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DECLARATION OF COVENANTS AND RESTRICTIONS OF  
EMERSON WOODS PROPERTY OWNERSHIP

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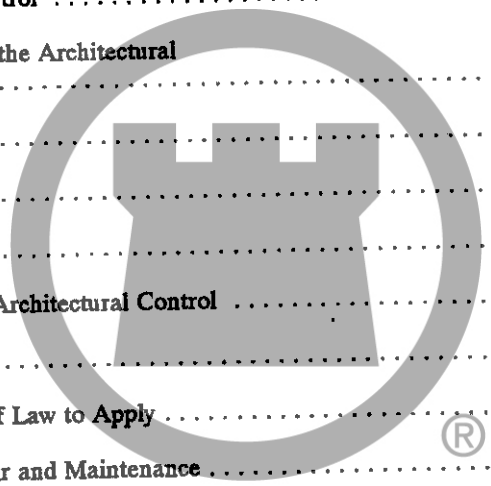
**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
EMERSON WOODS PROPERTY OWNERSHIP**

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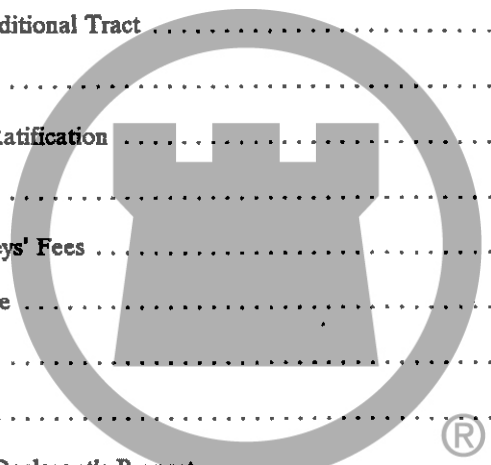
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DECLARATION OF COVENANTS AND RESTRICTIONS OF  
EMERSON WOODS PROPERTY OWNERSHIP

(CROSS-REFERENCE TO DEED INSTRUMENT NO. 96- 80843)

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF  
EMERSON WOODS PROPERTY OWNERSHIP (the "Declaration"), is made this \_\_\_  
day of June, 1996, by EMERSON WOODS ESTATES, LLC, an Indiana limited liability  
company ("Declarant"), and WITNESSETH that:

WHEREAS, Declarant is the owner in fee simple to certain real estate located  
in Marion County, Indiana, more particularly described in Exhibit "A" attached hereto  
and incorporated herein by reference (hereinafter referred to as "Declarant's Property");  
and

WHEREAS, Declarant desires to plat Declarant's Property into two (2) sections,  
the first of which, Section 1, is more particularly described in Exhibit "B" attached hereto  
and incorporated herein by reference (hereinafter referred to as Emerson Woods  
Section 1"); and

WHEREAS, Declarant, by execution of this Declaration, intends that all  
properties which are conveyed by Declarant and which are a part of Emerson Woods  
Section 1 shall be conveyed subject to the terms and conditions of this Declaration,  
which terms and conditions shall run with Emerson Woods Section 1 and be binding  
upon all subsequent owners of any right, title or interest in Emerson Woods Section 1,  
or any part thereof, and their respective heirs, successors and assigns, and shall inure to  
the benefit of each such owner.

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NOW THEREFORE, in consideration of the foregoing, Declarant declares that Emerson Woods Section 1, and any other tracts added thereto from time to time by Declarant, shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth herein.

## ARTICLE I

### Definitions

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

- (a) "Additional Tract" means that real estate or any part thereof described in Exhibit "C" attached hereto and made a part hereof, and referred in Article XVI of this Declaration.
- (b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (c) "Association" means Emerson Woods Homeowners Association, Inc., its successors and assigns, a nonprofit corporation, whose members shall be the Owner of Lots, or appointees as provided in Article V of this Declaration; such Association being more particularly described in Article V of this Declaration.
- (d) "Block" refers to areas designated as such on the Final Plat within which may contain from 4 to 5 Lots. Title to the Lots for ultimate owners shall be distinguishable from Common Areas outside the Lots but within the

Blocks which, if made subject to this Declaration, will be ultimately owned by the Association.

- (e) "Board of Directors" means the governing body of the Association elected by the Members in accordance with the By-Laws of the Association.
- (f) "Builder" refers to a person or entity to which Declarant has conveyed a Block or Lot therein for the purpose of the construction of a Building.
- (g) "Building" means any one of the potential forty-one (41) structures (22 in Section 1 and 19 in Section 2), each of which shall have two (2) Dwelling Units.
- (h) "By-Laws" shall mean the By-Laws of the Association and shall provide for the election of directors and Officers, and other governing officials of the Association. The By-Laws are incorporated herein by reference.
- (i) "Common Area" means the ground designated as such upon the Final Plat of Emerson Woods Section 1 and upon the recorded plat, if any, of the Additional Tract or any part thereof.
- (j) "Common Expense" means the expenses attributable to the administration of the Association and the expenses for the upkeep, maintenance, repair and replacement of the Common Area and the improvements therein, the utilities serving said improvements, the private utility lines and drainage improvements serving all or any portion of Emerson Woods, and all sums reasonably associated therewith.



- (k) "Declarant" shall mean and refer to Emerson Woods Estates, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designated in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of Declarant's property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
- (l) "Dwelling Unit" means one of the living units located upon a Lot within a given Building on a designated Block.
- (m) "Final Plat" means the document to be recorded of the subdivision of land described as Emerson Woods Section 1 and, when the Additional Tract is annexed as provided in Article XVI of this Declaration, Emerson Woods Section 2, dividing the Tract into 12 Blocks and Common Area, both of which plats were prepared by Dennis L. Grumpp, a registered land surveyor, Schneider Engineering Corporation, and certified as of June 10, 1996, and both of which plats will be recorded in the Office of the Recorder of Marion County, Indiana, and both of which are incorporated herein by reference.
- (n) "Lot" means any plot of ground designated as such upon the recorded Final Plat of a Block, and upon which a Building is or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon, unless the context requires otherwise.

- (o) "Member" means a member of the Association.
- (p) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.
- (r) "Tract" means the real estate described in Exhibit "B" attached hereto and such portions of the Additional Tract for which a Final Plat has been recorded in the Office of the Recorder of Marion County, Indiana, and which has been subjected to this Declaration as provided herein. In the aggregate, the tracts subject to this Declaration may be labeled Emerson Woods.

