

CROSS REFERENCE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF WESTERN HOMEOWNERS ASSOCIATION, INC.

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; and

WHEREAS, said property is being developed by Declarant as part of a planned unit development and Declarant contemplates that such planned unit development will consist primarily of platted residential subdivisions or residential condominium developments within an integrated community; and

WHEREAS, Declarant wishes to preserve the values and amenities in such planned unit development and preserve the same as an integrated community, and Declarant desires to provide for the maintenance of recreational and other common facilities, and, to this end, desires to subject said property, together with any additions thereto, to the covenants, restrictions, easements, assessments and liens as hereinafter set forth, all of which shall be for the benefit of such planned unit development and each and every owner of a residence therein; and

WHEREAS, Declarant has caused or will cause the incorporation of Western Homeowners Association, Inc., an Indiana not-for-profit corporation, for the purpose of performing duties hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions,

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which are for the purpose of protecting the value and desirability of, and which shall run with, said property, and be binding on and inure to the benefit of all parties having any right, title or interest in said property or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

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

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

Section 3. "Common Areas" shall mean and refer to any and all real estate and facilities leased or owned by the Association for the benefit, use and enjoyment of its members and all personal property leased or owned by the Association for the benefit, use and enjoyment of its members.

Section 4. "Declarant" shall mean and refer to Waterfront Development Co., Inc., its successors and assigns, as declarant.

Section 5. "Development Plan" shall mean and refer to the total general scheme of intended uses of land in the Properties as illustrated in Exhibit B hereof, as the same may be amended from time to time.

Section 6. "Federal Mortgage Agencies" shall mean and refer to those federal agencies who have or may come to have an interest in the Properties, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or successors to their interests.

Section 7. "Lot" shall mean and refer to any parcel of land conveyed in fee simple and shown upon any Plat or any residential unit conveyed in fee simple and located within any

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condominium development on any portion of the Properties and established under the provisions of the Indiana Horizontal Property Law, I.C. 32-1-6, as the same may be hereafter amended or supplemented.

Section 8. "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 (as hereinafter defined), including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Plat" shall mean and refer to any subdivision plat covering of any portion of the Properties recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

Section 10. "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 as hereinafter provided.

Section 11. "Quorum of Owners" shall mean the representation by presence or proxy of members who hold two-thirds (2/3) of the outstanding Class A votes and the representation by presence or proxy of the Class B member, so long as it shall exist.

Section 12. "Subdivision" shall mean and refer to any platted subdivision, condominium development or other separate and distinct residential development which now exists or may hereafter be created within the Properties.

Section 13. "Supplementary Declaration shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded by Declarant and which extends the provisions of this Declaration to a Subdivision or which brings additional property within the jurisdiction of the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION;

ADDITIONS THERETO

Section 1. Existing Property. The real property which initially is and shall be held, transferred, conveyed, and occupied subject to this Declaration is located in Marion County, Indiana, and is more particularly described in Exhibit A.

Section 2. Additions to Existing Property. Added properties may become subject to this Declaration in the following manner:

(a) Additions by the Declarant. Declarant shall have the right to subject to the Declaration any additional property which lies within the land area represented by the Development Plan, as it may be amended from time to time, provided that no more than five (5) years shall have lapsed since the filing of the last Supplementary Declaration which subjects a Subdivision to this Declaration. Upon request of the Federal Mortgage Agencies or the Association, Declarant shall provide a statement which shall set forth an estimate of the net additional operating costs expected to result from the annexation and an estimate of the expected increase in user load, if any, upon existing developed recreation facilities.

(b) Other Additions. Additional land, other than that described above, may be annexed to the Existing Property upon approval of two-thirds (2/3) of the votes of a Quorum of Owners and any Federal Mortgage Agencies having an interest in the Properties.

The additions authorized under subsection (a) and (b) shall be made by filing of record one or more Supplementary Declarations of covenants and restrictions with respect to the additional property.

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Section 3. The Development Plan.

(a) Purpose. The Development Plan, illustrated in Exhibit B, is the general design for the development of the Properties which may be modified and amended, as provided herein, during the several years required to build the community. Because the Development Plan is a temporary design, it shall not bind Declarant to make any of the additions which are shown on the Development Plan or to improve any portion of such lands in accordance with the Development Plan unless and until a Supplementary Declaration is filed for such property which subjects it to this Declaration. Thereafter, Declarant shall be required to develop in accordance with such Supplementary Declaration and the Development Plan then in effect unless and until Declarant shall terminate such Supplementary Declaration and obtain any necessary approvals from applicable local government agencies.

(b) Amendments. The Developer hereby reserves the right, with the approval of any of the Federal Mortgage Agencies having an interest in the Properties, to add land or amend the Development Plan for lands which have yet not been made subject to this Declaration, in response to changes in technological, economic, environmental or social conditions related to the development or marketing of The Properties or to changes in requirements or government agencies and financial institutions.

Section 4. Merger. In accordance with its Articles of Incorporation, the property, rights, and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purposes or, alternatively, the properties, rights and obligations of an association similar in corporate nature and purposes may by operation of law be added to the property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and

restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration except as hereinafter provided. Except as provided by law, such merger or consolidation shall have the assent of seventy-five percent of the votes of a Quorum of Owners.

### ARTICLE III

#### Common Areas

Section 1. Obligations of the Association. The Association, subject to the rights of the Members set forth in the Declaration, shall be responsible for the management and control, for the exclusive benefit of the Members, of the Common Area conveyed or leased to it and all improvements thereon, and shall keep the same in good, clean, attractive and sanitary condition, order and repair in compliance with the standards of sound property management.

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

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas;
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by any member for any period during which any assessment remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to promulgate reasonable rules and regulations governing the use of the Common Areas;

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- (d) the rights of Declarant as provided in this Declaration; and
- (e) all other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.
- (f) The right of the Association to mortgage any or all of the Common Area with the assent of seventy-five percent of the votes of a Quorum of the Owners.

Section 3. Recreational Facilities. Declarant has constructed or will construct a swimming pool and clubhouse upon the real estate described in Exhibit "C" attached hereto. Such pool and clubhouse shall be for the exclusive use, benefit and enjoyment of all members of the Association. Further, Declarant has constructed or may construct a horse stable or stables on or within the real estate described in Exhibit "D" attached hereto and has constructed or may construct certain other recreational facilities for the benefit of all members which facilities, in the absolute discretion of Declarant, may include tennis courts, picnic areas, playgrounds and parking areas for boats and recreational vehicles. Except as specifically provided above, all such recreational facilities shall be for the exclusive benefit of all members of the Association. Declarant shall bear the entire cost of construction of such facilities and the Association shall bear the entire cost of maintenance, repair and replacement of such facilities provided by Declarant and for any facilities hereafter provided by the Association.

Section 4. Horse Stable Area. The area described in Exhibit "D" attached hereto shall be used for the riding and boarding of horses and other equestrian purposes or as otherwise determined by the Association. The Association shall have the right to promulgate reasonable rules and regulations in regard to the use of such stable area and to provide for the safety of the members and their guests.

Section 5. Title to Common Areas. Declarant hereby dedicates to the Association for the use, benefit and enjoyment

of its members and covenants that it shall convey the property described in Exhibit "A" free and clear of all liens and encumbrances, other than the lien of real estate taxes not delinquent, to the Association on or before the date it shall have transferred seventy-five percent (75%) of the Lots as shown on the Development Plan.

