Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming or ice skating will be permitted in a Lake except if and to the extent authorized by the Board of Directors. Except as otherwise provided herein, no individual using a Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Association and its employees, agents and assigns as set forth in this Declaration. The Association shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion. Any portion of any of the Lakes or Lake Control Structures which is contained within the legal description of a Lot shall be subject to all easements and uses of the Lakes and/or Lake Control Structures, respectively, and shall be maintained, assessed and otherwise treated as though such portion had been conveyed to the Association.

4. The Lake Control Structures. The Original Developer has conveyed title to the Lake Control Structures to the Association. The Association shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots. Any portion of any of the Lakes or Lake Control Structures which is contained within the legal description of a Lot shall be subject to all easements and uses of the Lakes and/or Lake Control Structures, respectively, and shall be maintained, assessed and otherwise treated as though such portion had been conveyed to the Association.

5. Drainage System. The Association shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots.

6. Maintenance of Entry Ways, Landscape Easements, Common Area Easements, Lots, Nature Preserve and Conservation Easements, Landscape Conservation Easements and Access Easements. The Association shall maintain the Entry Ways and the Landscape Easements and all improvements and plantings thereof, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on or in an Entry Way or a Landscape Easement and/or within planting areas extending both east and west from the Entry Ways to the full extent of Easy Street as it from time to time exists shall be kept neatly cut, cultivated and trimmed as reasonably required to maintain an attractive entrance to Easy Street. All entrance signs located on an Entry Way shall be maintained at all times in good condition appropriate to a first-class residential subdivision.

The Association shall further maintain the Nature Preserve and Conservation Easements, Landscape Conservation Easements and Access Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, paths, trees, shrubs and vegetation shall be maintained to provide landscaping within such easement areas and to create and maintain a nature trail and provide for the preservation of wetland areas within the Nature Preserve and Conservation Easements.

The Association shall maintain the lawns and remove snow from the driveways and walkways and provide for weekly removal of trash of the Lots within Bluestone, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Bluestone Lots. Grass located on such Lots shall be kept fertilized and neatly cut by the Association as reasonably required to maintain an attractive appearance of the Lots, and the snow shall be removed from the sidewalks and driveways on such Lots by the Association as reasonably necessary. To enable the Association to fulfill its obligations under this provision, the Association is hereby expressly granted easement rights of entry and access to each Lot within Bluestone for purposes of maintaining the lawns and removing snow from the driveways and sidewalks thereon.

7. Roadways. (a) Maintenance. Each roadway has been accepted as a public roadway by the Town of Fishers and is thus the Town's responsibility for maintenance, repairs and replacement.

(b) Landscaping. All landscaping within the road right-of-way is subject to the approval of the appropriate governmental authority.

(c) Cul-de-sac Parking. There shall be no parking on the Cul-de-sacs shown on the Plat.

8. Construction of Residences.

(a) Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the Town of Fishers, Indiana. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Bluestone than the number of Lots depicted on the Plat for the Bluestone subdivision. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a minimum ground floor area of:

Bluestone, Phase I Bluestone, Phase II (Lot 45 only)	one thousand three hundred (1,300) square feet if a one-story structure, or one thousand six hundred (1,600) square feet if a higher structure;
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Bluestone, Phase II (except Lot 45)	one thousand eight hundred (1,800) square feet if a one-story structure, or two thousand two hundred (2,200) square feet if a higher structure.
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(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. Unless further restricted by the Plat, no building may be erected between the building line shown on the Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than:

Bluestone, Phase I Bluestone, Phase II (Lot 45 only)	seven and one-half (7.5) feet to any side Lot line or twenty-five (25) feet to any rear or front Lot line;
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Bluestone, Phase II (except Lot 45)	ten (10) feet to any side Lot line, thirty (30) feet to any rear Lot line or twenty-five (25) feet to any front Lot line.
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No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation, shown on the development plan for Bluestone was established by the Original Developer for each Lot depicted on the Plat and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.

(e) Driveways. All driveways shall be paved and maintained dust free.

(f) Yard Lights. The builder on each Lot shall supply and install a yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Lot Owner.