## ARTICLE II

### Description of the Emerson Woods Section 1

Emerson Woods Section 1 consists of six (6) Blocks numbered 1 through 6, inclusive, together with the Common Area as designated on the Final Plat. The Common Area and the size of the Blocks are as designated on said Final Plat. Each Block shall be further platted into individual Lots as Dwelling Units are constructed. The legal description for each Lot in Emerson Woods Section 1 shall be as follows:

Lot \_\_\_\_ in Block \_\_\_\_ of Emerson Woods Section 1, a subdivision in Marion County, Indiana, as per plat thereof recorded \_\_\_\_\_, 19\_\_\_\_, as Instrument No. \_\_\_\_\_, in the office of the Recorder of Marion County, Indiana.

### ARTICLE III

#### Lots and Easements

The boundaries of each Lot in Emerson Woods Section 1 shall be as shown on the Final Plat of each Block; provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction, subsequent reconstruction or otherwise, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such line outside the actual boundary line of the Lot.

### ARTICLE IV

#### Common Area

Section 1. Designation of Common Area. Common Area includes all the area designated as such on the recorded Final Plat of Emerson Woods Section 1 and on the recorded Final Plat of Emerson Woods Section 2, or any part thereof, including, but not limited to the lakes, yards, gardens, driveways, sidewalks, parking areas, nature paths and recreational areas, if any, but excluding all Lots and dedicated streets. If the Emerson Woods Section 2 is not later annexed as contemplated in Article XVI below, the paragraphs in this Declaration relating to Common Area in Emerson Woods Section 2 and ownership thereof by the Association shall not be applicable.

**Section 2. Recreational Facilities.** Within the Common Area Declarant reserves the right, without the obligation, to build or cause to be built recreational facilities as Declarant deems appropriate. In addition, Declarant reserves the right to construct, or cause to be constructed, a club house and such appurtenant facilities as Declarant deems necessary or appropriate on Block 12 of Emerson Woods Section 2, together with a picnic area, fishing dock and walking/jogging path on either or both of Emerson Woods Section 1 and/or Section 2, commencing after the annexation of Emerson Woods Section 2 and when twenty percent (20%) of the Dwelling Units in Emerson Woods Section 2 are completed and conveyed to Class A members.

**Section 3. Ownership of Common Area.** The Common Area shall be conveyed to and owned by the Association, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which shall pass with title to each Lot, subject to the provisions of this Declaration, including but not limited to, the following:

- (i) The right of the Association to charge reasonable admission and other fees for use of any recreational facility.
- (ii) The right of the Association to suspend any Member from the right to use any recreational facility for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.
- (iii) The right of the Association, upon approval by a written instrument signed by two-thirds (2/3) of all Class A Members, two-thirds (2/3) of all Class B Members, and by two-thirds (2/3) of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Association.

- (iv) The right of the Association or its Board of Directors to determine the time and manner of use of recreational facilities, if any, by the Members.
- (v) The right of the Association to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Article V.

The Common Area in Emerson Woods Section 1 shall be conveyed to or owned by the Association at the time of the first conveyance of a Lot to a Class A Member within Emerson Woods Section 1. The Common Area in Emerson Woods Section 2 shall be conveyed to or owned by the Corporation at the time of the first conveyance of a Lot to a Class A member within Emerson Woods Section 2.

Section 4. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association, its right of enjoyment, and use of the Common Area and facilities to members of his or her family, tenants or contract purchasers who reside on any Lot.

Section 5. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Area.

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, if any, located in any other Dwelling Units or in the Common Area and serving such Owner's Dwelling Unit.

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Section 6. Patios and Driveways. The Owner of a Lot shall have an easement to and an exclusive right to use the driveways and sidewalks exclusively serving such Owner's Lot and non-exclusive right to use the sidewalks and driveways serving more than one Lot, whether or not such sidewalks or driveways are part of the Lot or located in the Common Area. Such right shall pass with title to the Lot even though not expressly mentioned in the document passing title. The Owner of a Lot shall have an easement to and the exclusive right to use the patios exclusively serving such Owner's Lot and located adjacent thereto whether or not such patio is part of the Lot or located in the Common Area. Such right shall pass with title to the Lot even though not expressly mentioned in the document passing title.

In the event that the Association decides to liquidate, dissolve or transfer all the Common Area to any public agency, the Association shall, prior to such action, convey to the Owner of each Lot the driveways and sidewalks which are designated for such Lot and the patios which are designated for such Lot under the terms of this Section 6.

Section 7. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the streets and Common Area in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, cable TV, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of

sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by Declarant or by the Board of Directors; and, provided further, that all such utilities shall be located and extended below ground. By virtue of this easement, the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on, through, within and under the roofs and exterior walls of the Dwelling Units. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Tract, without conflicting with the terms of this Section. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Association, its officers, agents and employees and to any management company selected by the Association to enter in or to cross over the Common Area to perform its duties.

#### ARTICLE V

##### Association: Membership: Voting Functions.

Section 1. Membership in Association. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his or her ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his or her Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely

as security for the performance of an obligation shall not be a member until and unless he or she realizes upon his or her security, at which time such person shall automatically be and become an Owner and a Member of the Association.

**Section 2. Voting Rights.** The Association shall have two (2) classes of memberships, with the following voting rights:

- (i) **Class A.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall have only one (1) vote for such Lot which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (ii) **Class B.** Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to three (3) votes for each Lot shown on the Final Plat whether or not a Final Plat has been filed for such Lot of which it is the Owner on all matters requiring a vote of the Members of the Association. The Class B membership shall cease and terminate upon the "Applicable Date," which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the resident agent of the Association, (ii) thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or (iii) December 31, 2005.

**Section 3. Functions.** The Association has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, to pay



taxes assessed against and payable with respect to the Common Area and to pay any other necessary expense and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

**Section 4. Board of Directors.**

- (a) **Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he or she is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Section 4.
- (b) **Initial Board of Directors.** The Initial Board of Directors shall be composed of the persons designated in the Articles of Incorporation, to-wit: Raymond O. Lee, John Preidt, Jr. and Gerry E. Wichman, Sr. (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained herein, or in any other provisions of this Declaration, the Articles of Incorporation or the By-Laws, (i) the Initial Board shall hold office until the Applicable Date or until removed by Declarant who may remove said Board Member without cause, and (ii) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who

shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridical acts *inter vivos* or *causa mortis*, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Association are entitled to vote under the Declaration, the Articles of Incorporation, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Association with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Association nor an

Owner of a Lot for any other purpose (unless he or she is actually the Owner of a Lot and thereby a Member of the Association).