Section 6. Easement of Use and Enjoyment. Declarant hereby grants and conveys a permanent nonexclusive easement to and right of enjoyment of, and license and privilege of use to, the owners of lots or dwelling units within the following platted subdivisions; Country Village at Eagle Valley Farms, the plat and declaration of which (as the same shall be amended) was recorded on September 11, 1979 as Instrument No. 79-68955 in the Office of the Recorder of Marion County, Indiana; Fox Ridge, the plat and declaration of which (as the same shall be amended) was recorded on May 16, 1980 as Instrument No. 80-30211 in the Office of the Recorder of Marion County, Indiana; and Country Village II, the plat of which (as the same shall be amended) was recorded on November 18, 1980 as Instrument No. 80-74315 and the Declaration of which was recorded on December 3, 1980 as Instrument No. 80-78173 in the Office of the Recorder of Marion County, Indiana. Such owners shall have equal rights of use and enjoyment with the members of the Association of and to all Common Areas now existing or hereafter brought within the jurisdiction of the Association, and, with respect to such use and enjoyment of the Common Areas, shall enjoy the same rights and privileges and be subject to the same duties and obligations as members of the Association, except such owners shall have no voting privileges. Such easement, right and privilege shall be conditioned upon the payment by any such owner of the appropriate annual and Special assessments (but not Subdivision assessments) relating to the Common Areas as the same are due from any member of the Association. The failure of such an

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owner to pay the applicable assessments for a particular year shall suspend such owner's rights for such year but shall not prejudice his rights to the use and enjoyment of the Common Areas for subsequent years upon payment of the applicable assessments for any such years. Upon the payment of reasonable and nondiscriminatory fee or assessment to be determined by the Board of Directors, the owners of lots or dwelling units subject to that certain Declaration of Covenants, Conditions and Restrictions of Eagle Valley Farms Development Company recorded August 9, 1976 as Instrument No. 76-47135 in the Office of the Recorder of Marion County, Indiana (as amended) shall enjoy the easement, right and privilege described in this Section, provided, however, that such owners shall have no easement, right and privilege in and to the swimming pool and clubhouse described in Section 3 of this Article (except as otherwise granted by the Board of Directors).

#### ARTICLE IV

##### ORGANIZATION OF THE ASSOCIATION

(a) The Association. The Association is a not-for-profit corporation organized and existing under the laws of Indiana charged with the duties and vested with the powers prescribed by law and set forth in the Declaration, any Supplementary Declaration, its Articles of Incorporation and By-Laws, as such may be amended from time to time.

(b) Institutional Plan. As the operating responsibilities of the Association expand from those related to the Properties as originally constituted to those required by the Development Plan for Eagle Valley Farms, this Declaration and any Supplementary Declaration shall guide the controlled and orderly evolution of the Association into a comprehensive community institution with two distinct operating and administrative levels, each with associates membership rights and assessment obligations:

(1) Subdivision Level refers to the administrative and operational activities construed to be of material benefit primarily to Owners within a single Subdivision. A Subdivision shall be established by recording a Supplementary Declaration which sets forth its boundaries, purposes, membership constituency and rights and obligations of Members which may be unique to such Subdivision. A Subdivision Committee shall be established for each Subdivision in accordance with the Bylaws and shall serve to provide Subdivision representation and to advise the Board of Directors as to matters pertaining to such Subdivision.

(2) Community Level refers to the administrative and operational activities construed to be of material benefit to the Members of the Association without respect to the type or location of Subdivision in which they reside.

(c) Subsidiary Corporations. The Association shall have the right to form one or more subsidiary corporations, for any purpose or purposes deemed appropriate by a majority vote of the Board of Directors. Without limiting the generality of the foregoing, one or more subsidiary corporations may be formed for the operation and maintenance of any specific area or to perform any function within the Properties; however, such subsidiary corporation shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Members.

(d) No contract or agreement for professional management of the Association nor any other contract with Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

ARTICLE V

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Eligible Members. Every Owner of a Lot which is subject to assessment and Declarant shall be eligible for membership of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot within the Properties.

Section 2. Classes of Eligible Members. The Association shall have two classes of eligible membership:

Class A. Class A members shall be all Owners of Lots within the Properties 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 during any period of membership, 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 shall be the Declarant who shall be entitled to three (3) votes for each Lot as shown on the Development Plan which it owns and the members of the first Board of Directors during their respective terms, who shall have no voting rights. Class B membership of Declarant shall expire at such time as the number of Class A votes equals the number of Class B votes, or January 1, 1986, whichever first occurs.

Section 3. Association. 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 VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Obligation for Assessments. Declarant hereby covenants for each Lot within

the Properties, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association such Annual and Special Assessments as are established herein and paid in the manner hereinafter provided.

The Annual and Special Assessments, together with such reasonable late fees as may be levied, interest, costs of collection (including court costs and attorney fees) as hereinafter provided, 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 late fees, interest and costs of collection, shall also be the personal obligation of the Owner of such property. In the case of a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for any unpaid assessments and/or charges, without regard to the right of the grantee to recover from the grantor the amounts paid by grantee for such assessments and/or charges. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Annual Assessments shall consist of General Assessments and Subdivision Assessments.

(a) General Assessments

(1) Purpose. The General Assessment shall be used exclusively:

- (a) to provide services to Members which promote the health, safety and welfare of the Members; and
- (b) to improve, maintain, and operate the Common Area and improvements, including funding of appropriate reserves for future repair and replacement; and

(2) Basis for Assessment. The Annual General Assessment rate shall be the same for all Lots.

- (3) Maximum. Until January 1 of the year following commencement of assessments, the Maximum General Assessment shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
- (4) Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the Maximum each year by the greater of: (1) a factor of not more than fifteen percent (15%) of the Maximum for the current fiscal year or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, or equivalent, as published by the U.S. Labor Department for the Metropolitan Indianapolis area; such increase shall become effective the first day of the next fiscal year. From and after the first day of the fiscal year immediately following the commencement of assessments, the Maximum General Assessment may be increased above the amount which can be set by the Board with the assent of two-thirds (2/3) of the votes of the Quorum of Owners.
- (5) A portion of such assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing maintenance, repair and replacement of those elements of the Common Areas that must be replaced on a periodic basis.

(b) Subdivision Assessments.

- (1) Purpose. Subdivision Assessments shall be used for such purposes as are authorized by the Supplementary Declaration for a given Subdivision.
- (2) Basis. The Supplementary Declaration shall set forth the basis by which all Lots in the Subdivision shall be assessed.
- (3) Maximum. The Supplementary Declaration shall set forth the maximum Annual Subdivision Assessment and methods by which such maximum may be changed.

(c) Method of Assessment for General and Subdivision Assessments. All Annual General and Annual Subdivision Assessments shall be levied by the Association against Lots and collected and disbursed by the Association. The Board of Directors shall fix the amount of the Assessments as provided hereinafter and set the date or dates such Assessments shall become due. By a vote of two-thirds (2/3) of the Directors, the Board shall fix the Annual General Assessments and Annual Subdivision Assessments at an amount not in excess of the current maximum for each assessment, provided however, that the Annual Assessments shall be sufficient to meet the obligations imposed by this Declaration and any Supplementary Declarations. In the event the Board fails to fix an assessment for any fiscal year, then each assessment established for the prior year shall automatically be continued until such time as the Board acts.

(d) Date of Commencement of Annual General and Subdivision Assessments. The first Annual Assessments provided for herein shall commence on the first day of the month following the conveyance of a Lot in a Subdivision to an Owner other than Declarant.

Section 3. Special Assessments.

(a) Capital Improvement Assessment. The Association may levy in any assessment year a Special Assessment against Lots, applicable to that year and payable over not more than the next three (3) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or major landscaping effort upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Class B Member, if any, and of two-thirds of the votes of a Quorum of Owners. Special Assessments for capital improvements to Subdivision Common Areas of only one Subdivision, if any, which will primarily benefit and be maintained by the Owner of the Subdivision, require only the approval of two-thirds of the votes of a Quorum of Owners of the affected Subdivision.

(b) Restoration Assessment. The Association may levy a Restoration Assessment upon any Lot when the Owner fails to maintain such Lot, as provided in Article VII. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration and the cost of collection thereof.

Section 4. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by a public authority and devoted to public use; (2) all Common Areas; (3) all properties exempted from taxation by the state or city government upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no occupied Lots shall be exempt from said assessments, charges or liens.

Section 5. Due Dates and Notices. The Board of Directors shall fix any increase in the amount of the annual 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 member 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 as to 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 6. Effect of Nonpayment of Mandatory 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 5 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.

