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JOHN R. VON ARX  
MARION COUNTY RECORDER

030703 FEB 15 1996

**DECLARATION OF COVENANTS, CONDITIONS,**

**EASEMENTS AND RESTRICTIONS**

SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

**WESTMOUNT PARK MASTER ASSOCIATION, INC.**

THIS DECLARATION, made on the date hereinafter set forth by Rottlund Homes of Indiana Limited Partnership, a Minnesota Limited Partnership, hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Indianapolis, County of Marion, State of Indiana, which is more particularly described as:

See Exhibit A attached hereto

(the "Property"), which Declarant intends to develop as a residential planned unit development; and

WHEREAS, Declarant desires that all of the Property shall be subject to certain uniform covenants, conditions, easements and restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Westmount Park Master Association, Inc., a not-for-profit corporation formed pursuant to Indiana Corporation Law, its successors and assigns, which Association is a planned community and which shall be a master association under the provision of any applicable law of the State of Indiana.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Where any such Lot is being sold by the fee owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered to be the owner of the Lot if: (1) the rights of the

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contract vendor hereunder are delegated to the vendee under such contract for deed; and (2) the vendee shall furnish proof of such delegation to the Association.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Association Member" shall mean and refer to any association of Owners of Lots located in a specific and separately identified subdivision or plat of a part of the Properties.

Section 5. "Owner Member" shall mean and refer to any Owner who is not a part of any Association Member.

Section 6. "Members" or "Member" shall refer to any Member Association or to any Owners who are not participants in any Member Association.

Section 7. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map or plat of the Properties which is intended to be sold as a separate unit or any unit shown upon any recorded condominium plant.

Section 8. "Declarant" shall mean and refer to Rottlund Homes of Indiana, L.P., a Minnesota Limited Partnership, its successors and assigns.

Section 9. "Common Area" shall mean and refer to the following described real property in Marion County, Indiana:

Lake Common Area, Pedestrian Access, Emergency Public and Private Roads within The Traditions of Westmount

Public and Private roads, and those areas not developed as driveways or residences within the Cottages of Westmount.

Lake Common Area, Easements of record, Public and Private Roads, and those areas described as Common Area within the Declaration of Westmount Park Villas and Garden Homes Horizontal Property Regime

"Common Area" shall also include any other lots, or Common Area(s) conveyed to the Association after the date hereof.

Section 10. "Public Rights-of-Way" shall mean and refer to the rights-of-way as recorded in the Marion County Recorder's Office as Instrument No. 1995-0157169, on December 5, 1995.

Section 11. "Street Lighting or Decorative Lighting" shall

mean and refer to those lights, electronic and otherwise, located within Public Rights-of-Way and Common Areas.

ARTICLE II.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Member Association and every Owner Member shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. The Association shall have three classes of voting membership:

Class A. Class A Members shall be all Owner Members with the exception of the Declarant and shall be entitled to one vote for each Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall the vote of any Owners be split with respect to any Lot. In the event that the Owners fail to determine how to cast any vote, no vote shall be cast.

Class B. Class B members shall be all Association Members. Each Association Member shall have a number of votes equal to the number of the Lots which are part of the Member Association. The vote of each Association Member shall be exercised by the duly authorized representative of the Association Member. The votes of an Association Member shall be cast as a single vote without division based upon the number of votes of the Association Member.

Class C. The Class C members shall be the Declarant and shall be entitled to 3 votes for each Lot which is not part of a Member Association. The Class C membership shall cease and be converted to Class A membership sixty (60) days after Declarant has conveyed the last lot subject to Class C membership.

ARTICLE III.

COVENANT FOR MAINTENANCE AND INSURANCE PREMIUM ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed or contract for deed therefor, whether or not it shall be so expressed in such deed or contract, is deemed to

covenant and agree to pay to the Association:

- (1) general annual assessments or charges,
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The general annual, master insurance premiums and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the purposes of the Association as set forth in Article IV hereof.

Section 3. Assessments for Member Associations. Any assessments for Lots which are a part of a Member Association shall be assessed to the appropriate Member Association and shall be a lien against the Lot of each Owner who is a member of the Member Association. If such assessment is not paid by the Member Association within sixty (60) days after written notice to the Member Association, the assessment shall be a personal obligation of the Member Association and the Owner of each Lot which is part of a Member Association on a per lot basis.

Section 4. Limitation on Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant or an affiliate of the Declarant, the maximum annual assessment to an Owner Member of Association Member shall be One Hundred Forty-Four and no/100 Dollars (\$144.00) per Lot exclusive of any assessment by a Member Association.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 25% above the maximum assessment for the previous year without a vote of the membership of the Association.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 25% by a vote of 2/3 of each class of Members who are voting in person or by proxy, at a meeting duly called for this



purpose.

- (c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum, and the Board of Directors of the Association may modify the annual assessment upward or downward from time to time, but in no event upward beyond the maximum permitted by this Section. Written notice of any modification of the annual assessment shall be sent to every Owner Member or Association Member subject hereto.

Section 5. Special Assessment for Capital Improvements.

In addition to the general annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for any Action Authorized

Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 and 5 shall be sent to all owner Members and Association Members not less than 21 days nor more than 30 days in advance of an annual meeting or not less than 7 days nor more than 30 days in advance of a special meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast more than 50% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 1/2 of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment; Alternative Assessment Program. Both general annual and special assessments on all Lots must be fixed at a uniform rate, except:

- a. no assessments shall be made against any Lot which is a parcel of real estate which is not intended for separate ownership or occupancy.
- b. any Lot owned by Declarant and which is not exempt from assessment by Section 7(a) shall be assessed at 25% of the established assessment rate, until such times as said Lot has been improved, developed, and/or built upon such that same has become suitable for occupancy.
- c. this alternative assessment program shall have no effect

on the level of services for items set forth in the Association's budget.

Annual and/or special assessments may be collected on a monthly basis.

Section 8. Date of Commencement of Assessments: Due Dates.  
The general annual assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance by the Declarant of a Lot, including any Lot which is a part of a Member Association. Notwithstanding the foregoing to the contrary, a Lot owned by Declarant shall be assessed amounts equal to the amounts assessed against Lots owned by other than Declarant, which assessment shall commence as to each Lot as of the first day of the month after the time that said Lot has been improved, developed, and/or built upon such that same has become suitable for occupancy.

The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of such assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of such assessments shall be sent to every Association Member and Owner Member subject thereto. The due dates shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an authorized representative of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment to an Association Member or Owner Member not paid within 30 days after the due date shall bear interest from the due date at a rate of 8% per annum. The Association may bring an action at law against the Member Association or the Owner personally obligated to pay the same or foreclose the Lien against the property. Such Lien may be foreclosed in the same manner as a mortgage, and the Association shall be entitled to recover interest at the rate of 8% per annum and its costs, expenses and disbursements, including reasonable attorney's fees, incurred in such foreclosure. No Owner Member or Association Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot.

Section 10. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due

or from the lien thereof. In the event that the holder of a first mortgage forecloses the first mortgage or receives a transfer of the Lot in lieu of the foreclosure, the lien for unpaid assessments shall be extinguished as of the date of foreclosure or transfer in lieu of foreclosure. Any assessments so extinguished shall become a common expense of the Association.

ARTICLE IV.

ASSOCIATION DUTIES

Section 1. Association Duties.

- a. With respect to any Common Area listed in Article I, Section 9, the Association shall:
1. Establish, repair, replace and maintain all landscaping and irrigation located within a Common Area including maintenance of all turf, trees and other vegetation located within a Common Area.
  2. Establish, repair, replace and maintain any monumentation of any entries to any portions of the Property which may be located in a Common Area.
- b. With respect to any Public Rights-of-Way listed in Article I, Section 10, the Association shall:
1. Establish, repair, replace and maintain all landscaping and irrigation located within the landscaped portions of the Public Rights-of-Way as may be required by the Department of Capital Asset Management, including the maintenance of all turf, trees and other vegetation located within the landscaped portions of the Public Rights-of-Way.
- c. With respect to any Street Lighting or Decorative Lighting, the Association shall:
1. Establish, repair, replace and maintain in an operable condition all Street Lighting or Decorative Lighting, as may be required by the Department of Capital Asset Management, including the payment of all energy costs to service and properly maintain the Street Lighting or Decorative Lighting as well as all costs of persons furnishing skills, tools, machinery or materials, or equipment or supplies to service and properly maintain the Street Lighting or Decorative Lighting.
- d. With respect to any Utility or Landscape Easements or Accesses which are or hereafter may be conveyed to the City of Indianapolis, the Association shall:

1. Establish, repair, replace and maintain all landscaping and irrigation located within the landscaped portions of the said Easements or Accesses as may be required by the City of Indianapolis, including the maintenance of all turf, trees and other vegetation located within the landscaped portions of the said Easements or Accesses.
- e. The Association shall enforce the covenants, conditions and restrictions set forth herein and any amendments hereto and any rules and regulations adopted by the Association or any Member Association for which it has assumed the responsibilities, obligations and duties.
- f. The Association shall undertake, at its discretion, such further duties as determined by the Board of Directors.

The obligations and duties of the Association shall include irrigation of the Common Areas and Public Rights-of-Way, and the architectural control of the Properties as herein provided.

In the event that the need for maintenance or repair of any entry way, monumentation or landscaping is caused through the willful or negligent acts of the family, guests, employees, agents or invitees of any Owner, the cost of such maintenance or repair shall be added to and become a part of the assessment against such Owner and any Lot owned by such Owner.

Section 2. Assumption of Duties - In the event of the dissolution or termination of any Member Association, the Association shall assume and perform all of the duties of such Member Association and any charges, costs or fees relating to the duties of such Member Association shall be assessed to the Members of such Member Association.

#### ARTICLE V.

##### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Controls. - In the event of the dissolution or termination of any Member Association, the Board of Directors shall assume the duties of the Architectural Control Committee for the properties which were subject to the dissolved or terminated Member Association. Alternatively, the Board of Directors may appoint an Architectural Control Committee composed of three (3) or more representatives.

Section 2. Approval. In the event said Board of Directors, or its designated Architectural Control Committee, or the Declarant, fails to approve or disapprove such design and location, or planting, of any item within 30 days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully

complied with.

ARTICLE VI.

USES

Section 1. Residential Uses. All Lots within the Properties described in Exhibit "A" attached hereto shall be restricted to residential use.