- (c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.
- (d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Article V, one (1) member of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date, one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each director shall hold office throughout the term of his or her election and until his or her successor is elected and

qualified. Subject to the provisions of subparagraph (b) of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owner if a director is removed in accordance with subparagraph (e) of this Article V. The director so filling a vacancy shall serve until the next annual meeting of the members and until his or her successor is elected and qualified. At the first annual meeting following any such vacancy, a director shall be elected for the balance of the term of the director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Director. A director or directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his or her successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A director so elected shall serve until the next annual meeting of the Owners and until his or her successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including, but not limited to, providing for the administration of the Tract, the

management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units and the collection and disbursement of regular and special assessments collected by the Association. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the vote and fifty-one percent (51%) of the vote of Mortgagees registered with the Association. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection, surveillance and replacement of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

- (ii) procuring of utilities in connection with the Lots and Dwelling Units, removal of garbage and waste, and snow removal from the Common Area;
- (iii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area, and such exterior portions of the Dwelling Units. Maintenance of lawns shall include but shall not be limited to the watering, fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by Declarant. It shall not include the care and maintenance of shrubs or trees that were not originally planted by Declarant, flowers or other plants on any Lot;
- (iv) surfacing, paving and maintaining any off-street parking spaces or drives constituting a part of the Common Area or access easement;
- (v) removal of trash and waste from the Real Estate on a basis of not less than weekly, provided further that only the Board or Managing Agent shall contract for such service and no Owner shall contract for such service;
- (vi) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (vii) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (viii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (ix) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
- (x) procuring and maintaining for the benefit of the Association and the Board the insurance coverages required under this Declaration and

such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

- (xi) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area; and
- (xii) to furnish, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year.

(g) **Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (i) to employ a Managing Agent to assist the Board in performing its duties;
- (ii) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (iii) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom; ®
- (vi) to open and maintain a bank account or accounts in the name of the Association;
- (vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Tract and the Common Area (in addition to those set forth in this Declaration) as the Board, in its

discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

- (viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Emerson Woods; and
  - (ix) to enter the Dwelling Unit of any Owner in case of any emergency whether the Owner is present at the time or not and in the case of non-emergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.
- (h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.
- (i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
  - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
  - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (i) Compensation. No director shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed,



shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

- (j) Non-Liability of Directors. The directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as directors, except for their own individual wilful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the directors shall have no personal liability with respect to any contract made by them on behalf of the Association.
- (k) Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by such director in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relating to matters as to which it shall be adjudged in such action, suit or proceeding that such director is liable for gross negligence or misconduct in the performance of his or her

duties. The Association shall also reimburse to any such director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a director, no director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his or her duties where, acting in good faith, such director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such director had actual knowledge of the falsity of incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he or she failed or neglected to attend a meeting or meetings of the Board of Directors.

- (1) Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Association, and such other officers or directors of the Association that handle or are responsible for funds indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such securities as

may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Association as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expression. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Association. The expense of any such bonds shall be a Common Expense.

**Section 5. Initial Management.** The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area, and to the extent the same is not otherwise the responsibility of the Owners of individual Dwelling Units, the maintenance of Dwelling Units, and in general perform all of the duties and obligations of the Association. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any

management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Association and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Tract and perform all the functions of the Association.

#### ARTICLE VI

##### Real Estate Taxes and Utilities

Section 1. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Initial Tract and Additional Tract or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his or her proportionate share of the real estate taxes assessed for the land, which shall be the ratio that the square footage in his or her Lot bears to the total square footage of all the land comprising the Initial Tract and Additional Tract or part thereof assessed as a whole, and shall pay his or her proportionate share of the real estate taxes assessed on the improvements on the Initial Tract and Additional Tract or part thereof assessed as a whole based upon the ratio that the square footage of the improvements on such Owner's Lot bears to the square footage of improvements of all

improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his or her own utilities which shall be separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Association.

## ARTICLE VII

### Maintenance, Repairs and Replacements

Section 1. General Duty. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Section 2. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include glass surfaces, screens and screen doors and window fixtures and other hardware, patios, and such other items as the Board of Directors may so designate (unless specifically designated in this Declaration as the Association's obligation) so long as such items of exception shall apply to all units equally. However, the Association shall be responsible for staining or painting of the outside surface of exterior doors and it shall also be responsible for painting or staining the outside or exterior surfaces of patio fences, if any. Each Owner shall be responsible for maintaining and keeping his or her Lot and

all improvements therein in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed by the Association, including the interiors of patio areas and patio fences (if any). The Association shall not be responsible for repairing and maintaining any patio fences other than painting or staining the exterior unless the Board of Directors shall otherwise provide.

**Section 3. Duty to Repair in Event of Owner's Own Acts.** Notwithstanding any obligation or duty of the Association to repair or maintain any Lot or the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of such Owner's family or of a guest, tenant invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot shall be subject.

**Section 4. Owner's Failure to Maintain Property: Lien on Property.** If any Owner shall fail so to maintain and keep his or her Lot or any part thereof in a good, clean and sanitary condition, the Association may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a

part of such Owner's assessment, and such cost shall be immediately due, and shall be secured by the Association's lien on the Owner's Lot.

Section 5. Right of Entry. So long as the Tract is subject to this Declaration each Owner, by his or her acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

#### ARTICLE VIII

##### Architectural Control

Section 1. Establishment of the Architectural Review Board. As a standing committee of the Association, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided by the By-Laws. Until the Applicable Date, the Architectural Review Board shall be, and the functions thereof discharged by, the Initial Board of Directors. After the last Lot capable of being subjected to this Declaration is conveyed to a purchaser, the membership of the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography of the Tract.

Section 3. Conditions. No improvements, alternations, repairs, change of colors, excavation, changes in grade or other work which in any way alters a Lot or the exterior of any Dwelling Unit or other improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to any Owner shall be made or done without the prior written approval of the Architectural Review Board. Except as otherwise expressly provided in this Declaration, no building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) was received by it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3rds) vote of the directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them. ®

Section 5. Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the



Dwelling Units or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

## ARTICLE IX

### Party Walls

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

**Section 3. Destruction by Fire or other Casualty.** If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of

any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article IX, each party shall choose an arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party. The cost of the arbitrators and the arbitration proceeding shall be born equally by the parties.