If any 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 mandatory assessments provided for herein by abandonment of his lot.



Section 7. Subordination of Lien to Mortgages.

The lien of mandatory 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 any Lot subject to mandatory assessments (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 VII

MAINTENANCE

Maintenance Obligations of Association. The Association shall provide all maintenance and repairs upon the Common Areas as deemed necessary or appropriate by the Board of Directors.

In the event that the need for maintenance or repair is caused through the willful or negligent act of any member, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for which such member is liable, shall be deemed to be a mandatory assessment as to any Owner and shall be the personal obligation of such member enforceable as provided in Article VI, Section 6.

ARTICLE VIII

INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas and any

other property of the Association as deemed necessary by the Board of Directors in an amount consonant with the full replacement value of such improvements and property. 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 as a part of the annual assessments. Such insurance coverage shall be for the benefit of the Association, and, if applicable, any Mortgagee of the Common Areas.

Such 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, Declarant, their agents and employees, Owners, Tenants, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured.

Section 2. Liability Insurance. The Association shall also purchase a 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, Declarant (if it has any interest in the Properties), all Owners and Tenants and all other persons as the Board of Directors may determine.

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, Tenant, Declarant, the Association, its Board of Directors and any managing agent acting on behalf of the Association.

Section 3. Casualty and Restoration. Damage to or destruction of the Common Areas or any portion thereof 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 4. 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 Common Areas or portion thereof so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by Association. If reasonably necessary the Association may request a special assessment as provided in Article VI and, in the absence of the ratification of such a special assessment, shall have no further obligations under Section 3 hereof.

For purposes of Section 3 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Common Areas or applicable portion thereof to as near as possible the same condition as it existed immediately prior to the damage or destruction.

Section 5. 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 Common Areas. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner or other person for committing willful or malicious damage.

ARTICLE IX

EASEMENTS

Section 1. By Declarant. Declarant hereby reserves an easement unto itself and hereby reserves unto itself the right to sell, convey, transfer and grant an easement or easements and rights-of-way across and through the Common Areas for the purposes of installing ditches, tiles, pipes and other types of drains, sewers and sewer lines, utility lines, ducts, wires, pipes and the like and providing access rights from one Subdivision to another or between Subdivisions or for any Subdivision. Declarant further reserves unto itself the right to dedicate any portion of the Common Areas or any utility line, sewer, drain, roadway or the like to any governmental body, municipality, utility or the like, including the right to dedicate public streets and roads. The interest of each member of the Association in the Common Areas shall be and is subject to the easements and rights hereby created and shall be and is subject at all times to the rights of proper authorities who service the utilities and easements hereby created or hereafter granted. Any such grant by Declarant shall be by recorded instrument and, on and after the recording thereof, no permanent structure of any kind shall be built, erected or maintained on any such easement unless otherwise agreed or allowed by the grantee thereof. This right of Declarant shall expire at such time as Declarant no longer retains any ownership interest in the Properties or five years after the filing of a Supplementary Declaration, whichever first occurs.

Section 2. By the Association. Subject to the easements and rights specified in Section 1 hereof, the Association shall have the right to sell, convey, transfer and grant easements and rights-of-way across and through the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. Such sale, conveyance, transfer, grant or dedication 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 such purpose; provided, however, no grantee shall be required to ascertain the compliance with the terms and provisions hereof regarding such member approval and may rely upon the representations of the Board of Directors and the officers of the Association. Any instrument duly executed by the officers of the Association granting any easement or dedication as herein provided shall be binding upon the Association as to any grantee taking in good faith.

#### ARTICLE X

##### ENCROACHMENTS AND EASEMENTS FOR IMPROVEMENTS

If any portion of the Common Areas shall encroach upon any Lot, or if any improvement, building, overhang, fixture or other structure or improvement of whatever type shall for any reason encroach upon any portion of the Common Areas as a result of the construction of a building or improvement, or as a result of settling or shifting of a building or improvement, a perpetual easement for the encroachment and for maintenance is retained by the Declarant for its benefit and for the benefit of the Association and any Owner whose Lot is affected thereby and shall exist perpetually. In the event such building or improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, any resulting encroachment shall be permitted, and a valid

easement for such encroachment is hereby reserved by the Declarant for its benefit and for the benefit of the Association and any Owner of a Lot who is affected thereby.

ARTICLE XI

RIGHTS OF FEDERAL AGENCIES AND MORTGAGEES

Section 1. Rights of Federal Agencies. As long as Declarant has Class B membership rights, the following actions require the prior approval of the Federal Mortgage Agencies should they have an interest in the Properties: dedication of the Common Areas, mergers and consolidation (other than as shown on the Development Plan), or mortgaging of the Common Areas.

Section 2. Additional Rights of Mortgagees. Any lender or lenders holding a first mortgage or mortgages upon any Lot or Lots may, jointly or singly, pay any real estate taxes or other taxes, assessments or charges which are in default and which may or have become a charge or lien against the Common Areas or any portion thereof and such lender or lenders may pay any overdue premiums on any hazard, casualty, liability or other insurance policy or policies or secure new insurance coverage on the lapse of any policies for the Common Areas or any portion thereof, any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

The Association, upon request, shall provide written notification to any lender holding a first mortgage upon any Lot specifying the defaults, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association or its By-Laws or any other applicable documents which default has not been cured within sixty (60) days.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association, the persons in ownership from time to time of the Lots or other real estate within the Properties 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 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 at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, executed by the Association and approved by at least two-thirds (2/3) of all Class A members; provided, however, none of the rights or obligations of Declarant reserved hereunder may be amended or changed without Declarant's written and recorded approval. This Declaration may also be amended by Declarant, if it then has any ownership interest in the Properties, at any time within two (2) years after the recordation hereof including any amendment required by any of the Federal Mortgage Agencies or any title insurance company insuring the sale of Lots to the initial Owners by written instrument recorded in the Office of the Recorder of Marion County, Indiana. 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 be automatically extended for successive periods of ten (10) years each unless prior to the expiration of any such ten-year period it is amended or terminated 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. Limitations. As long as Declarant has an interest in developing the Properties, the Association may not use its financial resources to defray any costs of opposing the development activities so long as they remain consistent with the general intents of the Development Plan. Nothing in this Section shall be construed to limit the rights of the members to act as individuals or in affiliation with other members or groups.

IN WITNESS WHEREOF, Waterfront Development Co., Inc., has caused this Declaration to be executed this 17<sup>th</sup> day of DECEMBER, 1980.

WATERFRONT DEVELOPMENT CO., INC.

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

ATTEST:

John C. Stark  
John C. Stark, Secretary

80 81608



STATE OF INDIANA )  
                  )SS  
COUNTY OF MARION )

Before me, a Notary Public, in and for such County and State, personally appeared W. C. Chance, Vice President, and John C. Stark, 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 17<sup>th</sup> day of December, 1980.

