

CROSS REFERENCE

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CROSS REFERENCE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

COUNTRY VILLAGE II

THIS DECLARATION, made on the date hereinafter set forth by Waterfront Development Co., Inc., an Indiana corporation, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Indianapolis, Marion County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

WHEREAS, Declarant wishes to hold, sell and convey the properties described in Exhibit "A" subject to the terms and conditions of the Amended Declaration of Covenants, Conditions and Restrictions of Country Village at Eagle Valley Farms dated March 11, 1980 and recorded on March 19, 1980 as Instrument No. 80-17631 in the Office of the Recorder of Marion County, Indiana, as the same may be amended, hereinafter referred to as the Amended Original Declaration.

WHEREAS, Declarant has obtained the consent of a majority of the owners of Lots described in the Amended Original Declaration as shown by Exhibit "B" attached hereto and by reference made a part hereof and under Article XVI, Section 3 of the Amended Original Declaration Declarant has the right to annex additional properties to the properties as defined in the Amended Original Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" 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.

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RECORDER-MARION CO.

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ARTICLE I

NAME

This subdivision shall be known and designated as Country Village II, a subdivision located in Indianapolis, Marion County, Indiana.

ARTICLE II

AMENDED ORIGINAL DECLARATION  
INCORPORATED BY REFERENCE

Except as otherwise specifically provided herein, the terms and provisions of the Amended Original Declaration are incorporated herein by reference as if fully set forth herein and shall be fully applicable to the Country Village II Properties, including any amendments thereto. Owners of Lots within Country Village II Properties shall be and are members of the Association and shall be entitled to all the rights and subject to all the burdens appertaining thereto.

ARTICLE III

DEFINITIONS

Section 1. "Country Village II Properties" shall mean and refer to the real estate described in Exhibit A attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 2. "Country Village II Plat" shall mean and refer to the subdivision plat of the Country Village II Properties recorded in the Office of the Recorder of Marion County, Indiana\*as the same may hereafter be amended or supplemented.

ARTICLE IV

LOTS

Section 1. Number of Lots. This subdivision consists of thirty-six (36) lots numbered from 1a to 9d, both inclusive, with streets as shown on the plat.

as Instrument No. 80-74315

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Section 2. Street Dedication. The streets (but not Driveway Easements) shown on the Country Village II plat and not heretofore dedicated are hereby dedicated to the public.

ARTICLE V

EASEMENTS

Section 1. Driveway Easements. Driveway Easements as defined in Article II, Section 5 of the Amended Original Declaration are hereby reserved for the common use and enjoyment of the Owners of any Lot or Lots appurtenant thereto, their families and invitees. Such Driveway Easements shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Lots. No velocipedes, bicycles, toys or other private property shall be allowed to obstruct any Driveway Easement, nor shall the same be stored in the open alongside building walls or other locations of public view. Cars, trucks and other vehicles shall not be parked on the paved portion of any Driveway Easement so as to impede access from or to any Lot or public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed on any Driveway Easement without the prior written consent of the Association and all Owners of Lots appurtenant to such Driveway Easement. Such consent shall not be binding upon any subsequent Owner unless and until a properly executed instrument specifically identifying all Lots concerned shall have been duly filed of record with the Office of the Recorder of Marion County, Indiana.

Section 2. Additional Easement Rights. Declarant further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any Driveway Easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant

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may deem necessary or appropriate, for ingress, egress, utility drainage, sewer and similar purposes on or within any Lot or Lots or any portion of the Properties. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, driveway easement, or other easement, license or right-of-way by written instrument, amended Country Village II Plat or amendment to the Country Village II Plat recorded in the Office of the Recorder of Marion County, Indiana and any Owner of any Lot shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section 2 shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof located upon any Lot or any Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress and egress to any Lot. The rights and easements reserved by Declarant in this Section 2 shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate one (1) year after the date upon which Declarant shall have conveyed the last Lot within the Country Village II Properties.

Section 3. Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon any Lots, Driveway Easements and any pedestrian walkways or sidewalks.

Section 4. Easement for Entryway Sign. Declarant reserves unto itself for so long as it owns any Lot, and thereafter reserves and grants to Association on behalf of the Owners, the right and easement to erect and maintain an entryway sign within the area shown on the Country Village II Plat as a permanent signage and entryway easement and the right and easement to erect and maintain not more than four (4)

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directional signs upon the Country Village II Properties. Such directional signs shall contain only directional information such as street addresses, shall not be larger than fifteen (15) square feet nor extend more than four (4) feet above grade, and shall be located within ten (10) feet of a street right-of-way.

#### ARTICLE VI

##### GENERAL PROVISIONS

Section 1. Amendment. This Declaration may be amended or changed at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed or approved by at least two-thirds (2/3) of the then owners of Lots within the Properties and the Country Village II Properties; provided, however, none of the rights of Declarant reserved hereunder may be amended or changed without Declarant's prior written approval. Declarant reserves the right until June 1, 1982 or until Declarant shall have conveyed nineteen (19) Lots within the Country Village II Properties, whichever shall first occur, to amend or change this Declaration by an instrument recorded in the Office of the Recorder of Marion County, Indiana. This Declaration shall run with the land for a period of twenty (20) years from the date of recordation of the Amended Original Declaration in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten (10)-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration or the Amended Original Declaration by judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 2. Conflicts with Amended Original Declaration. To the extent of any conflict or inconsistency between this Declaration and the Amended Original Declaration,

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the terms and provisions of this Declaration shall control as to the Country Village II Properties and the terms and provisions of the Amended Original Declaration shall control as to the Properties. To the extent necessary or appropriate to extend the rights, privileges, obligations and burdens of this Declaration and the Amended Original Declaration to all Owners of Lots within the Properties and the Country Village II Properties, the legal description of the Properties shall be deemed to include the legal description of the Country Village II Properties and the legal description of the Country Village II Properties shall be deemed to include the legal description of the Properties.