ARTICLE VII.

ADDITIONAL RESTRICTIONS

A. No Lot shall be used except for residential purposes, except that Declarant shall be entitled to maintain model homes and other sales facilities upon the Lots.

B. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of no more than one (1) square foot, one sign of not more than five (5) square feet advertising the property for sale, except that Declarant shall be permitted to erect and maintain upon the Property such signs as it deems appropriate to advertise the Property until the Declarant conveys the last Lot.

C. 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 they are not kept, bred or maintained for any commercial purposes. No more than two (2) adult cats or two (2) adult dogs or one adult cat and one adult dog shall be kept on any Lot at any one time. Fenced dog runs shall be permitted only if prior approval of an architectural control committee has been obtained.

D. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Garbage, rubbish and trash shall not be kept on said premises except in sanitary containers. All incinerators or other equipment used or kept for the storage or disposal of such material shall be kept in a clean and sanitary condition.

E. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 2. Rules and Regulations. The Association may adopt, amend and revoke rules and regulations not inconsistent with the Articles of Incorporation, By-Laws or Declarations of the Association, as follows: (a) regulating the use of the Common Areas; (b) regulating the use of residential units which may jeopardize the health, safety or welfare of other occupants, which

involve noise or other disturbing activity, or which may damage the Common Areas or other units; (c) regulating or prohibiting animals on residential Lots; (d) regulating changes in the appearance of the Common Areas; (e) regulating the exterior appearance of the Lots, including, by way of illustration and not limitation, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a unit; (f) implementing the Articles of Incorporation, By-Laws or Declarations of the Association; and (g) other rules facilitating the operation of the common interest of community. After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines, for violations of the Declaration, By-Laws and rules and regulations of the Association.

#### ARTICLE VIII.

##### EASEMENTS

Section 1. In addition to the easements, covenants, restrictions and conditions herein, all Lots shall be subject to easements and covenants hereinafter specifically described for the benefit of the Properties or for the limited benefit of specified adjoining Lots, all as more fully set forth hereinafter in this Article. Within such easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of any utilities or accesses or which may change the flow or drainage channels within the easements or which may obstruct, retard or change the flow of water through drainage easements. The easement area of each Lot of all improvements therein shall be maintained continuously by the Owner of the Lot, except for improvements which are the responsibility of a public authority or utility company.

Section 2. Landscape and Utility Easements. The Declarant has, or will, provide easements for landscaping and utility purposes to and from all Lots in the Properties. In addition each Lot over which a utility is in fact installed or constructed as part of the original utility system shall be subject to an easement for utility purposes over the portion of the Lot upon which such utility system is constructed. The Association or its proper representatives shall have the right of free access to any Lot or living unit for the purpose of maintaining any utility service to any Lot on the Properties.

Section 3. Easements for Encroachment. In the event that any buildings, structures, including but not limited to monuments, landscaping and fences, and utilities originally constructed by the Declarant or constructed or erected thereafter on any Lot in accordance with this document encroaches upon any other Lot, or, if any such encroachment shall hereafter arise because of settling or shifting of the building or other cause, an exclusive easement appurtenant to said encroaching Lot for such encroachment and the



maintenance thereof shall exist.

Section 4. Easement for Maintenance. Declarant hereby grants an easement in favor of the Association over and across each Lot for the purposes of the Association performing its duties under Article IV hereof.

ARTICLE IX.

INSURANCE AND RECONSTRUCTION

Section 1. Liability Insurance; Fidelity Bonds. The Board of Directors of the Association, or its duly authorized agent, shall obtain a broad form of public liability insurance insuring the Association, with such limits of liabilities as the Association shall determine to be necessary, against all acts, omissions to act and negligence of the Association, its employees and agents. To the extent available, the Association's Board of Directors shall also provide fidelity bonds providing protection to the Association against loss by reason of acts of fraud or dishonesty on the part of the Association's Directors, managers, officers, employees or volunteers who are responsible for the handling of funds of the Association in an amount sufficient to provide no less protection than 110% times the estimated annual operating expenses and reserves of the Association.

ARTICLE X.

STORM WATER DRAINAGE

The Association will be responsible for the water quality, safety, taste and odor of any surface water that might run off or be discharged in the water system of the Civil Town of Speedway from storm water drainage systems maintained on the Property. The Association may become responsible for the costs of treatment of such discharges to protect the quality of the Civil Town of Speedway's water resources and water systems. The responsibility of the Association to bear the costs associated with the treatment of such discharges shall be accepted only after a determination has been made by a competent agency that the cause of that which resulted in treatment originated on the Property and which was allowed to run off or be discharged from the Property. The aforementioned agency shall be one which is acceptable to both the Civil Town of Speedway and a group of representatives from the Westmount Park Master Association which group shall be comprised of one (1) individual member from the Boards of the Westmount Park Villas, the Cottages of Westmount, and the Traditions of Westmount.





**ARTICLE XI.**

**GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner Member or Association Member shall have the right to enforce, by any proceeding by law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land and to the extent permitted by the laws of the State of Indiana shall be perpetual. If a perpetual term is not permitted by the laws of the State of Indiana, these covenants and restrictions shall be for a term of 20 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of 10 years. This Declaration may be amended by an instrument signed by the Owners representing Lots to which not less than 67% of votes have been allocated. Any amendment must be recorded. No amendment which would reduce the duties of the Association under Article IV or which would reduce the term of the covenants and restrictions shall be effective without the written approval of the City of Indianapolis, Indiana. So long as Declarant is the owner of any Lot subject to this Declaration, no amendment to Article III shall be effective unless approved by the Declarant.

**Section 4. Annexation.** Additional residential or Common Area may be annexed to the Property with the consent of the Declarant or 2/3 of each class of Members.

**Section 5. FHA/VA.** As long as there is a Class C membership, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs; annexation of additional properties, dedication of Common Areas and amendment of this Declaration.

WAYNE TOWNSHIP  
ASSESSOR  
PLAT APPROVED  
Date: Feb. 19, 1996  
By: Charles R. Spears  
CHARLES R. SPEARS  
ASSESSOR

ROSSLUND HOMES OF INDIANA, L.P.

By: Thomas E. Repass Sr.  
Thomas E. Repass Sr., Vice President  
(Name and Title Printed)

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 13th day of February, 1996, by Thomas E. Repass, Sr., Vice President, of Rottlund Homes of Indiana, L.P., a Minnesota Limited Partnership, on behalf of said corporation.

*Pamela R. Smith*  
Notary Public, Pamela R. Smith  
Resident: Mason County, IN

This Instrument was drafted by:

CAMERON F. CLARK  
CLARK, QUINN, MOSES & CLARK  
One Indiana Square, Suite 220  
Indianapolis, IN 46204

*Expires 11-12-99*



LAND DESCRIPTION

(Deed parcel to fence line along Westerly line)

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East more particularly described as follows:

Commencing at the Northeast corner of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East; thence West (South 89°19'33" West measured) on the North line of said Quarter Section, 160 feet (Deed & Measured) to the Point of Beginning; thence continuing West (South 89°19'33" West, measured) 393.96 feet to the East line of Belmer Second Addition, the plat of which is recorded in Volume 32, page 317; thence South 00°31'46" West, along said East line 1112.00 feet to the intersection of said line with a fence; thence South 89°19'33" West along said fence 211.04 feet to the Northerly extension of a North South farm type fence; thence South 00°31'46" West along said fence being 0.96' East of and parallel with the East line of Chapel Hill 7th Section, the plat of which is recorded as Instrument No. 64-33118 in the Office of the Recorder of said county and along the East line of Chapel Hill 9th Section, the plat of which is recorded as Instrument No. 65-16068 in said Office of the Recorder 1643.50 feet; thence North 89°19'33" East 771.22 feet; thence North 00°24'01" East 2442.20 feet; thence South 89°19'34" West 160.00 feet; thence North 00°24'00" East 313.18 feet to the Point of Beginning; containing 42.042 acres, more or less, subject to highways, rights-of-way, and easements.

EXHIBIT "A"

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REGISTRATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
THE COTTAGES OF WESTMOUNT  
PHASE I AND PHASE II**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTAGES OF WESTMOUNT PHASE I AND PHASE II ("Declaration"), made this 12<sup>th</sup> day of March, 1996, by Rottlund Homes of Indiana Limited Partnership, a Minnesota Limited Partnership, (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the agent and subsidiary of The Rottlund Company, Incorporated, a Minnesota Corporation, who is the owner of certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, Declarant intends to develop the Real Estate, by constructing residential facilities, which shall be known as "The Cottages Of Westmount" (hereinafter sometimes referred to as "The Cottages"); and

WHEREAS, Declarant intends to sell and convey the residential facilities and Lots within The Cottages and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate; and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas, Utility and Landscape Easements, Streets and other

improvements located on the real estate which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of The Cottages;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

#### ARTICLE I.

##### General Purpose of This Declaration

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may not be harmonious with other improvements on the Real Estate, to preserve and maintain proper setbacks from streets and adequate free space

between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all Lots within The Cottages and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within The Cottages.

ARTICLE II.

Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1. Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for The Cottages to be appointed in accordance with this Declaration.

Section 2. Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot as determined and levied pursuant to the provisions of this Declaration.

Section 3. Association. "Association" means The Cottages Homeowners' Association, Inc., an Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

Section 4. By-Laws. "By-Laws" means the code of By-Laws of The Cottages of Westmount Homeowner's Association, Inc. providing for the administration and management of the Association. A true

copy of the By-Laws is attached to this Declaration and incorporated herein by reference.

Section 5. Common Areas. "Common Areas" means certain areas not amenable to development which may be designated as Sidewalks, Streets, Utility and Landscape Easements or other Common Area on the Plat and which is intended for the common benefit of all Lots.

Section 6. Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, Easements, Drainage System, and other cost or expense incurred by the Association for the benefit of the same.

Section 7. Declarant. "Declarant" means Rottlund Homes of Indiana, L.P., an Indiana limited partnership, or any other person, firm, corporation or partnership which succeeds to the interest of Rottlund Homes of Indiana, L.P. as developer and/or owner of The Cottages.

Section 8. Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across The Cottages.

Section 9. Easements. "Easements" refer to those areas reserved as easements, on the Plat of The Cottages.

Section 10. The Cottages. "The Cottages" means the Real Estate as it is platted and recorded by Declarant in accordance



with the provisions of this Declaration.