Nancy Mac Owens  
Notary Public

Nancy Mac Owens  
Printed

My Commission Expires:

March 5, 1984

My County of Residence:

Marion

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

80 81608

EXHIBIT "A"

A part of the southwest and southeast quarters of Section 22, both of township 16 north, range 2 east, Marion County, Indiana, more particularly described as follows:

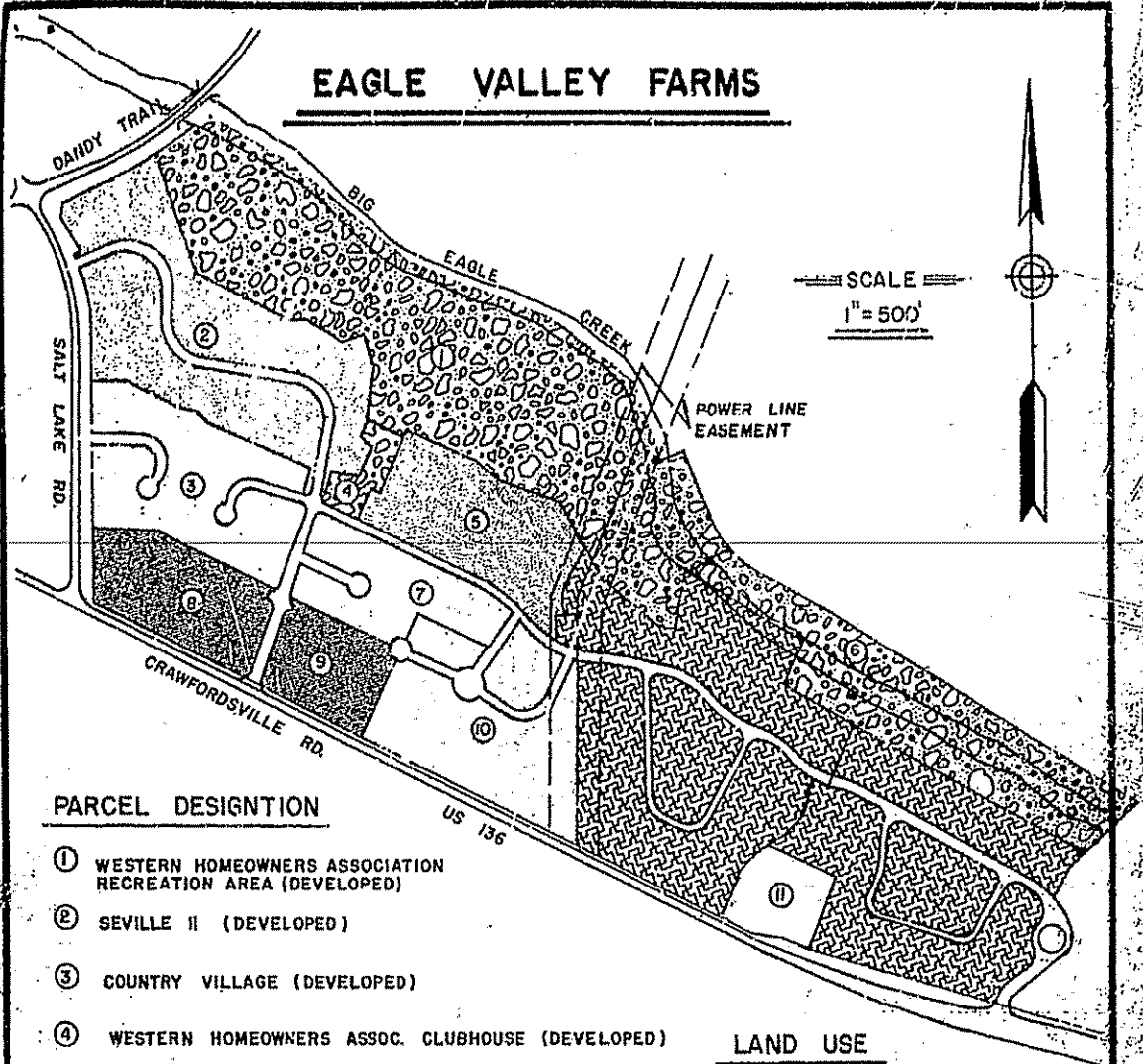
Commencing at the southeast corner of said southwest quarter; thence North 03°53'26" east, along the east line of said southwest quarter, 708.85 feet to the north boundary line of the Woodcliffe Manor II subdivision as recorded in Instrument #80-74317 in the Office of the Recorder of Marion County, Indiana, said point also being the point of beginning of this description; thence along said north line north 68°45'00" west, 213.55 feet; thence north 45°45'00" west, along said north line, 110.00 feet; thence north 65°00'00" west, along said north line, 174.98 feet to a point in the west boundary line of said subdivision; thence south 30°00'00" west along said west line, 163.25 feet; thence north 60°00'00" west along said line 41.84 feet south 30°00'00" west along said line, 179.00 feet, to a point in the centerline of Eagle Valley Pass as recorded in Instrument #76-47124 in the Office of the Recorder; thence along said centerline, north 60°00'00" west, 163.80 feet to the boundary line of the Seville II subdivision as recorded in Instrument #80-74316 in the Office of the Recorder of said county; thence along said boundary line north 17°30'00" east, 134.02 feet; thence south 72°30'00" east along said line, 109.26 feet; thence north 29°59'28" east along said line, 134.31 feet; thence north 44°36'04" west along said line, 87.15 feet; thence north 19°25'10" east along said line, 165.00 feet; thence north 11°30'00" east along said line, 90.00 feet; thence north 02°00'00" west along said line 125.01 feet; thence north 36°00'00" west along said line 104.98 feet; thence north 74°00'00" west along said line, 145.00 feet; thence south 87°00'00" west along said line, 235.00 feet; thence north 49°19'29" west along said line, 172.52 feet; thence north 10°45'03" west along said line, 458.04 feet to the south right-of-way line of Country Club Road, also known as Dandy Trail Road, per Indiana State Highway plans for Project I-05-2(24) Sheet Number 6, dated 1959 and per Marion County plans for Wayne Township Bridge Number 3, Salt Lake Road over Big Eagle Creek, Sheet Number 2, dated July 15, 1959; thence north 51°33'24" east along said right-of-way line and leaving the boundary line of said subdivision, 219.34 feet; to the centerline of Big Eagle Creek; thence south 58°16'50" east along said centerline, 158.06 feet; thence south 66°30'05" east along said centerline, 50.16 feet; thence south 44°10'47" east along said centerline, 99.01 feet; thence south 51°36'08" east along said centerline, 239.89 feet; thence south 43°01'21" east along said centerline, 61.55 feet; thence south 37°34'07" east along said centerline, 98.41 feet; thence south 43°38'33" east along said centerline, 149.24 feet; thence south 66°21'06" east along said centerline, 518.55 feet; thence south 61°53'37" east along said centerline, 99.77 feet; thence south 49°57'01" east along said centerline, 270.42 feet; thence south 36°52'12" east along said centerline, 50.00 feet; thence south 25°54'23" east along said centerline, 38.91 feet and into said southwest quarter section; thence south 14°38'51" east along said centerline, 191.91 feet; thence south 03°30'13" east along said centerline, 49.09 feet; thence north 70°09'38" east and leaving the centerline of said creek, 101.46 feet; thence south 19°50'22" east, 325.77 feet; thence along a curve to the left having a radius of 230.00 feet and a Delta angle of 33°26'11" an arc distance of 134.22 feet and a chord bearing and distance of south 36°33'28" east, 32.33 feet; thence south 63°38'56" west, 150.31 feet to the boundary of Eagle Valley Farms Project I, Cluster 22 as recorded

Exhibit "A" (cont'd)

in Instrument #78-054228 in the Office of the Recorder of said county and all amendments thereto; thence south  $22^{\circ}30'02''$  west, 153.10 feet along said boundary to the boundary of Eagle Valley Farms Project I, Phase IV, Section A as recorded in Instrument #77-005531 in the Office of the Recorder of said county and all amendments thereto; thence north  $67^{\circ}29'58''$  west along said boundary, 40.00 feet; thence north  $86^{\circ}01'12''$  west along said boundary, 59.73 feet; thence north  $71^{\circ}14'29''$  west along said boundary, 55.97 feet; thence north  $48^{\circ}42'36''$  west along said boundary, 9.44 feet to the boundary of Eagle Valley Farms, Project I, Phase I, Sections A and B as recorded in Instrument #76-54288 in the Office of the Recorder of said county and all amendments thereto; thence north  $48^{\circ}42'36''$  west along said boundary, 174.94 feet; thence north  $26^{\circ}40'42''$  west along said boundary, 190.72 feet to the boundary of Woodcliffe Manor II subdivision recorded as previously noted; thence north  $26^{\circ}40'42''$  west along said boundary, 146.73 feet; thence north  $68^{\circ}45'00''$  west, 10.65 feet to the point of beginning, containing 25.24 acres, more or less.

Subject to all easements and rights-of-way of record.