#### ARTICLE X

##### Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished

to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration, which replacement reserve fund (if established) shall be used for those purposes and not for

usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, regardless of when determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the

final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessment shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget, the following, as applicable, shall apply:

- (i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his or her Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i)

or (ii) above shall be made by a cash payment by, or refund to, the Owner by first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner who has paid his or her Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his or her Lot or any interest therein, shall not relieve or release such Owner or his or her successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his or her successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determination. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither

the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

**Section 4. Special Assessments.** From time to time, Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that such assessment shall have the consent of two-thirds (2/3rds) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to Section 4(b) of Article V of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

**Section 5. Regular Assessments Prior to the Applicable Date.** During the period that Declarant or a Builder is constructing Dwelling Units within the Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Association to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the

Declaration, the Articles of Incorporation or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Section 3. The Association will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) in accordance with the provisions of Article V of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to the Managing Agent. Declarant shall guarantee that until the earlier of: (i) the termination of said management agreement; or (ii) one (1) year after the date of recordation of the Declaration, the monthly Regular Assessment shall not exceed Sixty and 00/100 Dollars (\$60.00) (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Managing Agent continues to perform such functions, the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and the Managing Agent continues to perform such functions. Such monthly charge shall during such guaranteed period entirely defray the Owner's



obligation for his or her share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any operating deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures shall be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to any replacement reserve created shall be held by the Initial Board and if required, applied to the replacement of Common Areas or those portions of Dwelling Units obligated to be repaired and replaced by the Association. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Association at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the next calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date. ®

For each Lot Declarant or Builder owns and which has been made subject to this Declaration by the recordation of a final plat, Declarant or Builder shall pay to Management Agent twenty-five percent (25%) of the amount of the regular assessment;

provided, however, such payment by Declarant or Builder for Lots within a particular final plat of a block shall not commence until the first Lot in such block subject to the final plat is conveyed by Declarant to an Owner other than a Builder.

Each Owner hereby authorizes the Association and the Board of Directors and its officers to enter into the aforesaid management agreement described in Article V of this Declaration and to adhere to and abide by the same.

Section 6. Failure of Owner to Pay Assessments. No Owner may exempt him or herself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due, the Board may in its discretion accelerate the entire balance of unpaid assessments in such event the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit and the Board shall be entitled to the appointment of a receiver for

the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In actions to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Association shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by NBD Bank, N.A. to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another national bank in Marion County, Indiana selected by the Board of Directors). The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

Section 7. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles of Incorporation or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner

from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

## ARTICLE XI

### Mortgages

Section 1. Notice to Association. Any Owner who places a first mortgage lien upon his or her Lot, or the Mortgagee, shall notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise. The Association shall, upon request of a

Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

Section 2. Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Article X hereof.

Section 3. Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation to (i) pay any taxes or other charges against the Common Area which are in default; and (ii) pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement for all such payments reasonably made by the Association.

Section 4. Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Emerson Woods or

any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Association.

Section 5. Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Association, receive the same notices as are required to be given to Mortgagees.

## ARTICLE XII

### Insurance

Section 1. Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Dwelling Units and the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Dwelling Units and Common Area. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors 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. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth. All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to the Association or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors, as

appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Association as provided in the By-Laws shall specifically include protection for any insurance proceeds so received. The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Common Area directly damaged by any event insured under the said master casualty insurance policy. 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, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to mortgagees and at least ten (10) days prior written notice to the Association.

**Section 2. Public 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, but not less than \$1,000,000 for bodily injury, including death of person and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who

may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

**Section 3. Other Insurance.** The Association shall also obtain any other insurance required by law to be maintained, including but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. 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, the 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 such Owner's right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors, the proceeds of which are payable to the Board or the Association.

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any



such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notice of the meeting of the Association. In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and such Owner's Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Indiana Nonprofit Association Act of 1991 or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

Section 5. Insurance by Owners. Each Owner shall be solely responsible for loss or damage to the contents of his or her Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall covers and fixtures, betterments and improvements installed by him or her) and his or her personal property stored elsewhere on the Tract, and the Association shall have no liability to the Owner for loss or damage

to the contents of any Dwelling Unit or any personal property stored elsewhere on the Tract. Each Owner shall be solely responsible for obtaining his or her own insurance to cover any such loss and risk. Each Owner shall have the right to purchase any additional insurance coverages at such Owner's sole expense as he or she may deem necessary.

Section 6. Condemnation Awards. In the event of condemnation of all or any part of the Common Area the Association, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. All proceeds payable as a result of condemnation shall be paid to the Association who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

#### ARTICLE XIII

##### Casualty of Dwelling Units.

##### Section 1. Restoration of Dwelling Units.

- (a) Damage to or destruction of any Dwelling Unit 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.

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- (b) If the insurance proceeds, if any, 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 Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling Unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.
- (c) For purposes of subparagraphs (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction, and with the same type of architecture.
- (d) Immediately after a fire or other casualty or disaster causing damage to any property for which the Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that immediately prior to the casualty. Such costs may include

professional fees and premiums for such bonds as the Board of Directors may deem necessary.

- (e) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against the Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

- (i) If the estimated cost of reconstruction and repair of the Dwelling Units is more than Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.
- (ii) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.

- (iii) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units 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 damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

**Section 2. Restoration of Common Area.** In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction. In the event the insurance proceeds, if any, 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 of the Common Area, or in the event there are no insurance proceeds, the cost of restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien of assessment as provided herein. For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

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**ARTICLE XIV**

**Covenants and Restrictions.**

The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Area. No Owner shall permit anything to be done or kept in his or her Dwelling Unit or on his or her Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriter or rating bureau.

- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit, the Common Area or on any Lot. The Board of Directors' determination as to what is a nuisance shall be conclusive.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his or her Dwelling Unit or placed on the outside walls of any Dwelling Unit or other building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit or other building without the prior written approval of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or on any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his or her pet. The tethering of pets in any area outside an Owner's fenced patio does not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a

nuisance or unreasonable disturbance or noise, shall be permanently removed from the Tract within ten (10) days after written notice from the Board to the respective Owner to do so.

- (f) All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be stored in closed sanitary containers in areas designed by the Association, shall be regularly removed from the premises, and shall not be allowed to accumulate on any part of the Tract. Trash may be stored in enclosed containers provided by the Association for that purpose. All clotheslines shall be confined to patio areas and shall be below the height of the patio fence. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed so as to be visible from any part of the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.
- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Tract, except those home occupations which are permitted by the applicable zoning regulations in Marion County, Indiana.
- (h) No "for sale," "for rent," or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Tract, any Lot or any Dwelling Unit by an Owner without the prior



consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs, on or about the Tract in connection with any unsold or unoccupied Lots and Dwellings Units.

- (i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.
- (j) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 1/2 ton), motorcycles, mini-bikes, or mopeds shall be permitted, parked or stored anywhere within the Tract except as otherwise specifically permitted by the Board. No repair work shall be done on the Tract on any vehicles, including passenger automobiles.
- (k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board.
- (l) Common Area shall be used and enjoyed only for the purposes for which it is designated and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

- (m) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.
- (n) Any Owner who leases a Dwelling Unit, shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of this Declaration and any failure of the lessee to comply with the terms of this Declaration, shall be a default under the lease.
- (o) No accessory structures, whether temporary or permanent, or fencing of any type may be placed on any Lot, except as may be installed prior to the conveyance of such Dwelling Unit and Lot to the first Owner thereof other than Declarant or a Builder.