IN WITNESS WHEREOF, Waterfront Development Co., Inc., by Charles P. Morgan, Vice President, and Brady R. Justice, Jr., Assistant Secretary, has caused this Declaration to be executed this 10th day of October, 1980.

WATERFRONT DEVELOPMENT CO., INC.

By: Charles P. Morgan  
Charles P. Morgan,  
Vice President

ATTEST:  
Brady R. Justice, Jr.  
Brady R. Justice, Jr.,  
Assistant Secretary

STATE OF INDIANA )  
  ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said County and State, personally appeared Charles P. Morgan, Vice President, and Brady R. Justice, Jr., Assistant Secretary, of Waterfront

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Development Co., Inc., an Indiana corporation, each of whom, after having been first duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said Corporation.

Dated this 10th day of October, 1980.

[Signature]  
(Notary Public)

Nancy Mae Owens  
Printed

My Commission Expires:

March 5, 1982

My County of Residence is:

Hendricks

HUD APPROVAL

The foregoing Declaration is hereby approved by the Federal Housing Administration, Department of Housing and Urban Development.

Federal Housing Administration,  
Department of Housing  
and Urban Development

By: Partick J. Barton, Attorney At Law

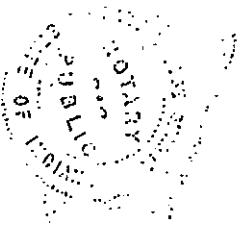
STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said County and State, personally appeared PARTICK J. BARTON, who,

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having been first duly sworn, acknowledged the execution of the foregoing Approval for and on behalf of the Federal Housing Administration, Department of Housing and Urban Development.

Dated this 17th day of NOVEMBER, 1980.



*Mary Louise Smartt*  
(Notary Public)

MARY LOUISE SMARTT  
Printed

My Commission Expires:

JUNE 26, 1984

My County of Residence is:

MARION

This Instrument was prepared by John W. VanBuskirk, Attorney.

SO 78173



Exhibit "A"

Part of the Southwest Quarter of Section 22, Township 16 North, Range 2 East, Marion County, Indiana, more particularly described as follows:

Commencing at the southeast corner of said quarter, thence North  $86^{\circ}48'04''$  West along the South line thereof, 703.71 feet; thence North  $29^{\circ}27'24''$  East, 195.00 feet to the Point of Beginning; thence continuing North  $29^{\circ}27'24''$  East 209.00 feet; thence South  $60^{\circ}32'36''$  East 281.76 feet; thence South  $38^{\circ}50'26''$  East 60.00 feet; thence North  $48^{\circ}35'16''$  East 178.71 feet, to a point on the centerline of Eagle Valley Pass as described in Instrument Number 76-47124 recorded in the Office of the Marion County Recorder, said point also being on a non-tangent curve to the left; thence along said road-centerline and curve 227.00 feet to a point of tangency, said curve having a delta of  $18^{\circ}35'16''$ , a radius of 700.00 feet, a chord of 226.10 feet, and a chord bearing of North  $50^{\circ}42'22''$  West; thence continuing along said centerline North  $60^{\circ}00'00''$  West, 574.76 feet to the centerline intersection of Eagle Valley Pass and Valley Farms Road; thence South  $25^{\circ}30'00''$  West along the centerline of Valley Farms Road, 356.16 feet; thence leaving said centerline South  $60^{\circ}32'36''$  East 327.17 feet to a point on a non-tangent curve to the left; thence along said curve 72.95 feet, said curve having a delta of  $83^{\circ}35'56''$ , a radius of 50.00 feet, a chord of 66.65 feet, and chord bearing of South  $18^{\circ}44'38''$  East, said point also being the point of beginning, containing 4.747 acres, more or less.

Subject to the right-of-way of Valley Farms Road and Eagle Valley Pass as described in Instrument No. 76-47124 recorded in the Office of the Marion County Recorder, and all other easements, and rights-of-way of record.

"Exhibit B"

CONSENT TO DECLARATION

The undersigned, being a majority of the owners of lots located within the property described in the Amended Declaration of Covenants, Conditions and Restrictions of Country Village at Eagle Valley Farms, executed on March 11, 1980 and recorded on March 19, 1980 as Instrument No. 80-17631 in the Office of the Recorder of Marion County, Indiana, hereby grant their consent to and approval of the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Country Village II.

Dated this 10<sup>th</sup> day of ~~September~~, 1980..  
OCT.

WATERFRONT DEVELOPMENT CO., INC.

By: Charles P. Morgan  
Charles P. Morgan, Vice President

ATTEST:  
Brady R. Justice, Jr.  
Brady R. Justice, Jr.,  
Assistant Secretary

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said county and state, personally appeared Charles P. Morgan and Brady R. Justice, Jr., the Vice President and Assistant Secretary of Waterfront Development Co., Inc., an Indiana corporation, each of whom, after having been duly sworn, acknowledged the execution of the foregoing for and on behalf of said corporation.

Dated this 10<sup>th</sup> day of October 10, 1980.

Brian J. Tushy  
( Brian J. Tushy ) Notary Public

My Commission Expires:

8/24/81

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My County of Residence:

Marion

HANSEN & HORN CONTRACTORS, INC.

By: *Kenneth D. Hansen*  
KENNETH D. HANSEN, PRES.

ATTEST:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for said county and state, personally appeared Kenneth D. Hansen and \_\_\_\_\_ the President of Hansen & Horn Contractors, Inc., an Indiana corporation, each of whom, after having been duly sworn, acknowledged the execution of the foregoing for and on behalf of said corporation.

Dated this 10 day of October, 1980.