Section 11. Landscape Easements. "Landscape Easements" refer to those areas reserved as Landscape Easements on the Plat of The Cottages.

Section 12. Lot. "Lot" means any of the separately identified parcel or parcels of land shown upon any recorded subdivision map or plat of the Properties which is intended to be sold to the ultimate Buyer as a separate Property.

Section 13. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 14. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot which is part of the Properties; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto. Where any such Lot is being sold by the fee Owner to a contract vendee who is entitled to possession of the Lot, the contract vendee shall be considered to be the Owner of the Lot if (1) the rights of the contract vendor hereunder are delegated to the vendee under such contract for deed; and (2) the vendee shall furnish proof of such delegation to the Association.

Section 15. Plat. "Plat" means the final plat recorded for The Cottages.

Section 16. Properties. "Properties" means that certain property herein before described, and such additions thereto as may

hereafter be brought within the jurisdiction of the Association.

Section 17. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

Section 18. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of The Cottages, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

Section 19. Street Lighting or Decorative Lighting. "Street Lighting or Decorative Lighting" means those lights, electronic and otherwise, located within Public Rights-of-Way and Common Areas.

### ARTICLE III.

#### General Restrictions

Section 1. Maintenance of Premises. In order to maintain the standards of The Cottages, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All Owners shall maintain their Lots and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

- (a) Maintain the Lot at such times as may be reasonably

required in order to prevent the unsightly growth of vegetation and noxious weeds. Non-decorative vegetation allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

(c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or The Cottages.

Failure to comply shall warrant the Declarant, authorized agents of Marion County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner. The Association shall place and record a lien against said Lot in an amount equal to the expenses therefor and costs which costs may include reasonable attorneys fees for the placement of said lien should such be deemed necessary by the Association. Said liens shall be subject and subordinate only to taxes, municipal liens, and the lien of any bona fide mortgage upon any Lot. At the option of the Association, said liens may be foreclosed upon in any court of competent jurisdiction by the Association as Plaintiff for the amount of lien with interest, attorney's fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws.

Section 2. Residential Purpose. No Lot shall be used except for residential purposes. No building shall be erected, altered,

placed or permitted on any Lot other than a dwelling not to exceed one (1) story in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

Section 3. Setbacks. All buildings shall be located as indicated on the Plat of The Cottages.

Section 4. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

Section 5. Landscape Easements. The landscaping within the Landscape Easements shall initially be determined by the Architectural Control Committee and developed by Declarant in accordance with the Landscape Plan for The Cottages. The Declarant, prior to the incorporation of the Association, and the Association thereafter, shall maintain the Landscape Easements. The Landscape Easements located within the dedicated County road right-of-way shall be subject to termination by the County if, in its discretion, the County determines that the Landscape Easements are not being properly maintained and/or constitute a hazard to the motoring public.

Section 6. Inoperable Vehicles. At no time shall any unlicensed and/or inoperable vehicle be permitted on any Lot, Common Area, street or easement unless kept entirely within a garage.

Section 7. Trucks And Recreational Vehicles. No semi-truck, bus, boat, trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any Lot for more

than 48 consecutive hours unless kept entirely within a garage.

Section 8. Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

Section 9. Outdoor Storage. No large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.

Section 10. Drainage Ditches. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of authorized agents of Marion County.

Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Marion County may cause said repairs to be accomplished and the bill for cost of said repairs will be sent to the affected property owner for the immediate payment.

Section 11. Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) professionally manufactured sign of not more than five (5) square feet advertising the property for sale or rent, except that Declarant shall be permitted to erect and maintain upon the Property such signs as it

deems appropriate to advertise the Property until Declarant conveys the last lot.

Section 12. Child Care Services. No pre-school, baby-sitting business or such child care services for more than six (6) children shall be allowed to operate upon any Lot.

Section 13. Mining Operations. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. Animals. 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 bred, kept or maintained for any commercial use and are housed within the dwelling.

Section 15. Rubbish, Trash And Garbage. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

Section 16. Minimum Living Space. The minimum square footage of living space of dwellings within The Cottages, exclusive of porches, garages or basements shall be no less than 1280 square feet of liveable space (up to approximately 1500 square feet).

Section 17. Outbuildings. No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be maintained on any Lot.

Section 18. Communication Devices. Satellite disks of no more than eighteen inches (18") in diameter will be the only antennae permitted. This restriction may be reviewed and is subject to alteration pursuant to the By-Laws as technology advances.

Section 19. Mail Boxes. All mailboxes in The Cottages shall be uniform in appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the mailboxes approved by the ACC. Owners shall be responsible to keep the mailboxes in a good state of repair and to replace them with a substantially identical one if necessary.

Section 20. Yard Lights. All Lots shall upon their initial development and thereafter have uniform dusk to dawn lights installed on each home. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the lights approved by the ACC. Owners shall be responsible to maintain the lights in the form in which they were originally installed, kept functional at all times and in a state of good repair.

Section 21. Wells And Septic Tanks. No water wells shall be drilled on any Lot. Septic tanks shall be prohibited.

Section 22. Swimming Pools. Above-ground swimming pools are



prohibited.

Section 23. Construction, Earth-Moving, Excavation. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Lot without first having any developments plans approved by the Architectural Control Committee.

Section 24. Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front Lot line than the front building setback line.

Section 25. Decorative Structures. No decorative structure, statue, or other structure may be placed on a Lot.

Section 26. Rules and Regulations. The Association may adopt, amend or revoke rules and regulations not inconsistent with Articles of Incorporation, By-Laws or Declarations of the Association or the Articles of Incorporation, By-Laws, Declarations rules and regulations of the Westmount Park Master Association, as follows: (a) regulating the use of the Common Areas; (b) regulating the use of units and the conduct of unit occupants, which may jeopardize the health, safety and welfare of other occupants, which involve noise or other disturbing activity, or which may damage the Common Areas or other units; (c) regulating or prohibiting animals; (d) regulating changes in the appearance of the Common Areas and conduct which may damage the common interest of the community; (e) regulating the exterior appearance of the common interest of the

community, including, by way of illustration and not limitation, balconies and patios, window treatments, and signs and other displays regardless of whether inside a unit; (f) implementing the Articles of Incorporation, By-Laws, or Declarations of the Association; and (g) other rules facilitating the operation of the common interest of the community. After notice and an opportunity to be heard, the Association may impose reasonable sanctions, including the levying of reasonable fines, for violations of the Declarations, By-Laws, and rules and regulations of the Association.

ARTICLE IV.

Declarant's/Association's Right to Guarantee Compliance

Section 1. In the event the Owner of any Lot in The Cottages shall fail to maintain that Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from Owner. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon.

ARTICLE V.

The Cottages Architectural Control Committee

Section 1. Appointment Of Architectural Control Committee.

The Board of Directors of the Association, or Declarant if the Association is not yet incorporated, shall appoint the members of the Architectural Control Committee (hereinafter sometimes referred to as "ACC"). However, initially the Architectural Control Committee shall consist of Thomas Repass. The term Thomas Repass shall serve as the ACC shall be that period of time consisting of the sale and construction of residential structures on all Lots within The Cottages. Thereafter, the ACC shall consist of three members who shall be appointed by the Association. The term of any Association appointed member of the ACC shall be one (1) year in length.

Section 2. Construction Approvals. No alteration of any kind may be made to a residence or to a Lot including additions, alterations, fences, screens and walls or shall begin within The Cottages until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all alterations shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply with all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be

based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be complete at the time of completion of the building, or as soon as weather and season permit. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

Section 3. Duties of ACC. The ACC shall approve or disapprove proposed alterations within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor.

Section 4. Liability of ACC. Neither the ACC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 5. Inspection. The ACC or its agents may inspect work being performed to assure compliance with the approved plans and this Declaration.

ARTICLE VI.

Covenants for Maintenance Assessments

Section 1. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Lots within The Cottages and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvements, fencing, operation, and maintenance of the Common Areas, Utility and Landscape Easements, Sidewalks and Drainage System, including, but not limited to, the payment of taxes and insurance thereon and for the costs of labor, equipment, material, and management furnished with respect to the Common Areas and Utility and Landscape Easements; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay the Association:

- (a) A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided; and
- (b) A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2. Liability for Assessments. All assessments shall

be a prior lien on the Lots with respect to which said assessments are in favor of the Association, subject and subordinate only to taxes, municipal liens, and to the lien of any bona fide mortgage upon any Lot, and at the option of the Association assessments may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of the assessment with interest, attorney's fees and costs. Any unpaid assessment deemed delinquent shall bear interest from the due date at a rate of eight percent (8%) per annum which interest amounts shall be recoverable by the Association upon an action brought in law or in equity. Any judgment obtained shall be without relief from valuation or appraisement laws. Each Owner of any of said Lots from the time of obtaining title thereto shall be held to have covenanted personally to pay to the Association all charges and assessments provided herein which were due and unpaid at the time he/she obtained title and all such charges and assessments thereafter made or falling due during his/her ownership thereof.

Each Owner, by accepting title to any Lot or Lots and by accepting membership in the Association shall be held to have vested the Association with the right and power in its own name to fix charges and levy assessments and to prosecute all suits, legal or equitable or otherwise which may, in the opinion of the Association, be necessary or advisable for the collection of such charges and assessments.

Section 3. Pro-rata Share. The pro-rata share of each Owner for purposes of this Article VI shall be the percentage obtained by

dividing one by the total number of Lots within The Cottages that have been conveyed by the Declarant to an Owner ("Pro-Rata Share").

Section 4. Basis of Annual Assessment. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

Section 5. Basis of Special Assessment. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessment.

Section 6. Limitation On Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment to an Owner Member or Association Member shall be Six Hundred Dollars (\$600.00) per Lot.



(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the membership of the Association.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above twenty-five percent (25%) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum, and the Board of Directors of the Association may modify the annual assessment upward or downward from time to time, but in no event upward beyond the maximum permitted by this Section. Written notice of any modification of the annual assessment shall be sent to every Owner Member or Association Member subject hereto.

Section 7. Notice Of Meetings. Written notice of any meeting called for the purpose of taking action to authorize Assessments shall be sent to all members not less than twenty-one (21) days nor more than thirty (30) days in advance of the meeting.

Section 8. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessment provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. Declarant shall be responsible for all Common Expenses prior to its conveying the Common Area to the Association. The first annual

Assessment for each Lot shall be pro-rated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 9. Duties of the Association.