Notwithstanding anything to the contrary contained herein or in the Articles of Incorporation or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Tract (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such location locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to

relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract at any time.

#### ARTICLE XV

##### Amendment of Declaration

Section 1. General. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Procedures.

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws of the Association.

- (b) General Amendments. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the

meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

- (c) Special Amendments. No amendment to this Declaration shall be adopted which changes (i) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (ii) the provisions of this Declaration of Article XII with respect to casualty insurance to be maintained by the Association, or (iii) the provisions of Article XIII of this Declaration with respect to reconstruction or repair of the Common Area or Dwelling Units in the event of fire or any other casualty or disaster, or (iv) the provisions of Article VIII of this Declaration establishing the Architectural Review Board and providing for its functions, or (v) the provisions of Article X of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.
- (d) Additional Special Amendments. No amendment to this Declaration shall be adopted which changes (i) the method of voting, or (ii) the responsibility for maintenance, repair or replacement of the Common Area and Dwelling Units, or (iii) the right to use the Common Area, or (iv) any provisions which are for the express benefit of Mortgagees without the

consent of at least ninety percent (90%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least seventy-five percent (75%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages.

- (e) Mortgagees' Vote on Special Amendments. Notwithstanding any provision contained herein to the contrary, no amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of this Declaration. Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting at which such amendment is to be considered (provided proper notice of such meeting was timely given to such Mortgagee), or if the Mortgagee does not send its

written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors, of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

- (f) By Declarant. Declarant hereby reserves the right, so long as Declarant or any entity related to Declarant owns any Lot or Dwelling Unit within and upon the Tract, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant, including without limitation: to bring Declarant or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration or any other governmental

agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that in no event shall Declarant be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Article XV on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. This right of the Declarant to act pursuant to rights reserved or granted under this Article XV shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Tract.

Section 2. Recording. Each amendment to this Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice

President and Secretary of the Association; provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

**Section 3. Amendment Prior to the Applicable Date.** Notwithstanding anything to contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the applicable Date without the consent and approval of Declarant.

## ARTICLE XVI

### Annexation of Additional Tract

In addition to Emerson Woods Section 1, Declarant is the owner of certain real estate more particularly described in Exhibit "C" attached hereto and made a part hereof, and which is located next to and is contiguous with Emerson Woods Section 1 (hereinafter referred to as the "Additional Tract" or "Emerson Woods Section 2").

Declarant, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or any part thereof, in substantially the same manner as Emerson Woods Section 1 and the Final Plat or Plats for such Additional Tract; provided, however, that the maximum number of Lots which may be contained in the total development shall be not more than eighty-two (82) Dwelling Units. The Dwelling Units built in such additional Blocks shall be consistent with the quality of construction of previous Dwelling Units built on Lots subject to this Declaration. Improvements (excluding Dwelling Units) within the area to be annexed must be substantially completed prior to annexation.



In the event the Additional Tract or any part of it is platted and developed in a manner similar to Emerson Woods Section 1, Declarant shall record an addendum to this Declaration confirming the annexation of the Additional Tract. Upon such annexation, the Owners of such Lots in the Additional Tract or parts thereof, shall have the same right and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein.

In the event Declarant decided not to plat and develop the Additional Tract or any part of it in a manner similar to Emerson Woods Section 1, Declarant shall file of record an addendum to this Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein and shall therefore not be subject to this Declaration, except with respect to the cross-easement rights and obligations provided in this Article XVI.

Regardless of the method of development of the Additional Tract and whether or not any part of the Additional Tract comes within the jurisdiction of the Association or subject to the Declaration, Declarant reserves unto itself, its successors and assigns: (i) for the use and benefit of that part of the Additional Tract not coming within the jurisdiction of the Association or be subject to this Declaration, the right and easement to enter upon the streets and Common Area of Emerson Woods Section 1 to provide ingress and egress to the Additional Tract; and (ii) for the use and benefit of the Initial Tract and Additional Tract, the right and easement to the use of all private utility and drainage facilities necessary for the use, enjoyment or benefit of either the Initial Tract

or Additional Tract, as applicable, provided, however, that if the Additional Tract does not come within the jurisdiction of the Association or be subject to this Declaration, the owner or owners of such Additional Tract shall nevertheless be obligated to pay an equitable portion of the common expenses associated with such utility and drainage facilities.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use of utility and drainage facilities, as well as access across the roadways and streets of the Initial Tract and Additional Tract, no matter how developed, for the Owners, their guests, invitees, and, as applicable, all public, quasi-public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Association, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot to Owner. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until the Final Plat of the Block in which such Lot is located has been recorded.

**ARTICLE XVII**

Miscellaneous



Section 1. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws

incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance mortgage or lease thereof. All persons, corporations, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

Section 2. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his or her negligence or by that of any member of his or her family or his, her or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, occupancy or abandonment of his or her Lot or its appurtenances or of the Common Area.

**Section 3. Costs and Attorneys' Fees.** In any proceeding arising because of the failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with addressing or correcting such default or failure.

**Section 4. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles of Incorporation or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or Incorporation, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

**Section 5. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

**Section 6. Interpretation.** The captions and titles of the various articles, section, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only, and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof. ®

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IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

EMERSON WOODS ESTATES, LLC

By: Raymond O. Lee  
Raymond O. Lee, Member

STATE OF INDIANA )  
                                  ) SS:  
COUNTY OF MARION )

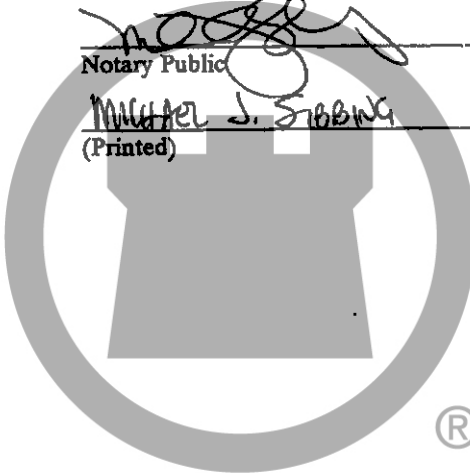
Before me, a Notary Public, in and for said County and State, personally appeared Raymond O. Lee, a Member of Emerson Woods Estates, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Emerson Woods Property Ownership" for and on behalf of said limited liability company.