*Brian J. Tuohy*  
(Brian J. Tuohy) Notary Public

My Commission Expires:

8/24/81

My County of Residence:

Marion

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Stephen A. Lee  
Stephen A. Lee

Michael Sloven  
Michael Sloven

Robin L. Jorgensen  
Robin L. Jorgensen

David E. Latimer  
David E. Latimer

Albert W. Erny  
Albert W. Erny

W. Robert Fields  
W. Robert Fields

David S. Wenben  
David S. Wenben

Monte H. Martin  
Monte H. Martin

John E. Zigmunt  
John E. Zigmunt

Edward M. Berger  
Edward M. Berger

J. Michael Kelly  
J. Michael Kelly

STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, a Notary Public, in and for said county and state, personally appeared the foregoing persons, each of whom, after having been duly sworn, acknowledged the execution of the foregoing.

Dated this 1 day of October, 1980.

Brian J. Turley  
Brian J. Turley, Notary Public

My Commission Expires:

8-24-81

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My County of Residence:

Maine

This instrument was prepared by John W. Van Buskirk, Attorney.

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AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
COUNTRY VILLAGE AT  
EAGLE VALLEY FARMS

THIS DECLARATION, made on the date hereinafter set forth by Waterfront Development Co., Inc., an Indiana corporation, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Indianapolis, Marion County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

WHEREAS, Declarant, being the owner of a majority of Lots within the Properties, wishes to make certain amendments and changes to the Declaration dated September 11, 1979 and recorded on September 11, 1979 as Instrument No. 79-68955 in the Office of the Recorder of Marion County, Indiana, as amended, hereinafter referred to as the Original Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" 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

NAME

This subdivision shall be known and designated as Country Village at Eagle Valley Farms, a subdivision located in Indianapolis, Marion County, Indiana.

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LUCAS COUNTY  
RECORDED  
APR 19 1 35 PM '80

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Eagle Valley Farms Country Village Homeowners Association, Inc.; an Indiana not-for-profit corporation, its successors and assigns.

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.

Section 3. "Properties" shall mean and refer to the real estate described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Plat" shall mean and refer to the subdivision plat of the Properties recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 5. "Driveway Easements" shall mean and refer to the surface easements for ingress and egress appurtenant to the Lots and shown as shaded areas on the Plat.

Section 6. "Lot" shall mean and refer to any parcel of land shown upon the Plat. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such parcels, "Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.

Section 7. "Building" shall mean and refer to any multi-family dwelling unit that may be constructed on a part of more than one Lot.

Section 8. "Declarant" shall mean and refer to Waterfront Development Co., Inc., its successors and assigns as a declarant.

Section 9. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

### ARTICLE III

#### LOTS

Section 1. Number of Lots. This subdivision consists of 72 lots numbered from 1a to 18d, both inclusive, with streets as shown on the Plat.

Section 2. Street Dedication. The streets (but not Driveway Easements) shown on the Plat and not heretofore dedicated are hereby dedicated to the public.

Section 3. Land Use. All Lots shall be used exclusively for single-family residential purposes.

Section 4. Subdivision of Lots. No Lot shall be subdivided to form units of less area.

Section 5. Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

### ARTICLE IV

#### ACCESS RIGHTS OF ASSOCIATION

Certain utility lines, sewer and other facilities and other improvements located on one Lot may serve other Lots. The Association and any member thereof whose enjoyment of the use and occupancy of his Lot is affected thereby shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lot for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Lot.

If any Owner shall fail to adequately maintain the open area included within his Lot, the Association upon the giving of ten (10) days written notice to such Owner, shall have the right to enter upon such open area and do any necessary maintenance thereon. The cost of such maintenance shall be a special assessment against such Lot and the Owner thereof.

The Association shall have an easement for access to all Lots for ingress and egress as reasonably required by its officers, directors, employees, and their agents and independent contractors, in order to perform its obligations and duties as set forth in this Declaration. This easement is also reserved for the benefit of Declarant so long as Declarant owns any Lot.

#### ARTICLE V

##### USE RESTRICTIONS

Section 1. Type, Size and Nature of Improvements. No single-family dwelling, garage, outbuilding, fence or wall shall be erected, placed or constructed on any Lot except in a manner approved in writing by Board of Directors or the architectural committee specified in Article XIII hereof prior to the commencement of construction as to the type of materials, exterior facade, design, layout, location, finished grade elevations and the like. Approval shall be considered based upon satisfactory plans and specifications providing such detail as may be reasonably required (which upon approval shall be strictly adhered to throughout construction unless modified or amended with further written approval); subject to the improvement of any Lot satisfying the following minimum standards:

- (a) No structure or building shall be erected, placed or constructed on any Lot other than one (1) single-family dwelling not to exceed three (3) stories in height, one (1) private garage for not more than three (3) cars and such other outbuildings as are usual and incidental to the use of such Lot for single-family residential purposes.
- (b) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be erected, placed or constructed on any Lot for use as a residence, either temporarily or permanently, or at any time be used for such purpose.
- (c) Every single-family dwelling erected, placed or constructed on any Lot shall have a minimum finished floor area, exclusive of open porches, stoops, attached garages or carports,

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of seven hundred (700) square feet. In the case of a two-story structure, at least four hundred (400) square feet of the required minimum floor area shall be on the first (1st) floor.

- (d) All materials used on the exterior of any single-family dwelling, garage or outbuilding erected, placed or constructed on any Lot shall be demonstrated to last at least fifty (50) years and shall be new, except that used brick, weathered barn siding or the like, or interior design features utilizing other than new materials may be approved by Declarant.
- (e) Every single-family dwelling, garage or outbuilding erected, placed or constructed on any Lot shall be completed, including at least one (1) coat of paint, stain, varnish or preservative on any exterior wood surfaces. Until all work is completed and such single-family dwelling is ready for occupancy, the Lot shall be kept and maintained in a sightly and orderly manner and no trash or other rubbish shall be permitted to unreasonably accumulate thereon.
- (f) Any tank for the storage of fuel erected, placed or constructed on any Lot outside of any structure or building permitted hereunder shall be concealed or otherwise located below the surface of the ground.
- (g) No fence, wall, hedge or shrub planting which obstructs site lines and elevations between two (2) and six (6) feet above any street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points twenty-five (25) feet from the intersection of such lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same site line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway, pavement or alley line.