(a) The Board of Directors of the Association shall establish, repair, replace and maintain all landscaping and irrigation located within a Common Area, including maintenance of all turf, trees and other vegetation located within the Common Area.

(b) The Board of Directors of the Association shall establish, repair, replace and maintain all trees and irrigation located within the Public Rights-of-Way.

(c) The Board of Directors of the Association shall establish, repair, replace and maintain in an operable condition all Street Lighting or Decorative Lighting including the payment of all energy costs to service and properly maintain the Street Lighting or Decorative Lighting as well as all costs of persons furnishing skills, tools, machinery or materials, or equipment or supplies to service and properly maintain the Street Lighting or Decorative Lighting.

(d) The Board of Directors of the Association shall enforce

the covenants, conditions and restrictions set forth herein and any amendments hereto and any rules and regulations adopted by the Association.

(e) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in the event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(f) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an

officer of the Association, setting forth the extent to which Assessment has been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

(g) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws or this Declaration which is not cured within sixty (60) days.

(h) The Association shall, upon notification of conveyance of a Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

(i) The Association shall undertake at its discretion, such further duties as determined by the Board of Directors.

Section 10. Master Association. The Association shall be a Member of Westmount Park Master Association, Inc., pursuant to the Declaration Of Covenants, Conditions, Easements And Restrictions of Westmount Park Master Association. In the event of the dissolution of the Association, Westmount Park Master Association, Inc., shall assume and perform all the duties of the Association, including architectural controls, and shall assess the Members of the Association for the expenses related to the performance of such duties.

Section 11. Adjustments. In the event that the amounts

actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

#### ARTICLE VII.

##### Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with The Cottages Homeowners Association, Inc. Articles of Incorporation, Code of By-Laws and Declaration of Covenants, Conditions and Restrictions which have been filed or will be filed by Declarant.

Section 2. Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in The Cottages provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting

purposes.

The Association shall have two classes of voting membership:  
Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they amongst themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) On January 1, 2003.

Section 3. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Board Members. Initially, the Board of Directors shall consist of three (3) members, those persons being Thomas E. Repass, President; Pamela R. Smith, Vice President; and Laurel A. Padula, Secretary/Treasurer (hereinafter referred to as Initial

Board). The Initial Board shall serve as said Board members until 75% of the Lots in The Cottages have been sold and developed. Thereafter, the Board shall consist of six members who shall be Association members and to be elected by the Association membership. Each Board member shall serve a three year term. However, the first Board members elected by the Association shall serve terms as follows:

- (a) 2 newly elected Board members shall serve one year terms
- (b) 2 newly elected Board members shall serve two year terms
- (c) 2 newly elected Board members shall serve three year terms

All subsequent Board members shall serve three year terms.

Section 5. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name of, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration.

Section 6. Liability of Association. Neither the Association nor its directors, officers or authorized agents shall have any

liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

Section 7. Amendment of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot Owners. Any Amendment must be recorded.

Section 8. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any all Common Areas and Landscape Easements. The Association shall also maintain in force adequate insurance, insuring all Common Property against windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount sufficient to cover any foreseeable maintenance, removal or replacement costs in the event



of damage attributable to such hazards. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in The Cottages, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or

substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, or as such guidelines may be amended thereafter.

Section 9. Condemnation; Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rate Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 10. Mortgagees' Rights. The Mortgagee shall have the right, at their option, jointly and severally, to pay taxes or

other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE VIII.

Easements

Section 1. General. In addition to the easements, covenants, restrictions and conditions herein, all Lots shall be subject to easements and covenants hereinafter specifically described for the benefit of the Properties or for the limited benefit of specified adjoining lots, all as more fully set forth hereinafter in this Article. Within such easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with with the installation and maintenance of any utilities or other certain easements or which may change the flow or drainage channels within the easements or which may obstruct, retard or change the flow of water through drainage easements. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for improvements which are the responsibility of a public authority or utility company or within the general duties of the Association.

Section 2. Utility Easements. The Declaratant has, or will, provide easements for utility purposes to and from all Lots in the

Properties. In addition, each Lot over which a utility is in fact installed or constructed as part of the original utility system shall be subject to easements for utility purposes over the portion of the Lot upon which such utility system is constructed. The Association or its proper representatives shall have the right of free access to any Lot or living unit for the purpose of maintaining any utility service to any Lot on the Properties.

Section 3. Easements For Encroachment. In the event that any buildings, structures, including but not limited to monuments, landscaping and fences, and utilities originally constructed by the Declarant or constructed or erected thereafter on any Lot in accordance with this document and encroaches upon any other Lot, or, if any such encroachment shall hereafter arise because of settling or shifting of the building or other cause, an exclusive easement appurtenant to said encroaching Lot for such encroachment and the maintenance thereof shall exist.

Section 4. Easement For Maintenance. Declarant hereby grants an easement in favor of the Association over and across each Lot for the purposes of the Association performing its duties under Article VI and Article VII hereof or the performance of any duty of Westmount Park Master Association, Inc., which becomes a duty of the Association upon the dissolution of Westmount Park Master Association, Inc.

Section 5. Owners' Easement Of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title

to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

#### ARTICLE IX.

##### General Provisions

Section 1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 2. Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall

be expressed in such deed, are deemed to have agreed to each and every one of the various terms, Covenants, and conditions, contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be

deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 5. Rights of Mortgagees. Except to the extent otherwise provided in Article VI no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. The provisions of Article VII hereinabove notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

Section 6. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 7. Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 8. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any,

designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to in Article VI; or (b) seventy-two (72) hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 9. Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after such time as Declarant owns fewer than Five (5) Lots within The Cottages.

Section 10. Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants, Conditions and Restrictions for The Cottages pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Marion County, Indiana",

and properly identifying the recording instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against Owner of any interest in any portion of the Real Estate.

Section 11. Provisions Against Merger. Declarant hereby



intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 12. Reservations of Declarant. The provisions of Article VI hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least five (5) Lots within The Cottages, without the approval or consent of the Owners or Mortgagees of the Lots; provided that Declarant shall not be entitled to make any amendment which has materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

Section 13. Rights to Common Areas. Title to all Common Areas shall be held in the Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, a right of access to his Lot over the Streets, the right to reasonable use of the Common Areas in accordance with the rules and regulations of the Association and the right of access thereto over the Streets, and the right of proper utilization and benefit of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Lot; provided, however, that no Owner shall materially interfere with any other Owner in exercising his rights

hereunder. In the event that any Owner's use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

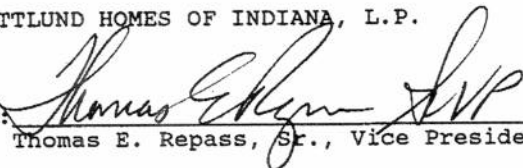
Section 14. Transfer of Control of Owner's Association and Delivery of Warranty Deed to Common Areas. Declarant shall transfer control of the Owner's Association to the Lot Owners and give a Warranty Deed conveying the Common Areas to the Association free and clear of encumbrances no later than the earlier of (a) four (4) months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) seven (7) years after the first Lot is conveyed.

Section 15. FHA/VA. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs: annexation of additional properties, dedication of Common Areas and amendment to this Declaration.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

"DECLARANT"

ROTTLUND HOMES OF INDIANA, L.P.

By:   
Thomas E. Repass, Sr., Vice President

WAYNE TOWNSHIP  
ASSESSOR  
PLAT APPROVED

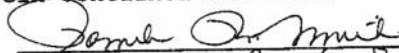
Date: March 14, 1996

By: Charles R. Spears  
CHARLES R. SPEARS  
ASSESSOR



STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Thomas E. Repass, the Vice President of Rottlund Homes Of Indiana, L.P., who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath, stated that the representations therein contained are true.

  
Notary Public, Pamela R. Smith  
Resident: Marion County, IN

My Commission Expires:  
11-12-99

This Instrument prepared by Cameron F. Clark, Attorney at Law, Clark, Quinn, Moses & Clark, One Indiana Square, Suite 2200, Indianapolis, Indiana 46204, 317/637-1321.

THE COTTAGES OF WESTMOUNT, PHASE I

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line thereof 553.96 feet; thence South 00 degrees 31 minutes 46 seconds West 1112.00 feet to the POINT OF BEGINNING; thence North 89 degrees 19 minutes 33 seconds East 18.76 feet to a point on a curve concave westerly, the radius point of said curve being North 87 degrees 08 minutes 18 seconds West 375.00 feet from said point; thence southerly along said curve 33.52 feet to the point of tangency of said curve, the radius point of said curve being North 82 degrees 01 minutes 02 seconds West 375.00 feet from said point; thence South 07 degrees 58 minutes 58 seconds West 161.78 feet to the point of curvature of a curve concave easterly, the radius point of said curve being South 82 degrees 01 minutes 02 seconds East 1025.00 feet from said point; thence southerly along said curve 147.57 feet to the point of tangency of said curve, the radius point of said curve being North 85 degrees 44 minutes 03 seconds East 1025.00 feet from said point; thence South 00 degrees 15 minutes 57 seconds East 182.03 feet; thence North 79 degrees 30 minutes 50 seconds West 202.93 feet; thence North 00 degrees 31 minutes 46 seconds East 483.08 feet; thence North 89 degrees 19 minutes 33 seconds East 211.04 feet to the place of beginning, containing 2.384 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

METES/21766CW1  
FEB 5, 1996

EXHIBIT "A"

THE COTTAGES OF WESTMOUNT  
PHASE 2

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line thereof 160.00 feet; thence South 00 degrees 24 minutes 01 seconds West 313.18 feet; thence North 89 degrees 19 minutes 33 seconds East 160.00 feet to a point on the East line of said Half Quarter Section; thence South 00 degrees 24 minutes 01 seconds West along said East line 1162.38 feet to the POINT OF BEGINNING of this description; thence South 85 degrees 12 minutes 33 seconds West 102.31 feet; thence South 54 degrees 59 minutes 13 seconds West 24.36 feet to a point on a curve concave northwesterly, the radius point of said curve being South 54 degrees 59 minutes 13 seconds West 38.00 feet from said point; thence southerly and westerly along said curve 112.32 feet to the point of tangency of said curve, the radius point of said curve being North 44 degrees 20 minutes 45 seconds East 38.00 feet from said point; said point also being the point of curvature of a curve concave southwesterly, the radius point of said curve being South 44 degrees 20 minutes 45 seconds West 62.00 feet from said point; thence westerly along said curve 47.55 feet to the point of tangency of said curve, the radius point of said curve being South 00 degrees 24 minutes 01 seconds West 62.00 feet from said point; thence North 89 degrees 35 minutes 59 seconds West 297.88 feet; thence South 00 degrees 15 minutes 57 seconds East 117.06 feet to a point of curvature of a curve concave westerly, the radius point of said curve being South 89 degrees 44 minutes 03 seconds West 1025.00 feet from said point; thence southerly along said curve 5.87 feet to a point on said curve, the radius point of said curve being North 00 degrees 06 minutes 07 seconds West 1025.00 feet from said point; thence South 79 degrees 30 minutes 50 seconds East 133.22 feet; thence South 89 degrees 35 minutes 59 seconds East 387.40 feet to a point on said East line; thence North 00 degrees 24 minutes 01 seconds East along said East line 201.65 feet to the place of beginning, containing 1.803 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

METES/21766CT2  
REV 2/2/96

EXHIBIT "A"

5

**AMENDMENT TO THE DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR THE COTTAGES OF WESTMOUNT PHASE I AND PHASE II**

THIS AMENDMENT made this 10<sup>th</sup> day of June, 1996 by Rottlund Homes of Indiana Limited Partnership, a Minnesota Limited Partnership, (the "Declarant").