WITNESS my hand and Notarial Seal this 14<sup>th</sup> day of June, 1996.

Michael J. Sibbing  
Notary Public  
Michael J. Sibbing  
(Printed)

My Commission Expires:  
3-7-00

County of Residence:  
Marion



This instrument prepared by David A. Shelton, Esq., Lowe Gray Steele & Darko, Bank One Tower, Suite 4600, 111 Monument Circle, Indianapolis, Indiana 46204, (317) 236-8020.

Exhibit "A"

Tract I:

Part of the West Half of the Southwest Quarter of Section 10, Township 14 North, Range 4 East of the Second Principal Meridian, Indianapolis, Marion County, Indiana, described as follows:

Commencing at a PK nail found and marking the Northwest corner of the Southwest Quarter of said Section; thence South 01 degree 06 minutes 00 seconds West (bearing based on The Boulders 1st Section, recorded as Instrument No. 76-72052 in the records of the Recorder of Marion County, Indiana) along the West line of said Quarter Section 297.00 feet to a PK nail set and marking the POINT OF BEGINNING of this described tract; thence North 89 degrees 55 minutes 55 seconds East 231.00 feet to a capped rebar set; thence North 01 degree 06 minutes 00 seconds East parallel with the West line of said Quarter Section 297.00 feet to a capped rebar set on the North line of said Quarter Section; thence North 89 degrees 55 minutes 55 seconds East along last said North line 453.00 feet to a capped rebar set; thence South 01 degree 06 minutes 00 seconds West parallel with the West line of said Quarter Section 1317.15 feet to a capped rebar set; thence South 89 degrees 55 minutes 55 seconds West 614.00 feet to a capped rebar set; thence North 01 degree 06 minutes 00 seconds East parallel with the West line of said Quarter Section 338.29 feet to a capped rebar set; thence North 25 degrees 27 minutes 55 seconds West 55.90 feet to a capped rebar set; thence South 01 degree 06 minutes 00 seconds West parallel with the West line of said Quarter Section 388.80 feet (measured) 388.29 feet (deed) to a capped rebar set; thence South 89 degrees 55 minutes 55 seconds West 25.00 feet to a cut cross set said point also being on the West line of said Quarter Section; thence North 01 degree 06 minutes 00 seconds East along last said West line 394.15 feet to a PK nail set; thence North 89 degrees 55 minutes 55 seconds East 231.00 feet to a capped rebar set; thence North 01 degree 06 minutes 00 seconds East 162.00 feet to a capped rebar set; thence South 89 degrees 55 minutes 55 seconds West 231.00 feet to a PK nail set on the West line of said Quarter Section; thence North 01 degree 06 minutes 00 seconds West along last said West line 484.00 feet to the POINT OF BEGINNING.

Tract II:

Part of the West Half of the Southwest Quarter of Section 10, Township 14 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, described as follows:

Commencing at a PK nail found and marking the Northwest corner of the Southwest Quarter of said Section; thence South 01 degree 06 minutes 00 seconds West (bearing based on the Boulders, First Section, recorded in Instrument No. 76-72052 in the records of the Recorder of Marion County, Indiana) along the West line of said Quarter Section 781.00 feet to a PK nail set and marking the POINT OF BEGINNING of this described tract; thence North 89 degrees 55 minutes 55 seconds East 231.00 feet to a capped rebar set; thence South 01 degree 06 minutes 00 seconds West 162.00 feet to a capped rebar set; thence South 89 degrees 55 minutes 55 seconds West 231.00 feet to a PK nail set on the West line of said Quarter Section; thence North 01 degree 06 minutes 00 seconds East along last said West line 162.00 feet to the POINT OF BEGINNING.

EXHIBIT "B"

Part of the West Half of the Southwest Quarter of Section 10, Township 14 North, Range 4 East of the Second Principal Meridian, Indianapolis, Marion County, Indiana, being more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest Quarter of said Section; thence South 01 degree, 06 minutes 00 seconds West (bearing based on The Boulders 1st Section, recorded as Instrument No. 78-72052 in the Office of the Recorder of Marion County, Indiana) along the West line of said Quarter Section a distance of 297.00 feet to the POINT OF BEGINNING of the following described tract; thence North 89 degrees 55 minutes 55 seconds East, parallel with the north line of said Southwest Quarter Section, a distance of 231.00 feet; thence North 01 degree 06 minutes 00 seconds East parallel with the West line of said Quarter Section a distance of 297.00 feet to the North line of said Quarter Section; thence North 89 degrees 55 minutes 55 seconds East along the North line of said Quarter Section a distance of 453.00 feet; thence South 01 degree 06 minutes 00 seconds West parallel with the West line of said Quarter Section a distance of 909.17 feet; thence North 88 degrees 54 minutes 00 seconds West a distance of 70.40 feet; thence North 01 degree 06 minutes 00 seconds East, parallel with the West line of said Quarter Section, a distance of 80.88 feet to a curve having a radius of 165.00 feet, the radius point of which bears North 88 degrees 54 minutes 00 seconds West; thence Northerly along said curve an arc distance of 96.41 feet to a point which bears North 57 degrees 37 minutes 17 seconds West from said radius point; thence North 64 degrees 07 minutes 04 seconds East a distance of 68.52 feet; thence North 25 degree 52 minutes 56 seconds West a distance of 90.98 feet; thence North 72 degrees 11 minutes 37 seconds West a distance of 141.18 feet; thence South 84 degrees 42 minutes 32 seconds West a distance of 107.17 feet; thence South 05 degrees 17 minutes 28 seconds East a distance of 20.45 feet; thence North 89 degrees 31 minutes 50 seconds West a distance of 86.88 feet; thence South 44 degrees 01 minutes 43 seconds West a distance of 59.44 feet to a curve having a radius of 120.00 feet, the radius point of which bears North 44 degrees 01 minutes 43 seconds East; thence Northwesterly along said curve an arc distance of 43.67 feet to a point which bears South 84 degrees 52 minutes 40 seconds West from said radius point; thence South 70 degrees 03 minutes 24 seconds West a distance of 164.31 feet; thence North 88 degrees 54 minutes 00 seconds West a distance of 60.00 feet to the west line of said Quarter Section; thence North 01 degree 06 minutes 00 seconds East along said West line a distance of 394.45 feet to the POINT OF BEGINNING of the above described tract, containing 8.917 acres, more or less.