In the event that written approval is not received as required hereunder within twenty-one (21) days from the date requested, the failure to issue such written approval shall be construed as the disapproval of the request made.

Section 2. 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 kept, bred or maintained for any commercial purpose.

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

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

Section 5. Water and Sewer Systems. No individual water supply system or sanitary sewer system shall be permitted on any Lot.

Section 6. Certain Vehicles Prohibited. Any motor vehicle which is inoperative and not being used for normal transportation shall not be permitted to remain on any Lot.

Section 7. Drainage. Any field tile or underground drain which is encountered in the construction of any improvements on any Lot shall be perpetuated and all Owners of Lots and their successors shall comply with The Indiana Drainage Code of 1965, and all amendments thereto.

Section 8. Exterior Antennae. Without prior written approval and authorization of the Board of Directors, no exterior television, radio or other type of antennae shall be placed, allowed or maintained upon any portion of the Properties nor upon any structure or improvement situated upon the Properties.

Section 9. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of construction and sale of Lots, upon any portion of the Properties which Declarant owns, such facilities as in the sole opinion of Declarant may be reasonably required, or be convenient or incidental to the

construction and sale of the Lots, including, but without limitation, storage areas, signs, model residences, construction offices, sales offices and business offices.

#### ARTICLE VI

##### ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment 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 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 among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. 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, 1985.

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

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal

Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article IV, Article IX and Article X; such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment 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 health, safety, and welfare of the residents in the Properties and for the improvements, maintenance and other purposes as specifically provided herein.

Section 3. Maximum Monthly Assessments.

(a) Until January 1, 1981, the maximum monthly assessment on any Lot conveyed by Declarant shall be \$24.00 per Lot, except that if a Lot is undeveloped or construction of the residential unit thereon is incomplete, the maximum monthly assessment for such Lot shall be twenty-five per cent (25%) of the monthly assessment applicable to other Lots.

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(b) From and after January 1, 1981, the maximum monthly assessment may be increased each calendar year not more than 8% above the maximum assessment for the previous year without a vote of the membership.

(c) From and after January 1, 1981, the maximum monthly assessment may be increased above 8% by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments; Due Dates. The monthly assessment provided for herein and the insurance assessment provided for in Article X shall commence as to each Lot on the first day of the first month following the conveyance of such Lot by Declarant. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

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If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 8% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party.

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

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

ARTICLE VIII

DECLARANT'S RIGHTS

Section 1. Use of Property. Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in

Declarant includes, but is not limited to, the right to maintain a model, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.

Section 2. Declarant's Easement for Adjoining Property. Declarant is presently the owner of certain real estate which is adjacent to the eastern, northern and southern boundaries of the real estate described in Exhibit "A" attached hereto. Declarant reserves unto itself the right to connect to, extend and utilize the utilities located or to be located on the Properties.

#### ARTICLE IX

#### MAINTENANCE

Section 1. Maintenance by Owners. The owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements within his residence, including the heating and air conditioning system and any partitions and interior walls. He further shall be responsible for the maintenance, repair and replacement of all windows in his residence and also the doors leading into the residence, and any and all other maintenance, repair, and replacements of the improvements on his Lot unless otherwise provided herein.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled

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to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Driveway Easements. The Association shall be responsible for the maintenance, repair and repaving of all Driveway Easements and for the maintenance and repair of the pedestrian walkway or sidewalk constructed or to be constructed within the easement created and described in Article XI, Section 3 hereof.

Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the Driveway Easements, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, lawns, shrubs, trees, trash removal and snow removal from the paved portions of Driveway Easements and front walks. Such exterior maintenance shall not include glass surfaces, doorways, windows, and window frames.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

#### ARTICLE X

#### INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Properties in an amount consonant with the full replacement value of the improvements excluding all floor, ceiling and wall coverings

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and fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on a Lot or elsewhere. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable, contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

Section 2. Liability Insurance: The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the

foregoing with respect to Country Village, all Owners and all other persons entitled to occupy any Lot.

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

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro-rata cost thereof shall become a separate monthly assessment to which each Lot conveyed by Declarant shall be subject under the terms and provisions of Article VII. Each Owner shall prepay to the Association at the time his lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the payment for the purchase of insurance as herein provided. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

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Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his Mortgagee jointly.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his residence (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Properties, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

For purposes of Section 3 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Section 8. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

#### ARTICLE XI

#### EASEMENTS

#### Section 1. Drainage, Utility and Sewer Easements.

There are strips of ground marked "drainage, utility and sewer easements (D. U. & S. )" shown on the Plat which are hereby reserved for public utilities, not including transportation

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companies, for the installation and maintenance of poles, mains, sewers, drains, ducts, lines, wires and the like. The Owners of Lots shall take title subject to the easements hereby created and subject at all times to the rights of proper authorities to service the utilities and the easements hereby created. No permanent structure of any kind, and no part thereof, including fences, shall be built, erected or maintained on said drainage, utility and sewer easements except walkways and paving on the Driveway Easements.

Section 2. Driveway Easements. Driveway Easements as specified in Article II, Section 5, are hereby reserved for the common use and enjoyment of the Owners of the Lot or Lots appurtenant thereto, their families and invitees. Such Driveway Easements shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Lots. No velocipedes, bicycles, toys or other private property shall be allowed to obstruct any Driveway Easement, nor shall the same be stored in the open alongside building walls or other locations of public view. Cars, trucks and other vehicles shall not be parked on the paved portion of any Driveway Easement so as to impede access from or to any Lot of public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed on any Driveway Easement without the prior written consent of the Association and all Owners of Lots appurtenant to such Driveway Easement. Such consent shall not be binding upon any subsequent Owner unless and until a properly executed instrument specifically identifying all Lots concerned shall have been duly filed of record with the Office of the Recorder of Marion County, Indiana.