W I T N E S S E T H:

WHEREAS, the following facts are true;

A. Declarant is an Indiana Limited Partnership and the agent and subsidiary of The Rottlund Company, Inc., a Minnesota Corporation, and Declarant is the owner of certain Real Estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate").

B. The Real Estate is subject to the Declaration Of Covenants, Conditions And Restrictions For The Cottages of Westmount Phase I And Phase II executed on March 12, 1996 and recorded in the Marion County Recorder's Office on March 15, 1996 and identified therein as Instrument Number 1996-0035044 (hereinafter referred to as "Declaration"). Said Declaration is incorporated herein by reference and all of the terms and definitions described therein are hereby adopted and shall have the same meaning in this Amendment.

C. Article VII, Section 7 of the Declaration provides for the amendment of said Declaration, which amendment may be done only with the assent of ninety percent (90%) of the Owners of the Real Estate.

D. Declarant, being Owner of the one hundred percent (100%)

of the Real Estate proposes to amend Article IX, Section 5 of the Declaration.

NOW, THEREFORE, Declarant hereby amends the Declaration Of Covenants, Conditions And Restrictions For The Cottages Of Westmount Phase I And Phase II, Article IX Section 5 as follows (that portion in bold face type indicates the Amendment to the existing language):

Section 5. Rights of Mortgagees. Except to the extent otherwise provided in Article VI no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all lands so purchased subject to this Declaration and any liens for past due assessments on the Real Estate shall be canceled and no longer providing a secured interest in said Real Estate. Similarly, if the Real Estate is transferred by way of deed-in-lieu of foreclosure any lien on the Real Estate for past due assessments shall be canceled and cease to provide a secured interest in the property to the lienor. The provisions of Article VII hereinabove notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.







THE COTTAGES OF WESTMOUNT, PHASE I

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line thereof 553.96 feet; thence South 00 degrees 31 minutes 46 seconds West 1112.00 feet to the POINT OF BEGINNING; thence North 89 degrees 19 minutes 33 seconds East 18.76 feet to a point on a curve concave westerly, the radius point of said curve being North 87 degrees 08 minutes 18 seconds West 375.00 feet from said point; thence southerly along said curve 33.52 feet to the point of tangency of said curve, the radius point of said curve being North 82 degrees 01 minutes 02 seconds West 375.00 feet from said point; thence South 07 degrees 58 minutes 58 seconds West 161.78 feet to the point of curvature of a curve concave easterly, the radius point of said curve being South 82 degrees 01 minutes 02 seconds East 1025.00 feet from said point; thence southerly along said curve 147.57 feet to the point of tangency of said curve, the radius point of said curve being North 85 degrees 44 minutes 03 seconds East 1025.00 feet from said point; thence South 00 degrees 15 minutes 57 seconds East 182.03 feet; thence North 79 degrees 30 minutes 50 seconds West 202.93 feet; thence North 00 degrees 31 minutes 46 seconds East 483.08 feet; thence North 89 degrees 19 minutes 33 seconds East 211.04 feet to the place of beginning, containing 2.384 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

METES/21766CW1  
FEB 5, 1996

EXHIBIT "A"

THE COTTAGES OF WESTMOUNT  
PHASE 2

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METES/21766CT2  
REV 2/2/96

EXHIBIT "A"

CROSS REF  
96-0035044

MARTHA A. WOMACKS  
MARION COUNTY CLERK

19

**CODE OF BY-LAWS**

67006 APR 11 8

DEPT. OF REVENUE TAXATION  
SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER

**OF**

**THE COTTAGES OF WESTMOUNT HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**Identification**

**Section 1.01. Name.** The name of the Corporation is The Cottages of Westmount Homeowners Association, Inc.

**Section 1.02. Principal Office and Resident Agent.** The location of the principal office of the Corporation and the designation of its resident agent shall be as specified in the Articles of Incorporation, such location or such designation or both shall be changed in accordance with the requirements of the Act, in which case the notice of the change that is required by the Act (and the more or most recent of such notices, if two or more shall have been filed) shall be conclusive as to the matters covered by such notice.

**Section 1.03. Definitions.** The definitions and terms as defined and used in the Declaration Of Covenants, Conditions And Restrictions For The Cottages Of Westmount shall have the same meaning in these By-Laws and reference is specifically made to Article II thereof containing definitions of terms.

**ARTICLE 2**

**Membership**

**Section 2.01. Qualification.** The qualifications for membership in the Corporation shall be those prescribed in the Articles and the Declaration of Covenants, Conditions and Restrictions for The Cottages Of Westmount (hereinafter sometimes referred to as the "Declaration").

**Section 2.02. Privileges of Members.** The Members (and any person who both belongs to the family of a Member and has the same residence as the Member to whose family he belongs) and any person who is a guest of a Member shall have the privilege of using the Common Areas in accordance with the Declaration, the Articles, the By-Laws, and such rules and regulations for the use of the Common Area as may be adopted from time to time by the Board of Directors.

**Section 2.03. Membership Certificates.** A nontransferable Certificate of Membership shall be issued to each Member. Such Certificate shall certify that the named person is a

Member of the Corporation, shall indicate the class of membership held, shall be signed by the President or a Vice President, and by the Secretary or Assistant Secretary of the Corporation, and shall be substantially in the following form:

(Form for Certificate of Membership)

**THE COTTAGES OF WESTMOUNT HOMEOWNERS ASSOCIATION, INC.**

(An Indiana Not-For-Profit Corporation)

**CERTIFICATE OF MEMBERSHIP**

No. \_\_\_\_\_

This certifies that \_\_\_\_\_ is a Class \_\_\_\_\_ Member of The Cottages Of Westmount Homeowners Association, Inc., an Indiana not-for-profit corporation. Reference is made to the Articles of Incorporation, Declaration of Covenants, Conditions and Restrictions for The Cottages Of Westmount and the Code of By Laws of the Corporation for a statement of the rights, privileges and obligations of Members and other provisions affecting the Corporation. This Certificate is not transferable.

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President

**ARTICLE 3**

**Meetings of Members**

**Section 3.01. Place of Meetings.** All meetings of the Members shall be held at such place in Marion County, Indiana as may be designated by the Board of Directors and specified in the respective notices or waivers of notice thereof.

**Section 3.02. Annual Meetings.** An annual meeting of the Members shall be held at 7:30 P.M. on the first \_\_\_\_\_ in \_\_\_\_\_ of each calendar year; provided, however, that the Board of Directors may designate another day and time for the annual meeting.

**Section 3.03. Special Meetings.** Special meetings of the Members may be called by the President, by a majority of the Board of Directors, or by written petition signed by not less than 50% + 1 of all of the Members.

Upon a request in writing delivered to the President or the Secretary by a Person or Persons entitled to call a special meeting, it shall be the duty of the President or the Secretary to give notice to the Members of such meeting, and, if such request is refused,

the Person or Persons making such request may call a meeting giving notice in the manner hereinafter provided.

Business transacted at all special meetings shall be limited to the subjects stated in the call or waiver of notice, and matters germane thereto.

**Section 3.04. Annual Reports.** An annual report shall be prepared by the Association and shall be provided to each Member at or prior to the annual meeting. The annual report shall include:

- (a) a statement of any capital expenditures in excess of ten percent (10%) of the current budget approved by the Association for the current fiscal year or succeeding two (2) fiscal years;
- (b) a statement of the balance in any reserve or replacement funds;
- (c) a copy of the statement of revenues and expenses for the Association's last fiscal year and a balance sheet as of the end of said fiscal year;
- (d) a statement of the status of any pending litigation or judgments to which the Association is a party;
- (e) of the insurance coverage provided by the Association;
- (f) a statement of the total past due assessments on all units, current as of not more than sixty days prior to the date of the meeting.

**Section 3.05. Notice of Meetings.** A written or printed notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which such meeting is called, shall be delivered or mailed by the Secretary or by the officer or Person calling the meeting to each Member at such address as appears on the records of the Corporation not more than thirty (30) nor less than ten (10) days before the date of any regular meeting and not more than thirty (30) nor less than five (5) days before the date of any special meeting. Notice of any meeting may be waived in writing filed with the Secretary by any Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting shall constitute waiver of notice of that meeting.

**Section 3.06. Voting Lists.** At least ten (10) days before each regular meeting of Members and at least five (5) days before any special meeting of Members, the Secretary shall make a complete list of Members entitled to vote at the meeting, which list may be inspected by any Member, for any proper purpose, at any reasonable time.

**Section 3.07. Quorum.** At any meeting of the Members, fifty percent (50%) plus one of the Members entitled to vote at such meeting, present in person or by proxy executed in writing, shall constitute a quorum for the transaction of business, except as otherwise provided by law.

**Section 3.08. Voting Rights.** The voting rights of the Members shall be as prescribed in the Articles and Declaration. In any election of Directors, each Member shall have the right to multiply the number of votes to which said Member may be entitled by the number of Directors to be elected.



**Section 3.09. Method of Voting.** A vote attributable to a Lot shall be cast as follows:

(a) **Single Owner or Occupant.** Where an individual is the sole Owner of a Lot or the sole Occupant of a Living Unit the vote attributable to that Lot or Living Unit shall be cast by such individual.