# EAGLE VALLEY FARMS



## PARCEL DESIGNATION

- ① WESTERN HOMEOWNERS ASSOCIATION RECREATION AREA (DEVELOPED)
- ② SEVILLE II (DEVELOPED)
- ③ COUNTRY VILLAGE (DEVELOPED)
- ④ WESTERN HOMEOWNERS ASSOC. CLUBHOUSE (DEVELOPED)
- ⑤ WOODCLIFFE MANOR II (DEVELOPED)
- ⑥ EAGLE VALLEY FARMS HOMEOWNERS ASSOC. (DEVELOPED)
- ⑦ COUNTRY VILLAGE II (DEVELOPED)
- ⑧ NOT A PART OF EAGLE VALLEY FARMS
- ⑨ NOT A PART OF EAGLE VALLEY FARMS
- ⑩ FOX RIDGE (DEVELOPED)
- ⑪ MFR-7 (TO BE DEVELOPED)

## LAND USE

-  COMMERCIAL
-  MULTI-FAMILY RESIDENTIAL
-  SINGLE-FAMILY RESIDENTIAL
-  RECREATION & FLOODWAY AREA
-  PROJECT I PREVIOUSLY DEVELOPED

### The PARK ENGINEERING Co., Inc. Civil Engineers & Surveyors

5380 Madison Ave.  
P.O. Box 27128  
Indianapolis, Indiana 46227

1000 W Oak St.  
P.O. Box 408  
Zionsville, Indiana 46077

EAGLE VALLEY FARMS  
LAND USE MAP

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Project No. 616	Scale 1" = 500'	Drawn By BMW	Checked By SEB	Date DEC. 2, 1980
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EXHIBIT "C"

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 said quarter; thence north  $86^{\circ}48'04''$  west along the south line of said quarter 940.56 feet to the centerline of U.S. Highway 136 (Crawfordsville Road); thence north  $60^{\circ}32'36''$  west along said centerline, 140.65 to the centerline of Valley Farms Road as described in Instrument #76-47124 in the Office of the Recorder; thence north  $25^{\circ}30'00''$  east along said centerline, 701.19 feet to the centerline of Eagle Valley Pass as recorded in Instrument #76-47124; thence south  $60^{\circ}00'00''$  east along said centerline, 25.70 feet to the point of beginning; thence north  $17^{\circ}27'21''$  east, 134.04 feet; thence south  $72^{\circ}30'00''$  east, 109.26 feet; thence north  $29^{\circ}57'28''$  east, 134.31 feet; thence north  $44^{\circ}36'04''$  west, 87.15 feet; thence north  $19^{\circ}25'10''$  east, 7.18 feet; thence south  $60^{\circ}00'00''$  east, 213.34 feet; thence south  $30^{\circ}00'00''$  west, 140.00 feet; thence north  $60^{\circ}00'00''$  west, 41.84 feet; thence south  $30^{\circ}00'00''$  west, 179.00 feet to the centerline of said Eagle Valley Pass; thence north  $60^{\circ}00'00''$  west along said centerline, 163.70 feet, to the point of beginning, containing 1.107 acres, more or less.

Subject to all easements and rights-of-way of record.

EXHIBIT "D"

A part of the southwest quarter of Section 22, Township 16 North, Range 3 East, Marion County, Indiana, more particularly described as follows:

Commencing at the southeast corner of said southwest quarter; thence north  $03^{\circ}53'26''$  east along the east line of said southwest quarter, 1583.89 feet; thence north  $86^{\circ}06'34''$  west, 939.37 feet to the point of beginning of this description; thence north  $26^{\circ}42'46''$  west, 74.00 feet; thence south  $63^{\circ}17'14''$  west, 46.00 feet; thence south  $26^{\circ}42'46''$  east, 74.00 feet; thence north  $63^{\circ}17'14''$  east, 46.00 feet to the point of beginning, containing 0.08 acres, more or less.

Subject to all easements and rights-of-way on record.

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**Mulkey, Tammy**

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**From:** Mulkey, Tammy  
**Sent:** Friday, December 14, 2007 3:58 PM  
**To:** 'TSS Orders'  
**Subject:** marion/copy request/no file

Need 81-65331.

Return to [servicedesk@ctt.com](mailto:servicedesk@ctt.com)

Thank you!

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FILED  
JAN 10 1988  
016978  
CROSS REFERENCE

WESTERN HOMEOWNERS ASSOCIATION, INC.  
SUPPLEMENTARY DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE VILLAS AT EAGLE VALLEY FARMS

CROSS REFERENCE

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" and any additions thereto subject to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions of Western Homeowners Association, Inc. dated December 17, 1980 and recorded on December 18, 1980 as Instrument No. 80-81608 in the Office of the Recorder of Marion County, Indiana, as the same may be amended, (hereinafter referred to as the "Master Declaration").

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" and any additions thereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions and to the Master Declaration, 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 the Villas at Eagle Valley Farms, a subdivision located in Indianapolis, Marion County, Indiana.

RECEIVED FOR RECORD  
LEGISLATIVE CLERK  
RESEARCH-INDIANAPOLIS CC.  
OCT 19 4 21 PM '81

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ARTICLE II

AMENDED ORIGINAL DECLARATION  
INCORPORATED BY REFERENCE

Except as otherwise specifically provided herein, the terms and provisions of the Master Declaration are incorporated herein by reference as if fully set forth herein and shall be fully applicable to the The Villas Properties, including any amendments thereto. Owners of Lots within The Villas 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. "The Villas 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. "The Villas Plat" shall mean and refer to the subdivision plat of the The Villas Properties recorded in the Office of the Recorder of Marion County, Indiana as the same may hereafter be amended or supplemented.

Section 3. "Driveway Easements" shall mean and refer to the surface easements for ingress and egress appurtenant to the Lots as shown on the Plat and labeled "P.D.E." (Private Driveway Easement). The rights of Owners as to their respective Driveway Easements are more specifically described in Article IX.

ARTICLE IV

LOTS

Section 1. Number of Lots. This subdivision consists of seventy-two (72) Lots, or such other number of lots as shall be shown on The Villas Plat, as amended, with streets as shown on The Villas Plat.

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

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, other than original construction by or on behalf of Declarant, except in a manner approved in writing by Board of Directors of the architectural committee specified in the Master Declaration 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 unit 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 unit 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 three hundred (300) square feet of the required minimum floor area shall be on the first (1st) floor.

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- (d) All materials used on the exterior of any single-family dwelling unit, garage or outbuilding erected, placed or constructed on any Lot 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 unit, 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 unit 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. No street shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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.

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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 to 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 Villas 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.

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ARTICLE VI

SUBDIVISION ASSESSMENTS

Section 1. Purpose of Assessments. Subdivision assessments shall be used exclusively for the purpose of providing services which are necessary or desirable for the health, safety and welfare of the members within a subdivision. Such services shall include:

(a) Providing services to each Lot, including, but not limited to: maintenance of lawn, shrubs and grass (except enclosed patios and landscaping within enclosures).

In the event a need for maintenance or repair arises on the exterior of a home from a willful or negligent act of an Owner or his invitees, the cost of such exterior maintenance or repair shall become a Special Assessment on his Lot as provided in the Master Declaration.

(b) Trash collection

(c) Operation, maintenance, repair and replacement (including reserves) of any Common Areas and administrative costs related thereto.

(d) Such other services and reserves as may be approved by the Board and a majority of Owners of Lots in The Villas Properties.

Section 2. Method of Assessment. The assessment shall be levied by the Association against Lots in The Villas Properties, and collected and disbursed by the Association. As provided in the Declaration, by a vote of two-thirds (2/3) of the Directors, the Board shall fix the Annual Subdivision Assessment (if any) and date(s) such assessments become due, with the advice of the Subdivision Committee.

Section 3. Basis of Assessment. The basis for the Subdivision Assessment shall be the same as for the Annual General Assessment, as set forth in the Master Declaration. In the event living units of substantially different size or model are constructed within The Villas Properties, the Subdivision Assessment may be established at uniform rates for each such

class of models or sizes (based upon a pro rata share of cost for maintenance, repair and insurance).