Section 3. Easement for Sidewalk. A private easement is hereby reserved for a pedestrian walkway or sidewalk for the common use and enjoyment of any Owner of any Lot, any resident,

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within this subdivision, their families, guests and invitees. Such pedestrian walkway or sidewalk shall be located within the Driveway Easements appurtenant to Lots 6c, 6d, 7a, 7b, 13d, 13c, 14a and 14b, as such Driveway Easements are shown on the Plat, and shall be constructed by Declarant in a manner that, in the discretion of Declarant, will not materially interfere with the use and enjoyment of the Driveway Easements appurtenant to such Lots. Cars, trucks and other vehicles shall not be parked on the pedestrian walkway or sidewalk as constructed and no fence, barrier or other obstruction of any kind shall ever be placed or constructed thereon. The easement described herein shall not be used for any type of motor vehicle access whatsoever between Stillmeadow Drive and Sunfield Court. The walkway or sidewalk easement hereby created shall not be used by any person in any manner which could reasonably be expected to disturb the use and quiet enjoyment of the lots on which the easement hereby created is located.

Section 4. Easement for Emergency Purposes. An easement is hereby granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars, ambulances, etc., and emergency personnel, public and private, over and upon the Driveway Easements and pedestrian walkway or sidewalk easement referred to in Section 3 above.

#### ARTICLE XII

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article X hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

#### ARTICLE XIII

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by the Board of Directors, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an



architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided.

#### ARTICLE XIV

##### SIGNS AND HOME OCCUPATIONS

Section 1. Signs. Prior to January 1, 1983, no advertising signs of any kind (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description (including incidental signs as regulated in Section 2.18 of the Dwelling District Zoning Ordinance of Marion County, Indiana, 68-AO-2, as amended) shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nothing contained herein shall be construed or interpreted to effect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of this Subdivision.

#### ARTICLE XV

##### ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of the single-family residence appurtenant to a Lot (hereinafter in this Article XIV referred to as the "Encroaching Lot") now encroaches or shall hereafter encroach upon any other adjacent

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Lot, then in such event, an easement shall be deemed to exist and run to the Owner of the Encroaching Lot for the maintenance, use and enjoyment of the Encroaching Lot and all appurtenances thereto.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving his Lot.

#### ARTICLE XVI

##### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed by at least a majority of the then Owners and thereafter by a similar recorded instrument signed by at least seventy-five per cent (75%) of such Owners; provided, however, none of the rights of Declarant reserved hereunder may be amended or changed without Declarant's prior written approval. This Declaration shall run

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with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional residential property may be annexed to the Properties with the consent of a majority of the Owners by the recording of a declaration applicable to such annexed real estate which incorporates the terms of the Declaration herein.

Section 4. HUD Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Department of Housing and Urban Development: annexation of additional properties; dedication of common area (if any); and amendment of this Declaration.

#### ARTICLE XVII

##### PRIORITY

This Declaration is an amendment and restatement of the Original Declaration. The terms and provisions hereof supersede and replace the terms and provisions of the Original Declaration and the priority of this Declaration shall relate back to the date of execution and recordation of the Original Declaration.

IN WITNESS WHEREOF, Waterfront Development Co., Inc.,  
by William C. Chance, Vice President, and Brady R. Justice, Jr.,

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Assistant Secretary, has caused this Declaration to be executed  
this 11<sup>th</sup> day of MARCH, 1980.

WATERFRONT DEVELOPMENT CO., INC.

By: William C. Chance  
William C. Chance,  
Vice President

• ATTEST:

Brady R. Justice, Jr.  
Brady R. Justice, Jr.,  
Assistant Secretary

STATE OF INDIANA )  
                          )SS  
COUNTY OF MARION )

Before me, a Notary Public, in and for such County and  
State, personally appeared William C. Chance, Vice President,  
and Brady R. Justice, Jr., Assistant Secretary, of Waterfront  
Development Co., Inc., an Indiana corporation, each of whom,  
after having been first duly sworn, acknowledged the execution  
of the foregoing Amended Declaration for and on behalf of said  
Corporation.

Dated this 11th day of March, 1980.

Cynthia Watson Adams  
Notary Public

Cynthia Watson Adams

Printed

My Commission Expires:  
My Commission Expires Dec. 5, 1983

My County of Residence:  
Marion

This Instrument was prepared by John W. Van Buskirk, Attorney.

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Exhibit "A"

A part of the Southwest Quarter of Section 22, Township 16 North, Range 2 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Southeast corner of the said Southwest Quarter Section thence North  $86^{\circ}48'04''$  West along the South line of the said Southwest Quarter Section 940.56 feet to the centerline of Crawfordville Road (U.S. #136) as now located; thence North  $60^{\circ}32'36''$  West along the said centerline 820.64 feet to the centerline of Salt Lake Road, per Salt Lake Road from State Road 34 to Nancy Trail plan approved by Marion County Surveyor and engineer dated March 25, 1941; thence North  $03^{\circ}23'28''$  East along the said centerline 280.00 feet to the point of beginning; thence North  $03^{\circ}23'28''$  East 507.28 feet; thence South  $86^{\circ}36'32''$  East 95.00 feet; thence South  $64^{\circ}00'00''$  East 276.06 feet; thence South  $70^{\circ}00'00''$  East 95.00 feet; thence South  $45^{\circ}00'00''$  East 46.93 feet; thence South  $66^{\circ}30'00''$  East 136.05 feet; thence South  $70^{\circ}00'00''$  East 293.00 feet; thence South  $17^{\circ}30'00''$  West 108.42 feet to a point on the North right-of-way of Eagle Valley Pass as described in Instrument 76-47124 recorded in the Marion County Recorder's office; thence South  $60^{\circ}00'00''$  East along said right-of-way 25.62 feet; thence South  $17^{\circ}30'00''$  West 25.61 feet to the centerline of the intersection of Valley Farm Road and Eagle Valley Pass; thence South  $25^{\circ}30'00''$  West along the centerline of said Valley Farms Road 356.16 feet; thence North  $60^{\circ}32'36''$  West 589.72 feet; thence North  $86^{\circ}36'32''$  West 210.95 feet to the point of beginning, containing 9.25 acres, more or less.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