(g) Storage Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Landscaping shall include a minimum of two 2" deciduous trees planted near the street right-of-way, taking care to avoid existing utilities and not to violate site distance requirements.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board. Each Owner shall be responsible for the maintenance, upkeep and replacement of the Owner's mailbox and post so as to be properly maintained and in good appearance.

(j) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by the Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) Water Systems. Each Owner shall connect to such water line maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot.

(l) Drainage. 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. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Bluestone may be included in a legal drain established by the Drainage Board. In such event, each Lot in Bluestone will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Vacant Lots. Within Bluestone, it shall be the duty of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereon. The Association shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots.

(n) Out buildings and sheds are specifically prohibited except that the Architectural Review Board may allow them on a case by case basis.

9. Maintenance of Lots.

(a) Vehicle Parking. No camper, motor home, business or service truck or truck larger than one (1) ton, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for the community entrance sign located in the Common Area or Community Area, no sign of any kind shall be displayed to the public view on any Lot, without the prior written approval of the Association and subject to the requirements of the Town of Fishers, except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale.

(c) Fencing. No fence shall be permitted on any Lot except as authorized in advance by the Architectural Review Board. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No free standing walls shall be permitted upon any Lot. No wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times, except those portion of Lots which are contained within the Landscape Conservation Easements and the Nature Preserve and Conservation Easements, which areas shall be maintained by the Association pursuant to Section 6 hereof. If an Owner fails to comply with this restriction, the Architectural Review Board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. 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 neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any residential Lot without the written approval of the Architectural Review Board, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric bug killers, "zappers", and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

(l) Tennis Courts. No tennis court shall be installed or maintained on any Lot.

(m) Swimming Pools. No swimming pool or equipment or building related thereto shall be constructed upon any Lot except as authorized in advance by the Architectural Review Board.

(n) Recreational and Outdoor Structures. Playground equipment, hot tubs, statues and other outdoor structures and/or seasonal and celebration displays must have prior approval of the Architectural Review Board prior to erecting/placement. The type, location/placement must have prior approval of the Architectural Review Board. In order to preserve the natural quality and aesthetics appearance of the existing geographic area within Bluestone, no outdoor structures of any type will be allowed in the front or side yards of any residence, with the exception of basketball goals, which shall have clear back boards and have prior approval of the Architectural

Review Board. Request for permission is not necessary to display small traditional ordinary seasonal items, such as wreaths.

(o) Leasing Property. The leasing of lots and/or the residences thereon in Bluestone is strictly prohibited. However, the following exceptions shall apply:

(i) Current Lease. Any Owner/Member whose lot/residence is leased pursuant to a written lease agreement as of July 18, 2005 (the date when the First Amendment to the Bluestone/Wintercove Declaration was recorded) shall be allowed to continue to lease his Lot/Residence, until such time said Owner/Member sells, grants or conveys his Lot/Residence or whenever title to the Lot changes. This exception shall apply only if:

(1) the Owner/Member provides a copy of the current lease agreement to the Association within thirty (30) days of July 18, 2005, and provides copies of all future lease agreements to the Association within thirty (30) days of the date of the lease agreement; and

(2) the current lease is dated prior to the date of July 18, 2005; and

(3) all future lease agreements have a term of not less than six (6) months and not more than twelve (12) months; and

(4) all future lease agreements have a condition stated within the lease agreement that the tenant shall comply with this Declaration and all amendments thereto or be subject to eviction by the Association.

(ii) Relocation of Owner/Member. Any Owner/Member who has personally occupied the Residence for at least one (1) year prior to leasing the Lot/Residence may lease his Lot/Residence for not less than six (6) months and not more than twelve (12) months. This exception shall apply only if one of the following conditions is applicable:

(1) the Owner/Member is relocating and will re-occupy the Lot/Residence within eighteen (18) months of the date of the lease agreement; or

(2) the Owner/Member has attempted to sell the Lot/Residence at fair market value for six (6) consecutive months or more in good faith and has received no acceptable offers to buy at fair market value.