Section 4. Maximum Cluster Assessment. Until the first day of the fiscal year following commencement of assessments in The Villas Properties, the Maximum Annual Subdivision Assessment shall be Eight Hundred Forty Dollars (\$840.00); provided, however, the Association may assess the first Owner of each Lot (other than Declarant or any original builder to whom Declarant may convey a Lot for the purpose of constructing a living unit thereon) an initial charge not to exceed two monthly installments of the Annual Subdivision Assessment and General Assessment to cover the start-up costs of the Association.

Section 5. Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Board of Directors may increase the Maximum Subdivision Assessment each year by the greater of: (1) a factor of not more than fifteen per cent (15%) of the Maximum for the current fiscal year or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, or equivalent, as published by the U.S. Labor Department for the Metropolitan Indianapolis area; such increase shall become effective the first day of the next fiscal year. From and after the first day of the fiscal year immediately following the commencement of assessments, the Maximum Subdivision Assessment may be increased above the amount which can be set by the Board with the assent of two-thirds (2/3) of the votes of the Quorum of Owners of Lots within The Villas Properties.

#### ARTICLE VII

##### MAINTENANCE

Section 1. Maintenance by Owners. The owner of each Lot shall furnish and be responsible for, at his own expense,

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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 exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements, 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 of 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 Owners shall be responsible for the maintenance, repair and repaving of all Driveway Easements and for the maintenance and repair of any pedestrian walkways or sidewalks constructed or to be constructed within the Properties for the benefit of all Owners of Lots.

Section 3. Exterior Maintenance Obligations of Association with Respect to Lots. The Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: lawns, shrubs, trees, trash removal and snow removal from the paved portions of Driveway Easements and front walks.

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 as provided above.

Section 4. Additional Maintenance Duties of Association. Certain living units built within The Villas Properties may consist of attached living units located upon two or more Lots and certain Lots may share a common Driveway Easement. In the event a dispute shall arise between Owners of such attached units or such Lots regarding repair or maintenance affecting such attached units (such as roof repair, painting, etc.) or such common Driveway Easement, a majority of Owners of attached units within a building or of Owners using such common Driveway Easement may agree as to the standard of repair or maintenance and certify such agreement to the Board of Directors or applicable Subdivision Committee in writing. Upon such certification, the Board shall cause such repair or maintenance to be performed and the cost thereof shall become a special assessment upon all Lots benefited thereby or the Owners may contract the work themselves using contractors and materials reasonably acceptable to the Board of Directors. In the event any emergency repairs are made by an Owner which benefit other Owners, the Owner making such repairs shall certify the cost thereof to the Board which may then assess a reasonable portion of the cost thereof as a special assessment against any other Lot benefiting thereby. Such special assessments shall be payable in the manner specified by the Board and payment may be enforced in the same manner as Subdivision Assessments.

In the event an Owner or Owners shall fail to properly maintain and repair the dwelling unit or units located on any Lot, the Board of Directors, by a two-thirds (2/3) majority vote, shall have the right to cause appropriate repairs or maintenance to be performed. In the event the Board votes to take such action, the Owner or Owners affected shall be given not less than thirty (30) days written notice prior to the



commencement of such action and such Owner or Owners shall be entitled to appear before the Board and be heard prior to such action. The Board shall provide a reasonable procedure to hear such appeals from any affected Owner.

Section 5. Architectural Control. No building, fence, wall or other structure, except original construction of living units by Declarant or a builder, 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 VIII

##### INSURANCE

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy or policies affording fire and extended coverage insurance insuring The Villas Properties (which may be purchased in connection with other policies or blanket policies) in an amount consonant with the full replacement value of such improvements including all living units but excluding, as to any Lot and the improvements thereon, all 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

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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 on a pro rata basis. Such insurance coverage shall be for the benefit of the Association, each Owner, and, if applicable, the first Mortgagee of each Lot. At the request of any first mortgagee holding an FHA or VA insured mortgage on any Lot, the monthly insurance assessments for any such Lot may be collected and held in escrow by such lender pending the payment of insurance premiums or casualty insurance for such Lot may be purchased separately and a certificate of insurance furnished to the Association.

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 the Association, 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-rate 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 VIII. 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 or shall use such funds to prepay the premiums of the required insurance. If required by applicable state or federal law, such monthly assessments may be collected and held by the first mortgagee of any Lot as provided herein. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association,

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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 Villas 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 pro-rata 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 the Common Area or any living unit covered by the master policy or policies due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance 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 Common Area or any living units 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 6 above, repair, reconstruction and restoration shall mean construction or rebuilding of the Common Area or any living units to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same or similar 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 Villas Properties, or, in the discretion of the Board of Directors, may be distributed to the Owners of the Lots 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.

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ARTICLE IXEASEMENTS

Section 1. Driveway Easements. Driveway Easements as defined in Article III, Section 3 herein 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. Drainage, Utility and Sewer Easements. As noted on the Plat, Declarant has reserved the open areas of the Lots as an undefined Drainage, Utility and Sewer Easement (D.U. & S. Easement). In doing so, it is the intention of Declarant to provide the needed flexibility to itself and to any original builder to whom Declarant may convey any lots for the purpose of constructing a living unit or units thereon, for the benefit of all Lots and Owners, to properly install and allow to be maintained all electrical, telephone, water, gas, sewer and other utility services (including all lines, pipes.

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wires, cables, ducts, etc., including cable television, lawn sprinkling systems and the like) to the living units constructed on the various Lots. The D.U. & S. Easement shall include all open areas of the Lots outside the buildings originally constructed by Declarant or any such original builder, but not including any areas covered by chimneys, patios, porches or similar appurtenances of such buildings. No other improvements or permanent structures (excluding walkways, pavement on Driveway Easements and Fences) shall be placed within the D.U. & S. Easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant and any such original builder (while they own any Lots) and the Association to provide for and maintain appropriate drainage. Provided, this shall not prohibit walkways and pavement on the Driveway Easements. Declarant and any such original builder shall also have the right to install utility lines beneath the foundation pads of any units for the benefit of any adjoining units and an underground utility easement shall thereafter run in favor of the Lot benefited thereby. Declarant hereby grants an easement to the Association to maintain not more than one (1) water line and faucet on or within the exterior wall of any living unit on a Lot to allow the Association to carry out its maintenance duties hereunder.

Section 3. 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 may deem necessary or appropriate, for ingress, egress, utility

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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 Villas Plat or amendment to The Villas 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 the improvements 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 Villas Properties.

Section 4. 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 Lot, Driveway Easement and any pedestrian walkways or sidewalks.

Section 5. 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 or signs within the areas shown on The Villas Plat as a permanent signage and entryway easement and the right and easement to erect and maintain not more than eight (8) directional signs upon The Villas Properties. Such directional signs shall contain only directional information such as street

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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.

Section 6. Horse Stable Easement. An access easement for ingress and egress to the horse stable areas is hereby granted in favor of the Association and its members. This easement is more particularly described upon The Villas Plat and the use thereof shall be subject to the reasonable rules and regulations of the Association.

#### ARTICLE X

##### ENCROACHMENTS AND EASEMENTS FOR BUILDINGS

If, by reason of the location, construction, settling or shifting of a dwelling unit, any part of such unit consisting of the single-family residence appurtenant to a Lot (hereinafter in this Article X referred to as the "Encroaching Unit") now encroaches or shall hereafter encroach upon any minor portion of any other adjacent Lot or any Common Areas, then in such event, an exclusive easement shall be deemed to exist and run to the Owner of the Encroaching Unit for the maintenance, use and enjoyment of the Encroaching Unit 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 XI

##### 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 Association, the persons in ownership from time to time of the Lots or other real estate within the Properties and all parties

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claiming under them and the Department of Metropolitan Development, City of Indianapolis 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 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 twenty (20) years following the date of recordation hereof by an instrument recorded in the Office of the Recorder of Marion County, Indiana, signed by the Association and signed or approved in writing by at least ninety per cent (90%) of the Owners of Lots within the Villas Properties; and thereafter, signed or approved in writing by at least seventy-five per cent (75%) of the Owners of Lots; 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 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 (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 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. This Declaration may also be amended by Declarant, if it then has any ownership interest in The Villas Properties, at any time within two (2) years after the recordation hereof in

order to satisfy the requirements of any of the Federal Mortgage Agencies. Any such amendments shall be recorded and shall be subject to the prior written approval of any of the Federal Mortgage Agencies having an interest in The Villas Properties.