79-68955

Country Village  
SW 1/4 - Sec 22  
Twp 16 NR 2 E

Park & Ing Co Inc

RECEIVED FOR RECORD  
TOWNSHIP CLERK  
SEP 11 3 47 PM '79

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF  
COUNTRY VILLAGE AT  
EAGLE VALLEY FARMS

THIS DECLARATION, made on the date hereinafter set forth by Waterfront Development Co., Inc., an Indiana corporation, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Indianapolis, Marion County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" 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

NAME

This subdivision shall be known and designated as Country Village at Eagle Valley Farms, a subdivision located in Indianapolis, Marion County, Indiana.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Eagle Valley Farms Country Village Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

RECEIVED FOR RECORD  
MARION COUNTY, INDIANA  
REC'D SEP 11 3 30 PM '79

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.

Section 3. "Properties" shall mean and refer to the real estate described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Plat" shall mean and refer to the subdivision plat of the Properties recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 5. "Driveway Easements" shall mean and refer to the surface easements for ingress and egress appurtenant to the Lots and shown as shaded areas on the Plat.

Section 6. "Lot" shall mean and refer to any parcel of land shown upon the Plat. With respect to any single-family portion of any Building that may be constructed on a part of more than one of such parcels, "Lot" shall mean and refer to the real estate conveyed in connection with such dwelling unit.

Section 7. "Building" shall mean and refer to any multi-family dwelling unit that may be constructed on a part of more than one Lot.

Section 8. "Declarant" shall mean and refer to Waterfront Development Co., Inc., its successors and assigns as a declarant.

Section 9. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

### ARTICLE III

#### LOTS

Section 1. Number of Lots. This subdivision consists of 72 Lots numbered from 1a to 18d, both inclusive, with streets as shown on the Plat.

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Section 2. Street Dedication. The streets (but not Driveway Easements) shown on the Plat and not heretofore dedicated are hereby dedicated to the public.

Section 3. Land Use. All Lots shall be used exclusively for single-family residential purposes.

Section 4. Subdivision of Lots. No Lot shall be subdivided to form units of less area.

Section 5. Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

#### ARTICLE IV

##### ACCESS RIGHTS OF ASSOCIATION

Certain utility lines, sewer and other facilities and other improvements located on one Lot may serve other Lots. The Association and any member thereof whose enjoyment of the and occupancy of his Lot is affected thereby shall have an easement thereto and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lot for the purpose of maintaining or causing to be maintained or repaired any party walls, utility lines, sewer or other facilities which serve more than one Lot.

If any Owner shall fail to adequately maintain the open area included within his Lot, the Association upon the giving of ten (10) days written notice to such Owner, shall have the right to enter upon such open area and do any necessary maintenance thereon. The cost of such maintenance shall be a special assessment against such Lot and the Owner thereof.

The Association shall have an easement for access to all Lots for ingress and egress as reasonably required by its officers, directors, employees, and their agents and independent contractors, in order to perform its obligations

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and duties as set forth in this Declaration. This easement is also reserved for the benefit of Declarant so long as Declarant owns any Lot.

#### ARTICLE V

##### USE RESTRICTIONS

Section 1. Type, Size and Nature of Improvements. No single-family dwelling, garage, outbuilding, fence or wall shall be erected, placed or constructed on any Lot except in a manner approved in writing by Declarant prior to the commencement of construction as to the type of materials, exterior facade, design, layout, location, finished grade elevations and the like. Approval shall be considered based upon satisfactory plans and specifications providing such detail as may be reasonably required (which upon approval shall be strictly adhered to throughout construction unless modified or amended with further written approval); subject to the improvement of any Lot satisfying the following minimum standards:

- (a) No structure or building shall be erected, placed or constructed on any Lot other than one (1) single-family dwelling not to exceed three (3) stories in height, one (1) private garage for not more than three (3) cars and such other outbuildings as are usual and incidental to the use of such Lot for single-family residential purposes.
- (b) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be erected, placed or constructed on any Lot for use as a residence, either temporarily or permanently, or at any time be used for such purpose.
- (c) Every single-family dwelling erected, placed or constructed on any Lot shall have a minimum finished floor area, exclusive of open porches, stoops, attached garages or carports, of seven hundred (700) square feet. In the case of a two-story structure, at least four hundred (400) square feet of the required minimum floor area shall be on the first (1st) floor.
- (d) All materials used on the exterior of any single-family dwelling, garage or outbuilding erected, placed or constructed on any Lot shall be demonstrated to last at least fifty (50) years and shall be new, except that used

brick, weathered barn siding or the like, or interior design features utilizing other than new materials may be approved by Declarant.

- (e) Every single-family dwelling, garage or outbuilding erected, placed or constructed on any Lot shall be completed, including at least one (1) coat of paint, stain, varnish or preservative on any exterior wood surfaces. Until all work is completed and such single-family dwelling is ready for occupancy, the Lot shall be kept and maintained in a sightly and orderly manner and no trash or other rubbish shall be permitted to unreasonably accumulate thereon.
- (f) Any tank for the storage of fuel erected, placed or constructed on any Lot outside of any structure or building permitted hereunder shall be concealed or otherwise located below the surface of the ground.
- (g) No fence, wall, hedge or shrub planting which obstructs site lines and elevations between two (2) and six (6) feet above any street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points twenty-five (25) feet from the intersection of such lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same site line limitations shall apply to any lot within ten (10) feet from the intersection of a street line with the edge of a driveway, pavement or alley line.