CHICAGO TITLE

EXHIBIT "C"

Part of the West Half of the Southwest Quarter of Section 10, Township 14 North, Range 4 East of the Second Principal Meridian, Indianapolis, Marion County, Indiana, being more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest Quarter of said Section; thence South 01 degree, 06 minutes 00 seconds West (bearing based on The Boulders 1st Section, recorded as Instrument No. 76-72052 in the Office of the Recorder of Marion County, Indiana) along the West line of said Quarter Section a distance of 297.00 feet; thence North 89 degrees 55 minutes 55 seconds East, parallel with the north line of said Southwest Quarter Section, a distance of 231.00 feet; thence North 01 degree 06 minutes 00 seconds East parallel with the West line of said Quarter Section a distance of 297.00 feet to the North line of said Quarter Section; thence North 89 degrees 55 minutes 55 seconds East along the North line of said Quarter Section a distance of 453.00 feet; thence South 01 degree 06 minutes 00 seconds West parallel with the West line of said Quarter Section a distance of 909.17 feet to the POINT OF BEGINNING of the following described tract; thence North 88 degrees 54 minutes 00 seconds West a distance of 70.40 feet; thence North 01 degree 06 minutes 00 seconds East, parallel with the West line of said Quarter Section, a distance of 60.88 feet to a curve having a radius of 165.00 feet, the radius point of which bears North 88 degrees 54 minutes 00 seconds West; thence Northerly along said curve an arc distance of 96.41 feet to a point which bears North 57 degrees 37 minutes 17 seconds East from said radius point; thence North 64 degrees 07 minutes 04 seconds East a distance of 68.52 feet; thence North 25 degree 52 minutes 56 seconds West a distance of 90.98 feet; thence North 72 degrees 11 minutes 37 seconds West a distance of 141.18 feet; thence South 84 degrees 42 minutes 32 seconds West a distance of 107.17 feet; thence South 05 degrees 17 minutes 28 seconds East a distance of 20.45 feet; thence North 89 degrees 31 minutes 50 seconds West a distance of 86.68 feet; thence South 44 degrees 01 minutes 43 seconds West a distance of 59.44 feet to a curve having a radius of 120.00 feet, the radius point of which bears North 44 degrees 01 minutes 43 seconds East; thence Northwesterly along said curve an arc distance of 43.67 feet to a point which bears South 64 degrees 52 minutes 40 seconds West from said radius point; thence South 70 degrees 03 minutes 24 seconds West a distance of 164.31 feet; thence North 88 degrees 54 minutes 00 seconds West a distance of 60.00 feet to the west line of said Quarter Section; thence South 01 degree 06 minutes 00 seconds West along said West line a distance of 645.70 feet; thence North 89 degrees 55 minutes 55 seconds East, parallel with the north line of said Quarter Section, a distance of 25.00 feet; thence North 01 degrees 06 minutes 00 seconds East, parallel with the west line of said Quarter Section, a distance of 388.80 feet; thence South 25 degrees 27 minutes 55 seconds East a distance of 55.90 feet; thence South 01 degrees 06 minutes 00 seconds West, parallel with the west line of said Quarter Section, a distance of 338.29 feet; thence North 89 degrees 55 minutes 55 seconds East, parallel with the north line of said Quarter Section, a distance of 634.00 feet; thence North 01 degrees 06 minutes 00 seconds East, parallel with the west line of said Quarter Section, a distance of 427.98 feet to the POINT OF BEGINNING of the above described tract, containing 10.292 acres, more or less.

CHICAGO TITLE



5

MARTHA A. WOHACKS  
MARION COUNTY AUDITOR  
580998 MAY 31 12  
FOR TRANSFER

**AMENDMENT  
TO DECLARATION OF COVENANTS AND RESTRICTIONS OF  
EMERSON WOODS PROPERTY OWNERSHIP**

THIS AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS OF EMERSON WOODS PROPERTY OWNERSHIP is made and entered into by the Board of Directors of Emerson Woods Homeowners Association, Inc., an Indiana Not-For-Profit Corporation ("Association")

**WITNESSETH**

WHEREAS, There heretofore has been executed a Declaration of Covenants and Restrictions of Emerson Woods Property Ownership, dated June 14, 1996 and recorded on June 17, 1996 in the Marion County, Indiana Recorder's Office as Instrument No. 1996-0080844, (the "Declaration").

WHEREAS, After receiving the affirmative vote of at least seventy-five percent (75%) or the total votes of the Owners, as provided in Article XV, Section 1 of the Declaration, it is desired that the Declaration be amended as set forth herein.

NOW THEREFORE, the Declaration is amended as follows:

Article XIV is amended to read as follows:

(m) The following restriction shall apply to the lease to rental of any Unit:

(1) Limit on Number of Leased Units. In order to insure that the residents within the Tract share the same proprietary interest in and respect for the Dwelling Units and the Common Areas, no more than four (4) Dwelling Units, at any given time, may be leased or rented for exclusive occupancy by one or more non-owner tenants. For purposes of this Section (m)(1), a Dwelling Unit is exclusively occupied by one or more non-owner tenants, if the Owner of the Dwelling Unit does not also correspondingly occupy the Dwelling Unit as his/her principal place of residence. Prior to the execution of any lease, and in addition to the requirements set forth in this Section (m)(1), the Dwelling Unit Owner must notify the Board or the Board's agent as to the Owner's intent to lease his/her Dwelling Unit. After receiving such notice, the Board or the Board's agent shall advise the Owner if the Dwelling Unit may be leased or whether the maximum number of Dwelling Units within the Tract is currently being leased. If the maximum number of Dwelling Units is already being leased, the Board or the Board's agent shall place the Owner on the waiting list in priority order based on the date of notice from the Owner, and shall notify the Owner of that Owner's position on the waiting list. When an existing non-owner occupant vacates a Dwelling Unit, the Owner of that Dwelling Unit shall immediately notify the Board or the Board's agent of such fact and that Dwelling Unit cannot be re-rented or leased until all prior Owners on the waiting list, if any, have had a chance to rent or lease their Dwelling Units. An Owner on the waiting list who obtains the opportunity to rent or lease his/her Dwelling Unit, must present an executed lease to

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**FILED**  
MAY 31 2005  
FRANKLIN TOWNSHIP  
ASSESSOR

the Board or to the Board's agent, within sixty (60) days of the date of notice that he/she may rent or lease the Dwelling Unit, or that Owner will forfeit his/her position on the waiting list. The Board may, in its discretion, grant an exception, for not more than one (1) year at a time, to the limit provided in this paragraph, to a Dwelling Unit Owner if, in its sole discretion, the Board determines that a hardship exists. Before the Board may grant a hardship exception, the Board shall adopt standards and conditions as to what circumstances might qualify as a hardship.