Section 3. Conflicts with Master Declaration. To the extent of any conflict or inconsistency between this Declaration and the Master Declaration, the terms and provisions of this Declaration shall control as to The Villas Properties and the terms and provisions of the Declaration shall control as to the Properties.

Section 4. Right to Re-Plat. Declarant reserves the right, for a period of two (2) years from the date of recordation hereof, to record a new or amended plat of the real estate included in The Villas Plat, notwithstanding the conveyance of any Lots prior to such recording; provided, however, such new plat shall not alter the boundary lines, size, area, location or access to or from or utility service to or from any Lot so conveyed. Such new plat may add additional land adjacent to the land shown on The Villas Plat and may provide for the inclusion of additional Lots and living units thereon.

Section 5. Seville Declaration Superseded. Declarant recorded the Western Homeowners Association, Inc. Supplementary Declaration of Covenants, Conditions and Restrictions for Seville II and plat thereof as Instrument No. 01-6959 in the Office of the Recorder of Marion County, Indiana. That declaration and plat shall be superseded as to the real estate described in Exhibit "A" upon the recordation of this Declaration and The Villas Plat.

IN WITNESS WHEREOF, Waterfront Development Co., Inc.,  
by Charles P. Morgan, Vice President, has caused this  
Declaration to be executed this 19 day of October, 1981.

WATERFRONT DEVELOPMENT CO., INC.

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

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF HANCOCK )

Before me, a Notary Public, in and for said County and  
State, personally appeared Charles P. Morgan, the Vice President of  
Waterfront Development Co., Inc., an Indiana corporation, who, after  
having been first duly sworn, acknowledged the execution of the  
foregoing Declaration for and on behalf of said Corporation.

Dated this 19 day of October, 1981.

Deborah L. Osborne  
Deborah L. Osborne (Notary Public)

Deborah L. Osborne  
Printed

My Commission Expires:

Aug 5 1985

My County of Residence is:

Hancock



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 said Southwest Quarter; thence North 06 degrees 48 minutes 04 seconds, West along the South line of said Southwest Quarter, 940.56 feet, to a point on the centerline of Crawfordville Road ( U.S. 136 ) as now located; thence, North 60 degrees 32 minutes, 36 seconds, West, along said centerline, 620.64 feet, to a point on the centerline of Salt Lake Road, per Salt Lake Road from State Road 34 to Dandy Trail, Plan approved by the Marion County Surveyor and Engineer dated March 25, 1941; thence, North 3 degrees, 23 minutes, 28 seconds, East, along said centerline, 787.28 feet, to the Point of Beginning; thence, North 3 degrees, 23 minutes, 28 seconds, East, along said centerline, 170.09 feet, to the point of curvature of a 10.00 degree curve of the left, the radius point of said curve being North 06 degrees, 36 minutes, 32 seconds, West, 572.96 feet from said point; thence Northwesterly along said curve and centerline, an arc distance of 258.27 feet, a chord distance of 256.09 feet and having a chord bearing of North 9 degrees, 31 minutes, 20 seconds, West, to the point of tangency of said curve; thence leaving said centerline, North 67 degrees, 33 minutes 52 seconds, East, 25.00 feet to the East Right-of-Way of Country Club Road (also known as Dandy Trail Road) per Indiana State Highway plans for Project 1-05-2(24) Sheet #6 dated 1959 and per Marion County plans for Wayne Township Bridge #3, Salt Lake Road over Big Eagle Creek Sheet #2 dated July 15, 1959 (the next five courses describe being on and along said Right-of-Way line); thence, North 21 degrees, 14 minutes, 11 seconds, West, 134.45 feet; thence, North 27 degrees, 05 minutes, 08 seconds, East, 39.59 feet; thence, North 70 degrees, 38 minutes 26 seconds, East, 191.93 feet; thence, North 69 degrees, 53 minutes, 15 seconds, East, 183.80 feet; thence, North 51 degrees, 13 minutes, 24 seconds, East, 25.00 feet; thence leaving said Right-of-Way line, South 18 degrees, 45 minutes, 03 seconds, East, 458.04 feet; thence, South 43 degrees, 19 minutes, 30 seconds, East, 72.52 feet; thence, South 50 degrees, 31 minutes, 26 seconds, West, 130.24 feet; thence South 3 degrees, 08 minutes, 46 seconds, East, 75.96 feet; thence, South 34 degrees, 08 minutes, 58 seconds, East, 50.76 feet; thence, South 12 degrees, 52 minutes, 59 seconds, West, 75.00 feet; thence South 2 degrees, 55 minutes, 30 seconds, West, 50.56 feet; thence South 10 degrees, 10 minutes, 28 seconds, West, 89.22 feet to the North line of Country Village as described in Instrument #79-68955 recorded in the Office of the Marion County Recorder (the next three courses are on and along said North line); thence, North 70 degrees, 00 minutes, 00 seconds, West, 95.00 feet; thence, North 64 degrees, 00 minutes, 00 seconds, West, 276.06 feet; thence, North 66 degrees, 36 minutes, 31 seconds, West, 95.00 feet to the Point of Beginning, containing 7.602 acres, more or less.

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AMENDMENT TO WESTERN HOMEOWNERS ASSOCIATION, INC.  
SUPPLEMENTARY DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE VILLAS AT EAGLE VALLEY FARMS

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

WITNESSETH:

WHEREAS, the Declarant recorded the plat ("Villas Plat") and Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration") for the subdivision known as The Villas at Eagle Valley Farms as Instrument No. 81-65332 and Instrument No. 81-65331, respectively, in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant has recorded a plat known as Eagle Valley Farms, Project III, Phase 2 ("Project III Plat"), as Instrument No. 81-71127 in the office of the Recorder of Marion County, Indiana, which plat supersedes the Villas Plat in its entirety; and

WHEREAS, Declarant now wishes to amend the Declaration in conformance with the Project III Plat for the subdivision.

NOW, THEREFORE, Declarant now amends the Supplementary

Declaration as follows:

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RECORDER-MARION CO.  
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1. The subdivision governed by the terms and provisions of the Supplementary Declaration shall be known as Eagle Valley Farms, Project III, Phase 2, as noted in the Project III Plat

2. The legal description for the Properties attached to the Supplementary Declaration as Exhibit "A" is deleted and the legal description shown on the Project III Plat is substituted in lieu thereof by reference.

3. All references in the Supplementary Declaration to "The Villas Plat" and to "The Villas Properties" shall mean and refer to the Project III Plat and the Properties described therein, respectively.

4. Article IX, Section 6 of the Supplementary Declaration regarding the horse stable easement is deleted and the following is inserted in lieu thereof:

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Section 6. Additional Easements. A perpetual easement is hereby granted in favor of the Association and the Owners of Lots from time to time to maintain and service underground utility lines, including electrical lines, phone lines, water lines, sewer lines, gas lines and the like. All such utility lines shall be located beneath grade and beneath any layer of sod or similar covering and may be located underneath the slab or foundation pad of dwelling units. Any such lines located under slabs or foundations shall be at least one foot below such slab or foundation and, if necessary, shall be properly vented to the surface. Such lines shall not interfere in any manner with access to any Lot interfere with the use and enjoyment of such Lot by the owner thereof. Such easement shall include the right to locate normal and customary utility meters above ground and shall include a right of access in a normal and customary manner to proper officials of utility companies to read, maintain, repair and replace such meters. There is also hereby granted to the Association an easement for common water lines for use in connection with Common Areas within the Properties. Such easement shall include the right for the Association to locate a connection or connections on the exterior walls of dwelling units for garden hoses. Not more than one garden hose shall be located on any one Lot and such water lines shall be separately metered and all costs in connection with such water lines shall be the responsibility of the Association. Such easement shall include the right to maintain, repair and replace such connection and such water meter.