(b) **Multiple Owners or Occupants.** When a Lot is owned by two or more individuals, whether as joint tenants, tenants in common, or tenants by the entireties, or by a partnership, or when a Living Unit is occupied by more than two individuals as joint lessees, there shall be only one voting representative entitled to cast the vote attributable to such Lot or Living Unit. The partners or those individuals owning the Lot or those individuals occupying the Living Unit shall determine among themselves who shall cast such vote. In the event agreement is not reached, the vote attributable to such Lot or Living Unit shall not be cast.

(c) **Voting by Corporation or Trust.** Where a corporation or trust is the owner of a Lot, the trustee may cast the vote attributable to such Lot on behalf of the trust and the agent or other representatives of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

**Section 3.10. Proxies.** A Member may vote in person or by his duly authorized and designated attorney-in fact. Where voting is by proxy a Member shall designate his attorney-in-fact in writing, delivered to an officer of the Corporation prior to the commencement of the meeting.

## **ARTICLE 4**

### **Board of Directors**

**Section 4.01. Functions.** The business, property and affairs of the Corporation shall be managed and controlled by a Board of Directors as from time to time constituted (herein collectively call the "Board" or "Directors" and individually called "Director").

**Section 4.02. Eligibility.** No person shall be a Director who is not a Member.

**Section 4.03. Number.** Except as provided in Article VII, Section 4 of the Declaration the number of Directors comprising the Board shall be five (5) which number may from time to time be increased to a number of no more than twelve (12) by resolution adopted by not less than a majority of the Board of Directors. No reduction in the number of Directors shall have the effect of removing a Director from office prior to the expiration of his term. In the event the number of Directors is increased as provided herein, the election of the additional Director or Directors shall be by a vote of the Members entitled to elect such additional Director or Directors according to a procedure established by the Board by resolution which is consistent with the requirements of Section 4.06.

**Section 4.04. Nomination Candidates.** Candidates for election to the Board of Directors shall file an application which will be included in the packet sent to them for the annual meeting or can be nominated from the floor at the annual meeting.

**Section 4.05. Election Directors.** shall be elected at the annual meeting provided in Article 3. The Board may, by resolution, establish such election procedures therefore, including certification requirements, as it deems appropriate.

Voting for the Board of Directors shall be by secret written ballot. The ballot shall be prepared by the Elections Committee and shall contain the name of each person nominated for election. Those persons receiving the highest number of votes shall be elected.

**Section 4.06. Term.** Except, and as provided in Article VII, Section 4 of the Declaration, each Director shall serve for a term of three (3) years or until his successor is elected and qualified.

**Section 4.07. Resignation.** Any Director may resign at any time by giving written notice of such resignation to the President or the Secretary of the Corporation. Such resignation shall be made in writing and shall take effect at the time specified herein, and, if no time is specified, at the time of its acceptance by the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

**Section 4.08. Removal.** Any Director may be removed with or without cause by vote of a majority of those Members who are eligible to elect the Director at a special meeting of such Members duly called and constituted.

**Section 4.09. Vacancies.** Any vacancy occurring on the Board of Directors caused by death, resignation or otherwise, the vacancy shall be filled by a Member, who will act as an interim Director, at the next meeting by way of a vote of a majority of the remaining members of the Board. If a majority of the remaining members of the Board cannot agree on a person to fill any such vacancy, a special meeting of the Members shall be called to elect a person to fill such vacancy.

**Section 4.10. Meetings.** The Board of Directors shall meet in each year immediately after the annual meeting of the Members, at the place where such meeting of the Members has been held, for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting. No notice shall be necessary for the holding of this annual meeting. If such meeting is not held as above provided, the election of officers may be held at any subsequent meeting of the Board specifically called in the manner provided in Section 4.11. Special meetings of the Board may be called by the President and shall be called by order thereof upon the written request of not less than one-third (1/3) of the membership of the Board, which request shall set forth the business to be conducted at such meeting.

**Section 4.11. Initial Meeting.** The first order of business at the initial meeting of the initial Board of Directors shall be the adoption of these By-Laws and the certification thereof by the Secretary for the Board.

**Section 4.12. Notice of Meetings.** Notice of all meetings of the Board of Directors, except as herein otherwise provided, shall be given by mailing the same at least three (3) days or by telephoning the same at least twelve (12) hours before the meeting to the usual business or residence address of the Director as shown upon the records of the Corporation. Notice of any meeting of the Board may be waived in writing filed with the Secretary by any Director if the waiver sets forth in reasonable detail the purpose or

purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting of the Board shall constitute a waiver of notice of that meeting.

**Section 4.13. Quorum.** A quorum of the Board of Directors at any annual or special meeting of the Board shall be a majority of the duly qualified members of the Board then occupying office, but in no event less than four (4) Directors.

**Section 4.14. Committees.**

**Clause (a).** Election Committee The Board of Directors, by vote of a majority of Directors then serving, shall appoint an Elections Committee no later than two (2) months prior to the date of the annual meeting. The Elections Committee shall consist of a chairman and at least four (4) Members none of whom shall be candidates for office. It shall be the duty of the Elections Committee to provide supervision of the nomination and election of Directors in accordance with the provisions of the Articles and these By-Laws and with procedures adopted by the Board of Directors. Record of same shall be maintained and kept by the chairman of the Elections Committee.

**Clause (b).** Other Committees The Board of Directors, by resolution adopted by a majority of the Board, may designate one or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board in the management of the Corporation. Other committees not having and exercising the authority of the Board in the management of the Corporation may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.

**Section 4.15. Powers.** All the corporate powers except as otherwise providing herein by law, shall be vested in and shall be exercised by the Board of Directors. Said powers shall include, but not be limited to:

- (a) The power to adopt, publish in the Register of Regulations, and enforce rules and regulations governing the use of the Lots and Common Areas;
- (b) The power to contract, lease or purchase for the benefit of the Members such property, equipment, materials, labor and services as may be necessary in the judgment of the Board;
- (c) The power to exercise the powers and perform the duties of the Corporation granted, imposed, authorized or permitted by the Declaration and any Supplementary Declaration, the exercise of which is not reserved or committed to the membership by the Articles or By-Laws.
- (d) The power to make and collect Assessments and charges, establish and collect membership dues, and levy and collect fines for the violation of rules and regulations governing the use of the Common Areas;



(e) The power to employ legal counsel, architects, engineers, contractors, accountants, consultants, managers, independent contractors and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the maintenance, repair, replacement, restoration, and operation of the Common Areas and the business and affairs of the Corporation.

**Section 4.16. Duties.** It shall be the duty of the Board of Directors to:

(a) cause the Common Areas to be maintained in good, clean, attractive and sanitary condition, order and repair;

(b) adopt and publish rules and regulations, including fees, if any, governing the use of the Common Areas and facilities located thereon, and the personal conduct of the Members, members of their families, and their guests, and to include these in the Register of Regulations;

(c) cause to be kept a complete record of all its corporate affairs, including Register of Regulations, make such records available for inspection, by any Member or his authorized agent, and present an annual report thereof to the Members;

(d) supervise all officers, agents and employees of the Corporation and see that their duties are properly performed;

(e) issue upon demand by an Member a certificate setting forth whether or not any Assessment has been paid and giving evidence thereof for which a reasonable charge may be made;

(f) designate depositories for the Corporation funds, designate those officers, agents and/or employees who shall have authority to withdraw funds from such accounts on behalf of the Corporation, and cause such persons to be bonded, as it may deem appropriate;

(g) hold a public hearing on the proposed annual budget and approve the annual budget by a two-thirds (2/3) vote of the Directors;

(h) by a two-thirds (2/3) vote of the Directors, fix annual General and Special Assessments at an amount sufficient to meet the obligations imposed by the Declaration and all Supplementary Declarations;

(i) annually set the date(s) Assessments are due and decide what, if any, interest rate is to be applied to Assessments which remain unpaid thirty (30) days after they become due;

(j) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date of the Assessment or first installment thereof;

(k) cause the lien against any property for which Assessments are not paid within thirty (30) days after due date to be foreclosed or cause an action at law to be brought against the Owner personally obligated to pay same;

(l) procure and maintain adequate insurance to protect the Corporation, its employees and its personal and real properties;

- (m) enter into mortgage agreements and obtain capital debt financing subject to the provisions of the Declaration;
- (n) appoint such committees as are prescribed in Section 4.13; and
- (o) exercise their powers and duties in good faith, with a view to the interests of the Corporation and to this end adopt appropriate guidelines for action on matters where a potential conflict of interest may exist.

**Section 4.17. Non-Liability of Directors.** The Directors shall not be liable to the Members for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Members shall indemnify and hold harmless each of the Directors against any and all liability to any Person arising out of contracts made by the Board on behalf of the Corporation unless any such contract shall have been made in bad faith or is contrary to the provisions of the Articles, the By-Laws, or the Act. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Members and as their agent. The liability of any Member arising out of any contract made by Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation there under as is equal to a fraction, the numerator of which is the number of Lots owned or occupied by him and the denomination of which is the total number of Lots in the section or sections affected thereby. Every contract made by the Board or any management agent on behalf of the Corporation, shall provide that the Board of Directors is acting as agent for the Members and shall have no personal liability there under, except in their capacity as Members and then only to the extent of their fractional interest described above.

**Section 4.18. Additional Indemnity of Directors.** The Members shall indemnify any Person, his heirs, assigns, and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director, against the reasonable expenses, including attorneys fees, actually and necessarily incurred by him in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which item shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Members shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or on behalf of the Corporation, or by any officer or employee thereof, or by any accountant, attorney of other Person employed by the Corporation to render advice or service unless such Director had knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 4.19. Transactions Involving Affiliates.** No contract or other transaction between the Corporation and one or more of its Directors, or between the Corporation

and any persons in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or otherwise interested, shall be void or voidable because such Director or Directors are present at the meeting of the Board or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose if:

(a) the fact of the affiliation or interest is disclosed or known to the Board or a majority thereof and noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) the fact of the affiliation or interest is disclosed or known to Members, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; and

(c) the contract or transaction is commercially reasonable to the Corporation at the time it is authorized, ratified, approved or executed.

Affiliated or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote as if they were not so affiliated or not so interested.