In the event that written approval is not received as required hereunder within twenty-one (21) days from the date requested, the failure to issue such written approval shall be construed as the disapproval of the request made.

Section 2. 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 kept, bred or maintained for any commercial purpose.

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

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

Section 5. Water and Sewer Systems. No individual water supply system or sanitary sewer system shall be permitted on any Lot.

Section 6. Certain Vehicles Prohibited. Any motor vehicle which is inoperative and not being used for normal transportation shall not be permitted to remain on any Lot.

Section 7. Drainage. Any field tile or underground drain which is encountered in the construction of any improvements on any Lot shall be perpetuated and all Owners of Lots and their successors shall comply with The Indiana Drainage Code of 1965, and all amendments thereto.

Section 8. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for Declarant to maintain, during the period of construction and sale of Lots, upon such portion of the Properties as Declarant may deem necessary, such facilities as in the sole opinion of Declarant may be reasonably required, or be convenient or incidental to the construction and sale of the Lots, including, but without limitation, storage areas, signs, model residences, construction offices, sales offices and business offices.

#### ARTICLE VI

##### ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Owners of each Lot shall be entitled to one vote for each Lot owned. When more than one person

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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 more than one vote be cast with respect to any Lot.

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

#### ARTICLE VII

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article IV, Article IX and Article X; such assessments to be established and collected as hereinafter provided. No assessment, however, shall commence for, or be levied on, any Lot that has not been conveyed by Declarant. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment 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

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the health, safety, and welfare of the residents in the Properties and for the improvements, maintenance and other purposes as specifically provided herein.

Section 3. Maximum Monthly Assessments.

(a) Until January 1, 1981, the maximum monthly assessment on any Lot conveyed by Declarant shall be \$24.00 per Lot.

(b) From and after January 1, 1981, the maximum monthly assessment may be increased each calendar year not more than 8% above the maximum assessment for the previous year without a vote of the membership.

(c) From and after January 1, 1981, the maximum monthly assessment may be increased above 8% by a vote of a majority of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(d) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes

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of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Monthly Assessments; Due Dates. The monthly assessment provided for herein and the insurance assessment provided for in Article X shall commence as to each Lot on the first day of the first month following the conveyance of such Lot by Declarant. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 7 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his heirs, devisees,

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successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of 8% per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

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

Section 9. Subordination of the Lien to Mortgages.

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

ARTICLE VIII

DECLARANT'S RIGHTS

Section 1. Use of Property. Declarant reserves the right to use any of the Lots as models and to sell, assign or conduct other businesses in connection with the construction and development of the project from any of such Lots prior to their being sold. This reservation of right or privilege in Declarant includes, but is not limited to, the right to maintain a model, erect signs, maintain an office, staff the office with employees, and to show Lots then unsold. Declarant

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retains the right to be considered an Owner of any Lot that remains unsold. Declarant also reserves the right to make changes in the location or manner of construction of buildings and other improvements.

Section 2. Management. So long as Declarant owns any Lot in the Properties, Declarant shall, at its option, have the right to perform the functions of the Association and to manage the Properties. Declarant's right to manage shall include the right to set monthly assessments subject to the limitations herein contained and to adopt rules and regulations governing the use of the Properties. Such rights shall be subject to the following:

(a) Declarant may manage or cause to be managed the Properties and it shall have the right to assess and collect the maximum monthly assessment as set forth in Article VII, Section 3 above. After January 1, 1981, Declarant may increase the amount of monthly assessment so long as such increase shall not exceed the maximum percentage increase permitted by such Article VII, Section 3, without vote of the members, unless a greater increase is approved by the membership as therein provided.

(b) Declarant shall have the right to transfer the management of the Properties, or any part thereof, to the Association at any time it believes that the Association is able to manage the Properties without undue difficulty. Declarant's right to manage the Properties shall expire when the last Lot is sold. So long as the management of the Association is being borne by Declarant, the rights of the Association to manage the Properties and set assessments shall be suspended.

Section 3. Declarant's Easement for Adjoining Property. Declarant is presently the owner of certain real estate which is adjacent to the eastern, northern and southern boundaries of the real estate described in Exhibit "A" attached

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hereto. Declarant reserves unto itself the right to connect to, extend and utilize the utilities located or to be located on the Properties.

ARTICLE IX

MAINTENANCE

Section 1. Maintenance by Owners. The owner of each Lot shall furnish and be responsible for, at his own expense, all the maintenance, repairs, decorating and replacements within his residence, including the heating and air conditioning system and any partitions and interior walls. He further shall be responsible for the maintenance, repair and replacement of all windows in his residence and also the doors leading into the residence, and any and all other maintenance, repair, and replacements of the improvements on his lot unless otherwise provided herein.

To the extent that equipment, facilities and fixtures within any Lot shall be connected to similar equipment, facilities or fixtures affecting or serving other Lots, then the use thereof by the Owner of such Lot shall be subject to the rules and regulations of the Association. The authorized representatives of the Association or Board of Directors or the manager or managing agent for the Association shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to any equipment, facilities or fixtures affecting or serving other Lots.

Section 2. Maintenance of Driveway Easements. The Association shall be responsible for the maintenance, repair and repaving of all Driveway Easements.

Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. In addition to maintenance upon the Driveway Easements, the Association shall provide exterior maintenance upon each Lot which is subject to

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assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, lawns, shrubs, trees, trash removal and snow removal from the paved portions of Driveway Easements and front walks. Such exterior maintenance shall not include glass surfaces, doorways, windows, and window frames.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

#### ARTICLE X

#### INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Properties in an amount consonant with the full replacement value of the improvements excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on a Lot or elsewhere. If the Association can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage. The Association shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Association, it may cause such full replacement value to be determined by a qualified appraiser and the cost of any such appraisal shall be included in the monthly maintenance assessment for each Lot. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagees of each Owner.

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Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, its Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted.

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

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

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companies all losses under policies purchased by the Association.

