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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

THE HAMPTONS AT GEIST

THIS DECLARATION is made this 10th day of August, 1987, by HERMAN ASSOCIATES, INC., an Indiana corporation (the "Developer").

Recitals

1. Developer is the owner of certain real estate more particularly described in Exhibit A attached hereto and made a part hereof (the "Real Estate").

2. Developer intends to subdivide the Real Estate into residential lots;

3. Before so subdividing any portion of the Real Estate, Developer desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of all or any part thereof.

4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plat of the Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana, and collecting and disbursing the assessments and charges as herein provided.

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens, which shall run with the land and shall be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in the Real Estate, or any part thereof.

(27) 43.00

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DECLARATION OF COVENANTS AND RESTRICTIONS

ARTICLE I

1.1. DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Applicable Date" means that date referred to in Section 5.3 below.

1.2 "Association" means The Hamptons at Geist Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

1.3 "Committee" means the Architectural Control Committee established pursuant to Article VI, paragraph 6.1, of this Declaration for the purposes herein stated.

1.4 "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, which are not Lots and which are not dedicated to the public, (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time.

1.5 "Common Expenses" means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, maintenance, repair and replacement of the Common Areas and the performance of the responsibilities and duties of the Association including, without limitation, expenses for the improvement, maintenance and repair of the Lake Easements, Drainage Easements and Utility Easements and any Landscape Easements, shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, (iii) all sums lawfully assessed against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses.

1.6 "Developer" means Herman Associates, Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including, without limitation, any mortgage acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

1.7 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer no longer owns any Lot within or upon the Real Estate.

DEFINITIONS

1.8 "Lot" means any numbered parcel of land shown and identified as a lot on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.9 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

1.10 "Nonaffiliated Owner" means any "Owner" (hereinafter defined) other than Developer, or any entity related to Developer.

1.11 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot.

ARTICLE II

NAME

The name by which the Real Estate shall be known is "The Hamptons at Geist."

ARTICLE III

APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or

undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this Declaration, and for himself, his heirs, personal representatives, successors, and assigns, covenant, agree and consent to and with Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

#### ARTICLE IV

##### COMMON AREAS

4.1 Easement to Owners. Developer hereby creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas which shall run with and be appurtenant to each Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas;

(ii) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(iii) the right of Association to suspend the voting rights and the right to use any recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid, and for reasonable periods for any infraction of its published rules and regulations.

(iv) the rights of the Developer as provided in this Declaration and in any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana;

(v) the terms and provisions of this Declaration; and

(vi) the easements reserved elsewhere in this Declaration and in any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana.

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(vii) the right of the owner of each lot which abuts the Lake to be constructed on the Real Estate to fence that portion of the Lake Easement which lies between his or her Lot and the water's edge, provided that full access thereto at any time is provided to the Association by the Developer and the Association pursuant to the Declaration of Use.

4.2. Declaration of Use. Any Owner may delegate, in accordance with the By-Laws of the Association and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, his right of enjoyment of the Common Areas to his family members, his tenants or contract purchasers who reside on the Lot.

ARTICLE V  
ASSOCIATION

5.1 Membership. Each Owner shall automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

5.2 Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless the Class B membership has been converted to Class A membership as provided in the following subparagraph (ii); in which event Developer shall then be a Class A member). Class A members shall be entitled to one vote for each Lot owned.

(ii) Class B Members. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date".

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date which is the earlier of: (a) the date when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership; or (b) December 31, 1990.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the

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persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote (in the case of Class A membership) be cast with respect to such Lot. ~~Notwithstanding~~ provided that this power shall at all time be provided to the Association.

**5.5 Board of Directors.** The Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

**5.6 Professional Management.** No contract or agreement for professional management of the Association, nor any other contract between Developer and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee, on written notice of ninety (90) days or less.

**5.7 Responsibilities of the Association.** The responsibilities of the Association include, but shall not be limited to:

(i) Installation and replacement of such fences, walls, foliage, landscaping, signs and other improvements in and upon the Common Areas as the Association deems necessary or appropriate, and maintenance of the Common Areas and any installation thereon in a clean and attractive condition and in good repair. The Association shall not be required to replace fences, landscaping or improvements in the Common Areas installed there by any Lot Owner other than the Developer.

(ii) Replacement of such foliage, landscaping, screening materials and other improvements in and upon any Landscape Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) as the Association deems necessary or appropriate and maintenance of any Landscape Easements and any installation thereon installed by Developer or the Association in a clean and attractive condition and in good repair.