**Section 4.20. Insurance.** The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the structures located in the Common Areas, if any, whether owned or leased by the Corporation, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost or any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering the Common Areas and all damage or injury caused by the negligence of the Corporation or any of its agents. All such insurance policies shall contain a provision that all Members shall, in appropriate circumstances, be able to recover damages as claimants under such insurance. The insurance may include coverage against vandalism. Premiums for all such insurance shall be included in the General Assessment. In the event of damage or destruction by fire or other casualty to any structure covered by insurance written in the name of the Corporation, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Common Areas to its condition before such damage. All such insurance proceeds (if the amount of such proceeds exceeds \$5,000.00) shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signatures of at least one-third (1/3) of the members of the Board of Directors, or by their duly authorized agent. In such event, the Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed structure or structures. In the event that the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors may levy a Special Assessment in

the manner specified in the Declaration to make up any deficiency. Excess insurance proceeds, if any, shall become a part of the Corporation's reserve for replacements.

**Section 4.21. Compensation.** No Director shall receive any compensation for any service he may render to the Corporation unless and as provided in Section 5.01 herein. He may, however, be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE 5

### The Officers of the Corporation

**Section 5.01. Officers and Agents.** The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may, by resolution, designate from time to time. Any two or more offices may be held by the same person, except that the duties of the President and the Secretary shall not be performed by the same person. The Board of Directors may, by resolution, create, appoint and define the duties and fix the compensation of such officers and/or agents as, in its discretion, is deemed necessary, convenient or expedient for carrying out the purposes for which the Corporation is formed; provided, however, that officers and agents shall be compensated only for actual services performed on behalf of the Corporation.

**Section 5.02. Election, Term of Office and Qualifications.** The candidates for the office position vacant by virtue of a term which shall then be expiring shall be chosen annually by the Election Committee. Each officer shall hold office until the next annual meeting of the Board of Directors held at the time his term shall then be expiring or until his successor is chosen and qualified.

**Section 5.03. Vacancies.** In the event an office of the Corporation becomes vacant by death, resignation, retirement, disqualification or any other cause, the Board of Directors shall elect a person to fill such vacancy, and the person so elected shall hold office and serve until the term of the position held expires or until the election and qualification of his successor.

**Section 5.04. President.** The President, who shall be chosen from among the membership of the Board of Directors, shall preside at all meetings of the Board, if present; shall appoint the chairmen and members of all standing and temporary committees, except the Elections Committee, subject to the review of the Board of Directors; shall be the executive officer of the Corporation; shall have and exercise general charge and supervision of the affairs of the Corporation; and shall do and perform such other duties as these By-Laws provide or as may be assigned to him by the Board of Directors.

**Section 5.05. Vice President.** Any Vice President may perform all duties incumbent upon the President during the absence or disability of the President and shall perform such other duties as these By-Laws may require or as may be assigned to him by the President or the Board of Directors.



**Section 5.06. Secretary.** The Secretary shall have the custody and care of the corporate records and the minute book of the Corporation. He shall attend all the meetings of the Board of Directors and Members of the Corporation, and shall keep, or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings, and shall perform a like duty for all standing committees of the Board of Directors when required. He shall attend to the giving and serving of all notice of the Corporation, shall file and take care of all papers and documents belonging to the Corporation, and shall perform such other duties as may be required by these By—Laws or as may be prescribed by the Board of Directors.

**Section 5.07. Treasurer.** The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in a national bank or other depository to be designated by the Board of Directors, and shall keep such bank account in the name of the Corporation. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors.

**Section 5.08. Removal.** Any officer of the Corporation may be removed from office by the affirmative vote of two-thirds (2/3) of all the Directors at any regular or special meeting of the Board of Directors called for the purpose for nonfeasance, malfeasance, or misfeasance, for conduct detrimental to the interests of the Corporation, for lack of sympathy with its objects, or for refusal to render reasonable assistance in carrying out its purposes. Any officer whose removal is proposed shall be entitled to at least ten (10) days notice in writing by mail of the meeting of the Board of Directors at which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Directors at such meeting.

**Section 5.09. Resignation.** Any officer or member of a committee may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and, if not time be specified, at the time of its receipt by the President or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective.

## **ARTICLE 6**

### **Architectural Control Committee**

**Section 6.01. Composition.** Except as provided in Article V, Section 1 of the Declaration the Architectural Control Committee shall be comprised of three (3) or more members elected by the Board of Directors by a vote of a majority of the Directors then serving.

**Section 6.02. Organization.** The Architectural Control Committee shall elect from among its membership a chairman, secretary and such other officers as it deems appropriate.

**Section 6.03. Quorum.** A quorum for action by the Architectural Control Committee shall be a majority of its members, but in no event less than two (2) members.

**Section 6.04. Duties.** It shall be the duty of the Architectural Control Committee to regulate the external design, appearance, location and maintenance of The Cottages Of Westmount and of improvements thereon and to regulate such uses of property, all as provided in the Declaration.

**Section 6.05. Procedures.** The Architectural Control Committee shall formulate general guidelines, procedures and regulations and submit them for approval to the Board of Directors. Such guidelines, procedures and regulations shall be considered adopted policy of the Board of Directors unless rejected by a two-thirds (2/3) vote of the Board of Directors within thirty (30) days of the date of submission. The adopted guidelines, procedures and regulations shall be incorporated in the Register of Regulations and the Building Control Committee shall act in accordance therewith.

## **ARTICLE 7**

### **Corporate Books**

Except as otherwise provided by the laws of the State of Indiana, by the Declaration, Articles, or these By-Laws, the books and records of the Corporation may be kept at such place or places, within or without the State of Indiana, as the Board of Directors may from time to time by resolution determine, but all of such books and records shall be open for inspection to any Member at any reasonable time for purposes reasonably related to his interest as a Member.

## **ARTICLE 8**

### **Financial Affairs**

**Section 8.01. Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit or render it liable pecuniarily for any purpose or to any amount.

**Section 8.02. Checks, Etc.** All checks, drafts, notes, bonds, bills of exchange, and order for the payment of money, shall, unless otherwise directed by the Board of Directors or required by law, be signed by any two of the following officers, who are different persons: President, a Vice President, Secretary or Treasurer. The Board of Directors, however, may designate officers or employees of the Corporation, other than those named above, who may, in the name of the Corporation, execute drafts, checks and orders for the payment of money on its behalf.

**Section 8.03. Investments.** The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors.

**Section 8.04. Reserve for Replacements.** The Board of Directors shall establish and maintain a reserve fund 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 buildings and improvements located on the Common Areas and of equipment and Property, including but not limited to maintenance and repair of buildings, if any, and resurfacing of streets. In determining the amount, the Board shall take into consideration the expected useful life of such improvements, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of the managing agent or any consultants the Board may employ. Such fund 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. The reserve for replacements may be expended only for the purposes of effecting the maintenance, repair, renewal or replacement of the buildings and improvements located upon the Common Areas and the equipment. The Board shall annually review the adequacy of the Replacement Reserve Fund.

**Section 8.05. General Operating Reserve.** The Board of Directors shall establish and maintain a reserve fund for general operating expenses of a non—recurring nature by the allocation and payment to such reserve fund not less frequently than annually of an amount described as follows:

- (i) 5% of the amount of the General Assessment until the reserve fund is equal to 30% of the amount of the General Assessment;
- (ii) thereafter, 5% of the amount of the General Assessment until the reserve fund is equal to 50% of the amount of the General Assessment, when payments to the reserve shall terminate.

Such fund 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. The general operating reserve may be expended for operating contingencies of a non-recurring nature or for capital improvement or capital replacement or repair purposes, provided that a method for replenishment of the fund is simultaneously adopted by the Board.

**Section 8.06. Fiscal Year.** The fiscal year of the Corporation shall be determined as provided in Article VI, Section 7 of the Declaration.

**Section 8.07. Assessment Year.** The assessment year of the Corporation shall be determined as provided in Article VI, Section 7 of the Declaration.

**Section 8.08. Auditing.** At the close of each fiscal year, the Board of Directors, by majority vote, will determine the need for an audit. If an audit is ordered, the books of the Corporation shall be audited by an independent Certified Public Accountant whose report

shall be prepared and certified in accordance with generally accepted auditing standards. A copy of such report shall be made available to a Member at the request of such Member.

**Section 8.09. Assessments.** As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be considered delinquent. If the assessments is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay same or foreclose the lien against the property, and interest, costs, and reasonable attorneys fees incurred by such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for assessments provided for herein.

**ARTICLE 9**  
**Amendments**

The power to make, alter, amend or repeal the By—Laws is vested in the Board of Directors, which power shall be experienced by the affirmative vote of a two-thirds (2/3) majority of the Directors present at any meeting of the Board; provided, however, that any such changes have been posted for the review and comment of the Members for a period of not less than thirty (30) days prior to such meeting. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By—Laws, the Declaration shall control.

These By-Laws have been duly adopted as of this 6 day of March 2003, by vote of the initial Board of Directors.

Attest:

Carol Taylor  
Secretary  
Carol Taylor

Gerald Powell  
President  
Gerald Powell

This Code of By-laws document revisions prepared by:

Carol Taylor  
Carol Taylor  
Geraldine Long  
Geraldine Long

Gerald Powell  
Gerald Powell  
Mary E. Davis  
Mary Davis



State of Indiana

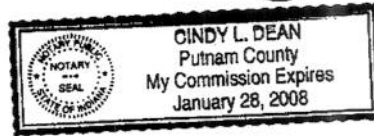
County of Marion

On this 3<sup>rd</sup> day of APRIL 2003, personally appeared Carol Taylor, Gerald Powell, Geraldine Long and Mary E. Davis.