The Owner/Member who leases his Residence under this exception shall be required to provide to the Association a copy of the lease agreement and shall have a condition stated within the lease agreement that the tenant shall comply with this Declaration and all amendments thereto or be subject to eviction by the Association.

(iii) Hardships. Any Owner/Member may apply to the Association for special permission to lease his Lot/Residence under this hardship clause. The Owner/Member

must prove that not leasing his Lot/Residence would be an undue hardship on him and he must provide reasons for and specifics of the hardship. In the event a hardship request is granted the Association shall have the right to set forth conditions under which the Lot/Residence shall be leased. However, there shall be no obligation upon the Association to grant hardship requests.

10. Bluestone Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Association shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, all as amended, together with all other powers that belong to it by law.

(c) Voting Rights. Members shall be entitled to one (1) vote for each lot owned in Bluestone. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

(d) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(e) Limitations on Action by the Association. Unless (i) at least two-thirds of the Mortgagees of record (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Members have given their prior written approval, the Association, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting or easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of

determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(f) Mergers. Upon a merger or consolidation of another corporation with the Association, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall affect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

(g) Board of Directors. 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. Directors must be members of the Association.

11. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association the following: (1) General Assessments, and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon, late charges, and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the Community Area and all sign easements and landscape easements. The General Assessment shall also be levied for the payment of real estate taxes allocable to the Community Areas, which real estate taxes shall be paid by the Association. It shall further be the obligation of the Association to (i) maintain and pay all costs of maintenance of all public lighting installed and existing in any right-of-way, (ii) pay the costs of all electricity and energy usage attributable to public lighting installed and existing any right-of-way, (iii) maintain and pay

the costs of maintenance of any sidewalks which abut a right-of-way but are not within the right-of-way, and the General Assessment shall also be levied by the Association to comply with and pay for the foregoing maintenance requirements and obligations, and (iv) to maintain the Lots as set forth in Paragraph 6 hereof, which maintenance costs shall be allocated equally among the Owners of the Lots.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a person shall be assessed according to this section 11 entitled Assessments.

(2) Change in Basis. The basis for assessment may be changed with the assent of two-thirds (2/3) of the Members in good standing, who vote in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board of Directors shall establish the date(s) the General Assessment shall become due and the manner in which it shall be paid.

(iv) Allocation of Assessment. Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Areas and all other expenses with regard to the operation of the Association or as required by the terms of this Declaration or the By-Laws shall be allocated equally among owners of all Lots and shall be uniformly assessed.

(c) Special Assessment. Subject to the limitations set forth below in subparagraph (m), the Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of a majority of the votes of the Members who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(e) Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Association

shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. If the Association has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(f) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from any assessments thereafter becoming due or from the lien thereof.

(g) Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(h) Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and (2) the Community Area.

(i) Annual Budget Preparation and Provision to the Members. By a majority vote of the Directors, the Board of Directors shall propose an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. The annual budget must reflect the estimated revenues and expenses for the budget year, and the estimated surplus or deficit as of the end of the current budget year. The Association shall provide each Member of the Association with: (1) a copy of the proposed annual budget; or (2) written notice that a copy of the proposed annual budget is available upon request at no charge to the Member. At the same time, the Association shall provide each Member with a written notice of the amount of any increase or decrease in the General Assessment paid by the Members that would occur if the proposed annual budget is approved. After all of the foregoing take place, the Association shall hold a meeting pursuant to the following subparagraph (j).

(j) Association Meeting to Approve the Budget. Subject to subparagraph (k) below, the Association budget must be approved at a meeting of the Members by a majority of the Members of the Association in attendance at a meeting called and conducted in accordance with the requirements of this Declaration, the Articles of Incorporation and the By-Laws. For purposes of this meeting, a Member is considered to be in attendance at the meeting if the Member attends: (1) in person; (2) by proxy; or (3) by any other means allowed under Indiana law or under this Declaration, the Articles of Incorporation or the By-Laws.



(k) Power of the Board to Adopt a Budget in the Absence of a Quorum. If the number of Members in attendance at the meeting held under subparagraph (j) above does not constitute a quorum as defined in Section 3.1 of the By-Laws of the Association, the Board may adopt an annual budget for the Association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved Association annual budget.