(2) General Lease Conditions. All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than one (1) year without the prior written approval of the Board. No portion of any Dwelling Unit other than the entire Dwelling Unit may be leased for any period. No subleasing is permitted. No Owner will be permitted to lease or rent his/her Dwelling Unit, if the Owner is delinquent in paying any assessments or other charges due to the Association at the time the lease is entered. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, By-laws and any rules and regulations promulgated by the Board, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any other Owner against the tenant with or without joinder of the Owner of the Dwelling Unit. The Owner of the Dwelling Unit shall supply copies of the Declaration, By-laws and rules and regulations to the tenant prior to the effective date of the lease. In addition, the Board shall have the power to promulgate such additional rules and regulations as, in its discretion, may be necessary or appropriate concerning leasing.

(3) One Year Waiting Period. In addition to all other provisions, for a period of at least one (1) year after an Owner's acquisition of a Dwelling Unit, the Owner cannot rent or lease that Dwelling Unit for exclusive occupancy by one or more non-owner tenants. After that time, the Dwelling Unit will be eligible to be leased if all other conditions are satisfied. In the case of the transfer of ownership of a Dwelling Unit which was properly leased under these rules by the previous Owner, the new Owner can continue with the existing lease only to finish the then current term of not more than one (1) year. When that term ends, the Owner, if he/she wants to lease his/her Dwelling Unit, must meet all requirements the same as other Dwelling Unit Owners who are not exempted.

(4) Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Dwelling Unit Owner from his/her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, By-laws and any rules and regulations promulgated by the Board, or from the Dwelling Unit Owner's liability to the Association for payments of assessments.

(5) Approval of Form of Lease. Any Owner desiring to enter into a lease for his/her Dwelling Unit shall submit the form of the proposed lease to the Board (which form need not include the identity of the tenant or the rental amount) for review for compliance with the requirements of this Section (m). The Board may employ an attorney in connection with any such review, and a reasonable fee may be charged to the applicant to offset the expense so incurred. In the event the Board fails to approve

or disapprove the form of the lease within thirty (30) days after submission by the applicant, the form of the lease shall be deemed approved. A copy of each executed lease by an Owner (which may have the rental amount deleted) shall be provided to the Board by the Owner within thirty (30) days after execution.

(6) Effective Date of Lease Conditions. These leasing restrictions shall not apply to any Dwelling Unit of an Owner who, at the time of recording this provision, is renting or leasing that Dwelling Unit for exclusive occupancy by one or more non-owner tenants, so long as the Dwelling Unit continues to be owned by the same Owner and is not occupied as a residence by that Owner. In order for this exception to apply, the Dwelling Unit Owner must deliver a copy of the executed lease which is in effect at the time to the Board within thirty (30) days after the recording of this document and shall furnish a copy of any subsequent lease within thirty (30) days after its execution. Such copy may have the rental amount deleted. Failure of such an Owner to timely deliver a copy of any such lease to the Board shall result in the Owner's Dwelling Unit being subject to these restrictions. However, in this latter circumstance, these restrictions shall not apply to any lease executed prior to the effective date of these restrictions or to any renewals thereof provided in such lease so long as the occupants remain the same. Any Dwelling Unit which falls under the exception of this paragraph shall, nevertheless, be counted as one of the four (4) maximum Dwelling Units that may be rented at any given time even though such maximum does not apply to restrict such excepted Dwelling Unit.

(8) Institutional Mortgages. The provisions set forth shall not apply to any institutional mortgage holder of any Dwelling Unit which comes into possession of the mortgage holder by reason of any remedies provided by law or in equity or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement or deed in lieu of foreclosure.

(n) Intentionally omitted.

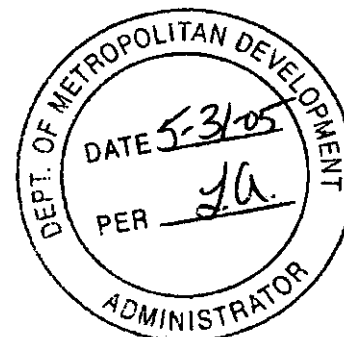
EMERSON WOODS HOMEOWNERS ASSOCIATION, INC.

CHICAGO TITLE

By: F. Donald Pear  
F. Donald Pear, President

ATTEST:

Lou Frizzell  
Lou Frizzell, Secretary



STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

I, Donna Cope, a Notary Public in and for the County and State aforesaid, do hereby certify that Emerson Woods Homeowners Association, Inc., by and through its President, F. Donald Pear, and its Secretary, Lou Frizzell, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as his/their own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth

GIVEN under my hand and Notarial Seal this 17<sup>th</sup> day of May 2005.

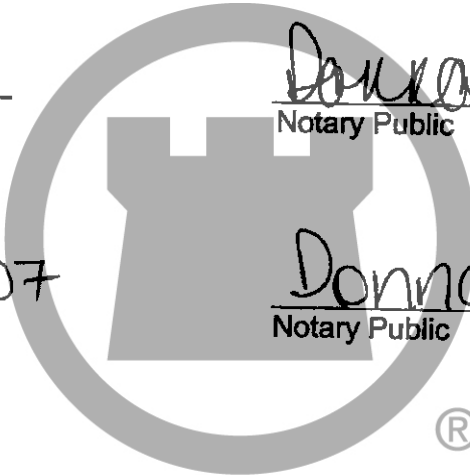
I reside in Marion  
County, Indiana

Donna Cope  
Notary Public (Signed)

My Commission Expires:

Sept. 21<sup>st</sup> 2007

Donna Cope  
Notary Public (printed)



CHICAGO TITLE

AFFIDAVIT OF MAILING  
NOTICE TO FIRST MORTGAGEES

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

After being first duly sworn under oath, Lou Frizzell, the Secretary of the Emerson Woods Homeowners Association, Inc., hereby deposes and says he has mailed a copy of the foregoing Amendment of the Declaration by certified United States mail to all holders of first mortgages of record entitled to such notice on this 17<sup>th</sup> day of May, 2005.

  
Lou Frizzell, Secretary

Before me, a Notary Public for the above County and State, personally appeared Lou Frizzell, the Secretary of the Emerson Woods Homeowners Association, Inc., and after being duly sworn under oath, acknowledged the execution of the foregoing Affidavit of Mailing Notice to First Mortgagees and stated the statements in said Affidavit are true.

Witness my hand and Notarial Seal this 17<sup>th</sup> day of May 2005.

I reside in Marion  
County, Indiana

  
Notary Public (Signed)

My Commission Expires:  
Sept. 21<sup>st</sup>, 2007

Donna Cope  
Notary Public(Printed)

Prepared By Steve Bachmann, 151 N. Delaware St. Indianapolis, IN 46204