My Commission Expires:

*Cindy L. Dean*  
Notary Public

01/28/08



**WAYNE TOWNSHIP  
ASSESSOR  
FLAT APPROVED**

Date: 4/3/03

By: *[Signature]*  
**CHARLES R. SPEARS  
ASSESSOR**



## THE COTTAGES OF WESTMOUNT

### PHASE I

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line thereof 553.96 feet; thence South 00 degrees 31 minutes 46 seconds West 1112.00 feet to the POINT OF BEGINNING; thence North 89 degrees 19 minutes 33 seconds East 18.76 feet to a point on a curve concave westerly, the radius point of said curve being North 87 degrees 08 minutes 18 seconds West 375.00 feet from said point; thence southerly along said curve 33.52 feet to the point of tangency of said curve, the radius point of said curve being North 82 degrees 01 minutes 02 seconds West 375.00 feet from said point; thence South 07 degrees 58 minutes 58 seconds West 161.78 feet to the point of curvature of a curve concave easterly, the radius point of said curve being South 82 degrees 01 minutes 02 seconds East 1025.00 feet from said point; thence southerly along said curve 147.57 feet to the point of tangency of said curve, the radius point of said curve being North 85 degrees 44 minutes 03 seconds East 1025.00 feet from said point; thence South 00 degrees 15 minutes 57 seconds East 182.03 feet; thence North 79 degrees 30 minutes 50 seconds West 202.93 feet; thence North 00 degrees 31 minutes 46 seconds East 483.08 feet; thence North 89 degrees 19 minutes 33 seconds East 211.04 feet to the place of beginning, containing 2.384 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

METES/2 1766CW1

FEB 5, 1996

EXHIBIT "A"

## THE COTTAGES OF WESTMOUNT

### PHASE II

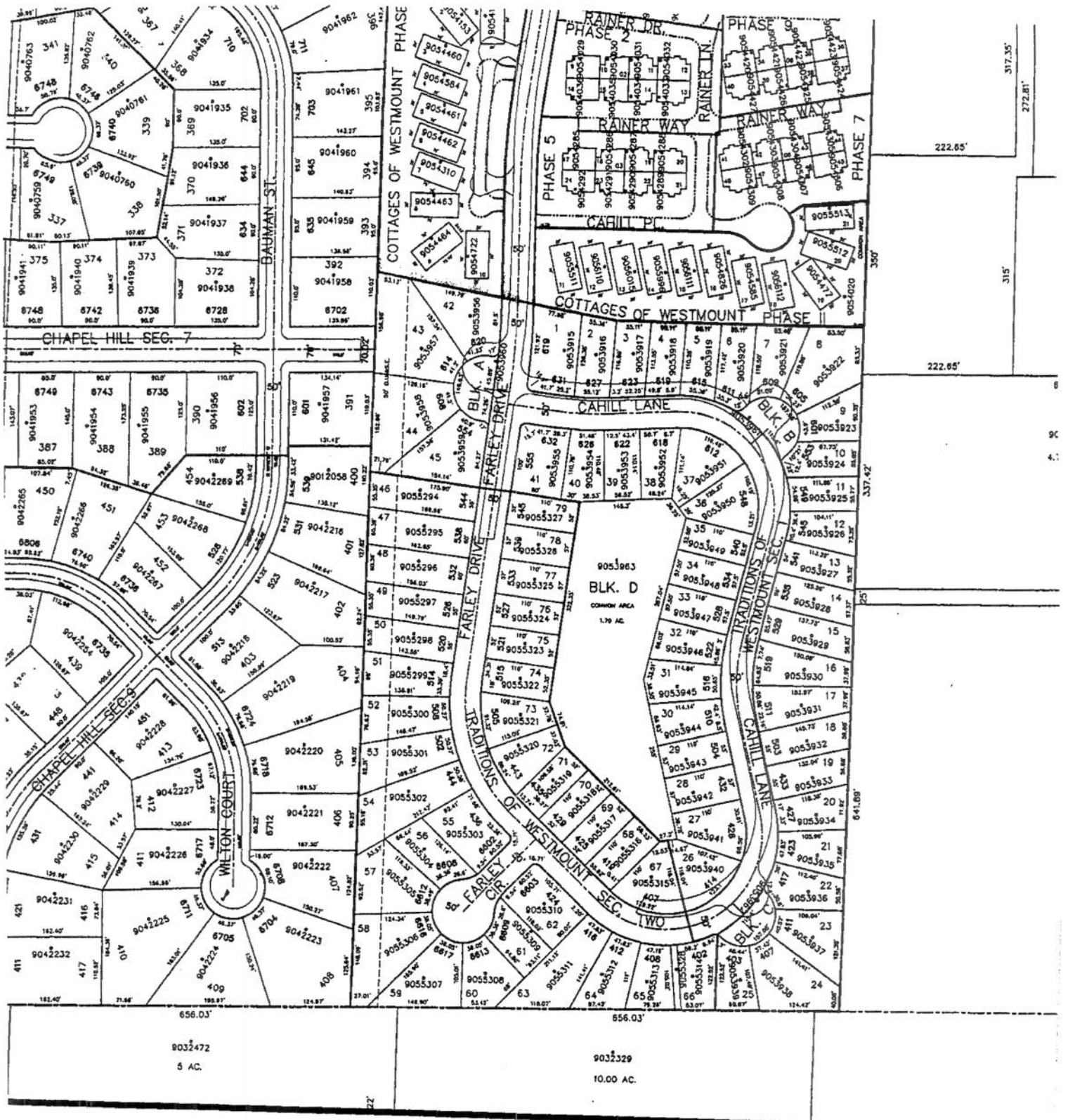
A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line thereof 160.00 feet; thence South 00 degrees 24 minutes 01 seconds West 313.18 feet; thence North 89 degrees 19 minutes 33 seconds East 160.00 feet to a point on the East line of said Half Quarter Section; thence South 00 degrees 24 minutes 01 seconds West along said East line 1162.38 feet to the POINT OF BEGINNING of this description; thence South 85 degrees 12 minutes 33 seconds West 102.31 feet; thence South 54 degrees 59 minutes 13 seconds West 24.36 feet to a point on a curve concave northwesterly, the radius point of said curve being South 54 degrees 59 minutes 13 seconds West 38.00 feet from said point; thence southerly and westerly along said curve 112.32 feet to the point of tangency of said curve, the radius point of said curve being North 44 degrees 20 minutes 45 seconds East 38.00 feet from said point; said point also being the point of curvature of a curve concave southwesterly, the radius point of said curve being South 44 degrees 20 minutes 45 seconds West 62.00 feet from said point; thence westerly along said curve 47.55 feet to the point of tangency of said curve, the radius point of said curve being South 00 degrees 24 minutes 01 seconds West 62.00 feet from said point; thence North 89 degrees 35 minutes 59 seconds West 297.88 feet; thence South 00 degrees 15 minutes 57 seconds East 117.06 feet to a point of curvature of a curve concave westerly, the radius point of said curve being South 89 degrees 44 minutes 03 seconds West 1025.00 feet from said point; thence southerly along said curve 5.87 feet to a point on said curve, the radius point of said curve being North 00 degrees 06 minutes 07 seconds West 1025.00 feet from said point; thence South 79 degrees 30 minutes 50 seconds East 133.22 feet; thence South 89 degrees 35 minutes 59 seconds East 387.40 feet to a point on said East line; thence North 00 degrees 24 minutes 01 seconds East along said East line 201.65 feet to the place of beginning, containing 1.803 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

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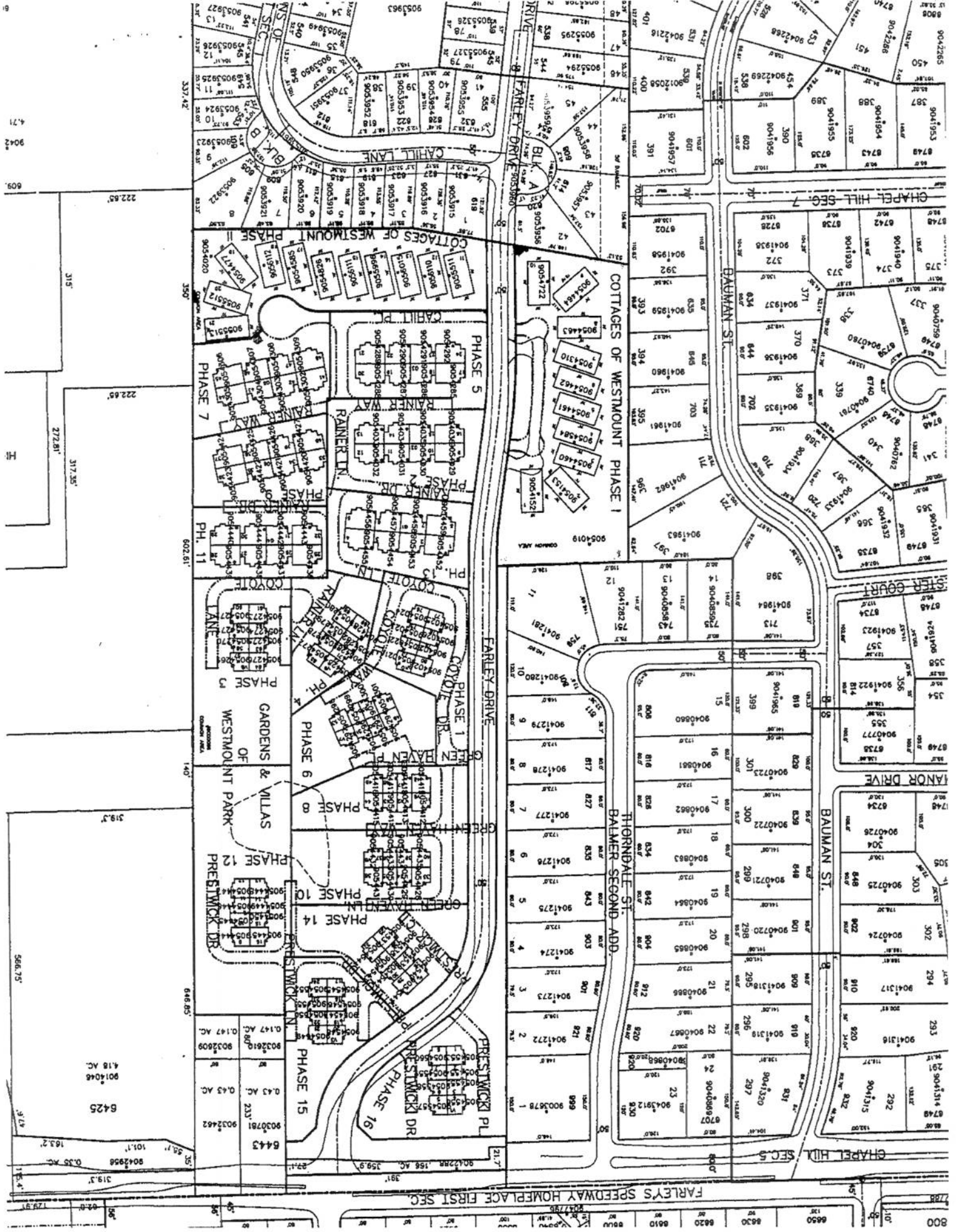
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