(l) Approval of Certain Contracts; Meeting; Vote by the Members. The Board may not enter into any contract that would result in a Special Assessment or the increase in the existing General Assessment payable by the affected Members in the amount of more than five hundred dollars (\$500) per year for each affected Member of the Association unless: (1) the Board holds at least two (2) Association meetings of the Members concerning the contract; and (2) the contract is approved by the affirmative vote of at least two-thirds (2/3) of the affected Members of the Association. The Board shall give notice of the first such Association meeting to each Member of the Association at least ten (10) calendar days before the date the meeting occurs. The provisions in this subparagraph (l) do not apply to a contract entered into by a Board that would resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law.

(m) Borrowing Money; Approval by the Members. The Association may not borrow money during any calendar year on behalf of the Association in an amount that exceeds the greater of:

- (1) five thousand dollars (\$5,000) during any calendar year; or
- (2) if the Association operated under an annual budget in the previous calendar year, an amount equal to at least ten percent (10%) of the previous annual budget of the Association;

unless borrowing the money is approved by the affirmative vote of a majority of the Members of the Association voting under this provision. A vote held under this provision must be conducted by paper ballot. The Association shall distribute paper ballots to persons eligible to vote at least thirty (30) days before the date the votes are to be opened and counted. Votes cast under this provision shall be opened and counted at a public meeting held by the Association. None of the provisions and requirements in this subparagraph (m) shall apply to money borrowed by the Association that is needed to: (1) resolve, settle, or otherwise satisfy an act of enforcement against the Association for violating a state or local law; or (2) address an emergency that affects the public health, safety, or welfare.

## 12. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Members of the Association shall be appointed by the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such

manner as to preserve values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting, removal of trees, or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Original Developer or a builder to an individual homeowner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by an Owner of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Bluestone, and no Owner shall undertake any construction activity within Bluestone unless legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than 30 inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by the Architectural Review Board of the Board of Directors, approval will be deemed granted. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. Specific architectural standards are in place for Bluestone, and the Architectural Review Board shall have the power to establish or modify such architectural and landscaping design guidelines and standards as it may deem appropriate for Bluestone to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

13. Community Area.

(a) Ownership. The Community Area shall remain private, and nothing is intended to be, or shall be construed as, a dedication to the public of such Community Area. The Association may, however, dedicate or transfer all or part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Obligations of the Association. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(c) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of lots abutting the Lake may use the Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use such parts of the Community Area as are reasonably required to afford access to and from such Owner's Lot. Each Owner within Bluestone shall have an easement of enjoyment to the Community Area that is owned by The Wintercove Homeowners Association, Inc. Likewise, each Owner within Wintercove shall have an easement of enjoyment to the Community Area that owned by The Bluestone Homeowners Association, Inc. These cross-easements are in recognition of the fact that when the Original Developer developed Bluestone and Wintercove, such sections were governed by a single set of covenants and restrictions and governed by a single homeowners association. Thus, even after the separation of Bluestone and Wintercove from each other, those easements of enjoyment shall continue.

(d) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Association to establish reasonable rules for the use of the Community Area;

(ii) the right of the Association to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of (i) two-thirds (2/3) of the votes of the Members or (ii) two-thirds (2/3) of the Mortgagees of record (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Association or a meeting duly called for this purpose; and

(iii) the right of the Association to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by (i) the appropriate officers of the Association acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(e) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area

and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Association and included within the Register of Regulations.

(f) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Association to repair said damaged area; the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

(g) Conveyance of Title. The Original Developer has conveyed the Lakes and Lake Control Structures to the Association, free and clear of all liens and financial encumbrances.

14. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as were created by the Original Developer pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, sign easements, entry way easements, landscaping easements, lake maintenance access easements, non-access easements, access easements, landscape conservation easement, landscape preservation easement and nature preserve and conservation easement, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utilities companies and governmental agencies as follows:

(i) Drainage Easements. (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Bluestone and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, and by the Architectural Review Board, but neither the Association nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. In the event the Association or the Architectural Review Board undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no circumstances shall the Association or the Architectural Review Board be liable for any damage or destruction to any fences, structures, or other improvements which are damaged, destroyed or remodeled by the Association or the Architectural Review Board, or their agents or employees as a

result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements. (SE) are created for the use of the local government agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Bluestone for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements. (UE) are created for the use of the Association and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements. (EWE) are hereby created in the area of the Entry Ways for the use of the Architectural Review Board and the Association for the installation, operation and maintenance of the Entry Ways.

(v) Landscape Easements. (LE) are created for the use by the Architectural Review Board and the Association for the planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Maintenance Easements or Lake Common Area. (LME, LCA) are created for the use of the Association, the Drainage for the purpose of gaining access to the Lake, the Lake Control Structures, the Drainage System in the course of maintenance, repair or replacement of any thereof.

(vii) Non-Access Easements. (NAE) are depicted on the Plat and are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except those by the Original Developer and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements.

(viii) Sign Easements. There may be strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. The Association hereby reserves unto itself such easements for the purposes of providing signs which either (i) advertise the Property, and the availability of Lots, or events, or (ii) identify the Property. The Association hereby reserves unto itself the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Original Developer and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements, except as installed by the Original Developer or the Association.

(ix) Landscape Preservation Easement. (L.P.E.) There may be areas shown on the Plat as "Landscape Preservation Easements" and are created in order to preserve the integrity of the existing woods, vegetation, and natural habitat. All trees and vegetation within the Landscape Preservation Easement shall remain in its natural state. No utility easements, drainage easement, or swales shall be permitted in the Landscape Preservation Easement unless such easements or swales are required to connect to existing utilities or swales on the surrounding subdivisions. All evergreen trees that have a trunk diameter (measured at ground level) of at least one inch, and larger, and all non evergreen trees that have a trunk diameter (measured at ground level) of at least two inches, and larger, shall be preserved. Mowing and normal maintenance within the Irregular Landscape Easement shall be permitted subject to preservation of trees of the above type and size designation and larger. Notwithstanding the above, the removal of dead or potentially hazardous trees or vegetation from the Landscape Preservation Easement may be performed upon written approval of the Association. Except as provided above, no improvements shall be installed or maintained in or upon a Landscape Preservation Easement. No fencing shall be installed within a Landscape Preservation Easement. Additional landscaping, trees and foliage may be installed in and upon the Landscape Preservation Easement by the Owner of a Lot subject to the prior written approval of the Association.

(x) Access Easements. (AE) Access easements are created across portions of certain Lots for the use of all Owners to provide pedestrian access to and from the Nature Preserve and Conservation Easement or Common Area.

(xi) Landscape Conservation Easement. (LCE) are hereby created to preserve the integrity of originally-installed landscape improvements, existing vegetation, tree cover and to promote nature wildlife habitat. There shall be no removal of landscape improvements, trees, shrubs or vegetation, except for removal of those that may be dead or potentially hazardous. In order to encourage the growth of desirable plant growth, mowing within the Landscape Conservation Easement shall be limited to one (1) time per year or additional mowing or trimming, as determined by the Association that is necessary to maintain the integrity of new or existing plant materials. The Landscape Conservation Easement may not be altered except to maintain or improve the integrity of the easement, subject to the approval of the Association. Except as performed by the Association and as provided above, no improvements, permanent structures or fencing shall be installed in or upon any portion of the Landscape Conservation Easement.

(xii) Nature Preserve and Conservation Easements. (NPCE) are created in order to preserve the integrity of existing natural features, woods and vegetation and to protect and encourage natural wildlife habitat. No trees, shrubs or vegetation shall be cut, mowed or removed except those that may be potentially

hazardous or require necessary maintenance to maintain the integrity of the preserve. Except as performed by the Association, the Nature Preserve and Conservation Easement shall not be "filled," drained or altered to impair its existing condition. No permanent structures, fencing or other improvements shall be installed in or upon the Nature Preserve and Conservation Easement except the continued maintenance of the nature trail.