Section 3. Monthly Assessment for Insurance. The premiums for all such insurance hereinabove described shall be paid by the Association and the pro-rata cost thereof shall become a separate monthly assessment to which each Lot shall be subject under the terms and provisions of Article VII. Each Owner shall prepay to the Association at the time his lot is conveyed to such Owner an amount equal to thirteen (13) monthly insurance assessments and shall maintain such prepayment account at all times. The Association shall hold such funds in escrow for the payment for the purchase of insurance as herein provided. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

Section 4. Distribution to Mortgagee. In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his Mortgagee jointly.

Section 5. Additional Insurance. Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his residence (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Properties, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the

master casualty insured policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Lot but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

Section 6. Casualty and Restoration. Damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose.

Section 7. Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Owners of the Building so damaged or destroyed in proportion to the cost of restoration of each Owner's respective residence.

For purposes of Section 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Building or Buildings to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Section 3. Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

ARTICLE XI

EASEMENTS

Section 1. Drainage, Utility and Sewer Easements.

There are strips of ground marked "drainage, utility and sewer easements (D. U. & S.," shown on the Plat which are hereby reserved for public utilities, not including transportation companies, for the installation and maintenance of poles, mains, sewers, drains, ducts, lines, wires and the like. The Owners of Lots shall take title subject to the easements hereby created and subject at all times to the rights of proper authorities to service the utilities and the easements hereby created. No permanent structure of any kind, and no part thereof, including fences, shall be built, erected or maintained on said drainage, utility and sewer easements except walkways and paving on the Driveway Easements.

Section 2. Driveway Easements. Driveway Easements as specified in Article II, Section 5, are hereby reserved for the common use and enjoyment of the Owners of the Lot or Lots appurtenant thereto, their families and invitees. Such Driveway Easements shall not be used for parking of trucks or other commercial vehicles, except temporarily or incidentally for the making of pickups and deliveries to neighboring Lots.

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No velocipedes, bicycles, toys or other private property shall be allowed to obstruct any Driveway Easement, nor shall the same be stored in the open alongside building walls or other locations of public view. Cars, trucks and other vehicles shall not be parked on the paved portion of any Driveway Easement so as to impede access from or to any Lot or public street. No fence, barrier or other obstruction of any kind shall ever be placed or constructed on any Driveway Easement without the prior written consent of the Association and all Owners of Lots appurtenant to such Driveway Easement.

#### ARTICLE XII

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing lines between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Article X hereof, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners hereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

#### ARTICLE XIII

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein, other than by Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided.

#### ARTICLE XIV

##### SIGNS AND HOME OCCUPATIONS

Section 1. Signs. Prior to January 1, 1983, no advertising signs of any kind (other than interior window signs) shall be displayed on any Lot without the prior written approval of Declarant. Further, no signs of any nature, kind or description (including incidental signs as regulated in Section 2.18 of the Dwelling District Zoning Ordinance of

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Marion County, Indiana, 68-AO-2, as amended) shall be erected, placed or maintained on any Lot which identify, advertise or in any way describe the existence or conduct of a home occupation.

Section 2. Home Occupations. No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of any such Lot and which is generally or regularly conducted in another location away from such Lot. Nothing contained herein shall be construed or interpreted to effect the activities of Declarant in the sale of Lots or single-family dwellings as a part of the development of this Subdivision.

#### ARTICLE XIV

##### ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

If, by reason of the location, construction, settling or shifting of a Building, any part of a Building consisting of the single-family residence appurtenant to a Lot (hereinafter in this Article XIV referred to as the "Encroaching Lot") now encroaches or shall hereafter encroach upon any other adjacent Lot, then in such event, an easement shall be deemed to exist and run to the Owner of the Encroaching Lot for the maintenance, use and enjoyment of the Encroaching Lot and all appurtenances thereto.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in or on any other Lot and serving his Lot.

#### ARTICLE XV

##### GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all

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parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 2. Amendment. This Declaration may be amended or changed at any time within ten (10) years following the date of recordation by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed by at least a majority of the then Owners and thereafter by a similar recorded instrument signed by at least seventy-five per cent (75%) of such Owners; provided, however, none of the rights of Declarant reserved hereunder may be amended or changed without Declarant's prior written approval. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty (20) years from the date of recordation in the Office of the Recorder of Marion County, Indiana, and shall automatically extend for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or changed in whole or in part as hereinabove provided. Invalidation of any of the covenants, conditions and restrictions of this Declaration by judgment or decree shall in no way effect any of the other provisions hereof, but the same shall remain in full force and effect.

Section 3. Annexation. Additional residential property may be annexed to the Properties with the consent of a majority of the Owners by the recording of a declaration

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applicable to such annexed real estate which incorporates the terms of the Declaration herein.

IN WITNESS WHEREOF, Waterfront Development Co., Inc., by William C. Chance, Vice President, and Brady R. Justice, Jr., Assistant Secretary, has caused this Declaration to be executed this 11<sup>th</sup> day of September, 1979.

WATERFRONT DEVELOPMENT CO., INC.

By: William C. Chance  
William C. Chance,  
Vice President

ATTEST:

Brady R. Justice, Jr.  
Brady R. Justice, Jr.,  
Assistant Secretary

STATE OF INDIANA )  
                          )SS  
COUNTY OF MARION )

Before me, a Notary Public, in and for such County and State, personally appeared William C. Chance, Vice President, and Brady R. Justice, Jr., Assistant Secretary, of Waterfront Development Co., Inc., an Indiana corporation, each of whom, after having been first duly sworn, acknowledged the execution of the foregoing Declaration for and on behalf of said Corporation.

Dated this 11<sup>th</sup> day of September, 1979.

Stacia F. Baker  
Notary Public

Stacia F. Baker  
Printed

My Commission Expires:

February 1, 1982

My County of Residence:

Marion

This Instrument was prepared by John W. Van Buskirk, Attorney.