IN WITNESS WHEREOF, Waterfront Development Co., Inc. has caused this amendment to be executed this 18<sup>th</sup> day of November, 1981.

WATERFRONT DEVELOPMENT CO., INC.

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

STATE OF INDIANA     )  
                              ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared Charles P. Morgan, the Vice President of Waterfront Development Co., Inc., an Indiana corporation, who, after having been first duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said corporation.

Dated this 18<sup>th</sup> day of November, 1981.

Cynthia Watson Adams  
Cynthia Watson Adams, Notary Public

My Commission Expires:

12/5/83

My County of Residence is:

Missouri

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

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CONSENT TO AMENDMENT AND  
RECORDATION OF PLAT

The undersigned, on behalf of any Lots owned by the undersigned, hereby consent to the above Amendment to said Supplementary Declaration and consent to and ratify the recordation of the plat of Eagle Valley Farms, Project III, Phase 2, recorded on November 17, 1981 as Instrument No. 81-71127 in the Office of the Recorder of Marion County, Indiana.

Danfor Homes, Inc.

BY: *Daniel W. Forbes*  
Daniel W. Forbes

x *John Michael Muley*  
John Michael Muley

x *Christine L. Muley*  
Christine L. Muley

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STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me, a Notary Public in and for said County and State, personally appeared DANIEL W. FORBES, President of Danfor Homes, Inc., who, after having been first duly sworn, acknowledged the execution of the foregoing Consent.

Dated this 18<sup>th</sup> day of November, 1981.

Larry L. Buckley  
Larry L. Buckley, Notary Public



My Commission Expires:

6/23/84

My County of Residence is:

MARION

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared John Michael Mulry,  
Christine L. Mulry,  
\_\_\_\_\_ , \_\_\_\_\_  
and \_\_\_\_\_, who, after having been duly sworn, acknowledged the execution of the foregoing Consent.

Dated this 30<sup>th</sup> day of November, 1981.

Larry L. Buckley  
Larry L. Buckley, Notary Public



My Commission Expires:

6/23/84

My County of Residence is:

MARION

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

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CROSS REFERENCE

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SECOND AMENDMENT TO WESTERN HOMEOWNERS ASSOCIATION, INC.  
SUPPLEMENTARY DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE VILLAS AT EAGLE VALLEY FARMS

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

WITNESSETH:

WHEREAS, the Declarant recorded the plat ("Villas Plat") and Supplementary Declaration of Covenants, Conditions and Restrictions ("Supplementary Declaration") for the subdivision known as The Villas at Eagle Valley Farms as Instrument No. 81-65332 and Instrument No. 81-65331, respectively, in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant has recorded a plat known as Eagle Valley Farms, Project III, Phase 2 ("Project III Plat"), as Instrument No. ~~81-71127~~ in the office of the Recorder of Marion County, Indiana, which plat supersedes the Villas Plat in its entirety; and

WHEREAS, Declarant is the record owner of more than ninety per cent (90%) of the Lots shown on the Project III Plat and Declarant now wishes to amend the Declaration in order to allow the Western Homeowners Association, Inc. ("Association") to better serve the owners of Lots within this area.

NOW, THEREFORE, Declarant now amends the Supplementary Declaration as follows:

1. Sections 1, 2 and 3 of Article VII of the Supplementary Declaration are deleted and the following is substituted in lieu thereof:

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

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RECORDER-MARION CO.  
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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 of 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 and for the maintenance and repair of any pedestrian walkways or sidewalks constructed or to be constructed within the Properties for the benefit of all Owners of Lots.

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. Such exterior maintenance

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shall not include glass surfaces, doors and 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 as provided above.

2. Article VII, Section 4 of the Supplementary Declaration regarding the horse stable easement is deleted and Section 5 is re-numbered as Section 4.

IN WITNESS WHEREOF, Waterfront Development Co., Inc. has caused this amendment to be executed this 25<sup>th</sup> day of February, 1982.

WATERFRONT DEVELOPMENT CO., INC.

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

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Charles P. Morgan, the Vice President of Waterfront Development Co., Inc., an Indiana corporation, who, after having been first duly sworn, acknowledged the execution of the foregoing Amendment for and on behalf of said corporation.

Dated this 25<sup>th</sup> day of February, 1982.

My Commission Expires:

12/5/83

My County of Residence is:

Marion

Cynthia Watson Adams Notary Public

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

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THIRD AMENDMENT TO WESTERN HOMEOWNERS ASSOCIATION, INC.  
SUPPLEMENTARY DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE VILLAS AT EAGLE VALLEY FARMS

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

RECEIVED FOR RECORD  
LUCILLE CAMP  
RECORDER-MARION CO.  
MAR 25 3 22 PM '82

WITNESSETH:

WHEREAS, the Declarant recorded the plat ("Villas Plat")  
and Supplementary Declaration of Covenants, Conditions and  
Restrictions ("Supplementary Declaration"), as amended, for the  
subdivision known as The Villas at Eagle Valley Farms as  
Instrument No. 81-65332 and Instrument No. 81-65331,  
respectively, in the office of the Recorder of Marion County,  
Indiana; and

WHEREAS, Declarant has recorded a plat known as Eagle  
Valley Farms, Project III, Phase 2 ("Project III Plat"), as  
Instrument No. 81-71127 in the office of the Recorder of Marion  
County, Indiana, which plat supersedes the Villas Plat in its  
entirety; and

WHEREAS, Declarant is the record owner of more than ninety  
per cent (90%) of the Lots shown on the Project III Plat and  
Declarant now wishes to amend the Declaration in order to allow  
the Western Homeowners Association, Inc. ("Association") to  
better serve the owners of Lots within this area.

NOW, THEREFORE, Declarant now amends the Supplementary  
Declaration as follows:

1. Sections 1 of Article VI of the Supplementary  
Declaration is deleted and the following is substituted in lieu  
thereof:

"Section 1. Purpose of Assessments. Subdivision  
assessments shall be used exclusively for the purpose  
of providing services which are necessary or desirable  
for the health, safety and welfare of the members  
within a subdivision. Such services shall include:

(a) Providing services to each Lot, including, but not limited to:

- (1) maintenance of the exteriors of living units (exterior building surfaces, roofs, gutters and downspouts, except glass and screens),
- (2) maintenance of improvements to Lots (walks, driveways, fences, trees, shrubs, grass and other site improvements, except enclosed patios and landscaping within enclosures).

In the event a need for maintenance or repair arises from a willful or negligent act of an Owner or his invitees, the cost of such maintenance or repair shall become a Special Assessment on his Lot as provided in the Master Declaration.

(b) Setting aside reserves for future repair and replacement of capital improvements to be maintained through the Subdivision Assessment. Reserves for exterior maintenance of living units may differ for individual units based upon the repair and maintenance expectations for each building or architectural style.

(c) Trash collection

(d) Operation, maintenance, repair and replacement of any Common Areas and administrative costs related thereto.

(e) Such other services as may be approved by the Board and a majority of Owners of Lots in The Villas Properties."

IN WITNESS WHEREOF, Waterfront Development Co., Inc. has caused this amendment to be executed this 12 day of March, 1982.

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WATERFRONT DEVELOPMENT CO., INC.

By:   
Charles P. Morgan, Vice President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared Charles P. Morgan, the Vice President of Waterfront Development Co., Inc., an Indiana corporation, who, after having been first duly sworn, acknowledged the execution of the foregoing Amendment ~~to~~ and on behalf of said corporation.

Dated this 12th day of March, 1982.

*Cynthia Matson*  
CYNTHIA MATSON HORN, Notary Public

My Commission Expires:

12/5/83

My County of Residence is:

Marion

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

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