(xiii) Sidewalk Easement. (SWE) A sidewalk easement is hereby created across portions of Lots 22 and 23 in Wintercove, Phase I as depicted on the Plat for the use of all Owners and the general public to provide pedestrian access to and from the public sidewalk system and the subdivision adjoining such Lots immediately to the east.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of (i) pathways, sidewalks or similar installations as determined by the Association, and (ii) underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for the Association or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if the Association or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and the Association shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as was proposed and approved by the Original Developer prior to the conveyance of the first Lot in the Property to an Owner or by the Association or the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, the Association shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties. ®

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any legal drain.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Maintenance Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or

other pavings, other than crossings, driveways, walkways or Lake Maintenance Easements, and neither the Association nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

15. Enforcement. Subject to the requirements and provisions of Paragraph 21 below entitled "Grievance Resolution Procedures", the Association and any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but the Association shall not be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by the Association or an Owner to enforce this Declaration, such party shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

16. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by the appropriate officers of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the members cast at a meeting duly called for the purpose of amending this Declaration.

(b) By the Board of Directors. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Board of Directors of the Association shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners or any other party to amend or supplement this Declaration, the Articles of Incorporation, and/or the By-Laws at any time and from time to time if such amendment or supplement is made:

(i) to comply with requirements of the Federal National Mortgage Association ("Fannie Mae"), the Government National Mortgage Association ("Ginnie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing & Urban Development ("HUD"), the Federal Housing Association, the Veteran's Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; or

(ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Residences; or



(iii) to bring this Declaration, the Articles of Incorporation and/or the By-Laws into compliance with any statutory requirements or the requirements of any governmental authority or with each other.

(c) Effective Date. Any amendment shall become effective upon its recordation in the office of the Recorder of Hamilton County, Indiana.

17. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any work shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

18. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in Bluestone or any part thereof, and on all persons claiming under them, until December 31, 2055, and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

19. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

20. Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

21. Grievance Resolution Procedures.

(a) Introduction and Definitions. The Association, the Owners, the Board of Directors, and all persons subject to this Declaration (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Bluestone Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that the grievance resolution procedures set forth in this Paragraph 21 apply to all Claims as hereafter defined. As used in this Paragraph 21 only, the following words, when capitalized, have the following specified meanings:

(1) "Claim" means any claim, grievance, or dispute between Parties involving the Property, except Exempt Claims (as defined below). "Claims" include, without

limitation:

- i. Claims arising out of or relating to the interpretation, application, or enforcement of the Restrictions.
- ii. Claims relating the rights and/or duties of Association or the Board of Directors under the Restrictions.
- iii. Claims relating to the maintenance of the Property.

(2) "Claimant" means any Party having a Claim against any other Party.

(3) "Exempt Claims" means the following claims or actions, which are exempt from this Paragraph 21 (unless the Party having the Exempt Claim elects not to treat it as exempt from this Paragraph 21):

- i. The Association's claim for Assessments and any action by the Association to collect Assessments.
- ii. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief to maintain the status quo and preserve the Party's ability to enforce the provisions of the Restrictions.
- iii. Enforcement of the easements, architectural control, maintenance, and use restrictions of the Restrictions.
- iv. A suit to which an applicable statute of limitations would expire within the notice period of this Paragraph 21, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Paragraph 21.
- v. A dispute that is subject to alternate dispute resolution – such as mediation or arbitration – by the terms of applicable law or another instrument, such as a contract or warranty agreement, in which case the dispute is exempt from this Paragraph 21, unless the Parties agree to have the dispute governed by this Paragraph 21.

(4) "Respondent" means the Party against whom the Claimant has a Claim.

(b) Mandatory Procedures. Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Paragraph 21.

(c) Notice. Claimant must notify Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location,

persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Claim Notice is given pursuant to this Paragraph 21.

(d) Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 30 days after Respondent's receipt of the Claim Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

(e) Mediation. If the Parties negotiate but do not resolve the Claim through negotiation within 60 days from the date of the Claim Notice (or within such other period as may be agreed on by the parties). Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30 day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

(f) Termination of Mediation. If the Parties do not settle the Claim within 30 days after submission to mediation or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

(g) Allocation of Costs. Except as otherwise provided in this Paragraph 21, each Party bears all of its own costs incurred prior to and during the proceedings described in the Claim Notice, Negotiation, and Mediation sub-paragraphs above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

(h) Enforcement of Resolution. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Paragraph 21. In the event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including without limitation, attorney's fees and court costs.

(i) General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

(j) Settlement Authority. The Board on behalf of the Association and without consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related hereto, such as settlement agreements and waiver or release of claims.

22. Bluestone/Wintercove Transition Items. Attached hereto as Exhibit "B" and incorporated herein by this reference is a document captioned Bluestone/Wintercove Transition Items ("Transition List"). **Notwithstanding any other provisions in this Declaration to the contrary, the provisions of the Transition List shall control and shall apply to the governance and actions necessary to effectuate the separation of the Wintercove and Bluestone communities.**



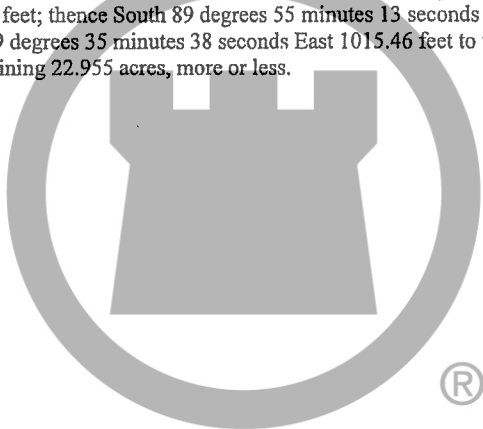
I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document unless required by law.

Robert D. Roache, II, Attorney-at-Law

CHICAGO TITLE  
This instrument prepared by, and should be returned to, Robert D. Roache, II, Attorney at Law,  
8144 Bowline Court, Indianapolis, Indiana 46236 Telephone: (317) 823-0660

Part of Section 2, Township 17 North, Range 4 East of the Second Principal Meridian in the Town of Fishers, Hamilton County, Indiana, consisting of the entirety of Bluestone Section 1 recorded as Instrument 1997-09755717 in Plat Cabinet 2 Slide 61 in the Office of the Recorder of Hamilton County, Indiana and Bluestone Section 2 recorded as Instrument 1999-09924026 in Plat Cabinet 2 Slide 254, described as follows:

BEGINNING at the southeast corner of Bluestone Section 2; thence the remaining courses along the perimeter lines of aforesaid plats; thence North 00 degrees 24 minutes 18 seconds West 279.09 feet; thence North 36 degrees 52 minutes 15 seconds West 187.64 feet; thence North 70 degrees 04 minutes 32 seconds West 310.42 feet; thence North 0 degrees 13 minutes 31 seconds East 141.53 feet; thence North 29 degrees 11 minutes 04 seconds East 23.02 feet; thence North 89 degrees 29 minutes 02 seconds East 28.52 feet; thence North 00 degrees 30 minutes 58 seconds West 50.00 feet; thence South 89 degrees 29 minutes 02 seconds West 150.00 feet; thence South 89 degrees 29 minutes 02 seconds West 736.24 feet to a curve concave northeasterly having a radius of 25.00 feet; thence northwesterly along said curve an arc length of 48.11 feet (said curve being subtended by a chord of North 35 degrees 23 minutes 16 seconds West 41.02 feet) to a non-tangent curve concave northwesterly having a radius of 4774.46 feet; thence southwesterly along said curve an arc length of 489.28 feet (said curve being subtended by a chord of South 22 degrees 40 minutes 34 seconds West 489.06 feet; thence South 25 degrees 36 minutes 43 seconds West 372.37 feet; thence South 88 degrees 58 minutes 27 seconds East 410.10 feet; thence South 89 degrees 55 minutes 13 seconds East 242.90 feet; thence North 89 degrees 35 minutes 38 seconds East 1015.46 feet to the POINT OF BEGINNING, containing 22.955 acres, more or less.



CHICAGO TITLE