(iii) Management and control of detention and retention ponds or lakes in and upon the Lake Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) for the exclusive benefit of the Owners of the Lots and maintenance of the same in a clean, attractive and sanitary condition; and installation and replacement of such improvements in and upon said Lake Easements as the Association deems necessary or appropriate and maintenance of

any such improvements installed by Developer or the Association in good condition and repair. Without limiting the generality of the foregoing, such maintenance obligations shall include overflow maintenance to protect the ponds or lakes from erosion, algae control and maintenance of minimum water levels. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law and prudent pond and lake operation.

(iv) Any necessary replacement of the drainage system in and upon the Drainage Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) as the Association deems necessary or appropriate, and the maintenance of any drainage system installed in or upon said Drainage Easements by Developer or the Association in good condition and repair, subject, however, to the obligation of the Owner of a Lot subject to a Drainage Easement to keep the portion of the Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded, or to reimburse the Association for its expense of repairing or maintaining that part of the drainage system which the Association repairs and/or maintains because such obligated Owner failed to do so.

(v) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required under this Declaration and such other insurance as the Association deems necessary or advisable.

(vi) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(vii) Assessment and collection from the Owners of the Common Expenses.

(viii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

(ix) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas, the use and enjoyment of the lakes and ponds located in and upon the Lake Easements by the Owners, and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules

and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective, and such actions shall be carried out according to the recommendations of the Association. (x) Replacement and maintenance of any street identification signs within and upon the Real Estate designated as private street signs.

**5.8 Compensation.** No director of the Association shall receive compensation for his services as such director, except to the extent expressly authorized by a majority vote of the Owners.

**5.9 Non-Liability of Directors and Officers.** The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

**5.10 Additional Indemnify of Directors and Officers.** The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for 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 or officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this paragraph 5.9.

5.11 Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, 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 sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

#### ARTICLE VI

##### ARCHITECTURAL CONTROL COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established an Architectural Control Committee to perform the functions provided for herein. The Committee shall consist of Stanley Herman and two (2) other members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause, until homes have been started on all the Lots. After such time, the Committee

shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association.

**6.2 Purposes and Powers of Committee.** The Committee shall regulate the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) In General. No residence, building, structure or improvement of any type or kind shall be repainted, constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings submitted to the Committee shall be drawn to a scale of 1", equals 10'; or one quarter or one-eighth inch equals one foot; or to such other scale as the Committee may require. When required by the Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Committee may refuse to grant permission to repaint, construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana;

(b) The design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

(iii) Rules and Regulations. The Committee may, from time to time, make, amend and modify such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana, as long as the same are not inconsistent with this Declaration or such subdivision plat(s).

6.3 Duties of Committee. The Committee shall approve or disapprove proposed repainting, construction or improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

6.4 Liability of Committee. Neither the Committee, Developer, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

6.5 Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI.

6.6 Nonapplication to Developer. Notwithstanding the provisions of this Article VI or any other provisions of this Declaration requiring the approval of the Committee, Developer, or any entity related to Developer, shall not be required to apply for or secure the approval of the Committee in connection with any construction, installation, painting or repainting by Developer, or any entity related to Developer, of any residence, building, structure, or other improvement on the Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Real Estate.

## ARTICLE VII

### ASSESSMENTS

7.1 Creation of Lien and Personal Obligation. Developer, for each Lot now or hereafter owned by it, hereby covenants,

and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.2 Purpose of Assessments. The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas and Landscape Easements, Lake Easements, Drainage Easements and Utility Easements shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, and of any public improvements in the Real Estate, (iii) for the performance of the responsibilities and duties of the Association and (iv) for such other purposes as are specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

7.3 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix,

from time to time, the Regular Assessment against each Lot at any amount not in excess of the maximum Regular Assessment hereinafter provided:

(i) Until January 1, 1989, the maximum Regular Assessment for a calendar year on any Lot shall not exceed One Hundred Twenty and 00/100 Dollars (\$120.00).

(ii) From and after January 1, 1989, the maximum Regular Assessment on a Lot for any calendar year may be increased by not more than ten percent (10%) per year without a vote of the members of the Association.

From and after January 1, 1989, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified above, only with the approval of two-thirds (2/3) of those members of each class of members of the Association who cast votes in person or in proxy at a meeting of the members of the Association duly called for such purpose.

7.4. Special Assessments. In addition to Regular Assessments, the Association may make Special Assessments against each Lot for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or to recover any operating deficits which the Association may from time to time incur only with the assent of two-thirds (2/3) of the members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called for such purpose.

7.5. Uniform Rate of Assessment. The Regular Assessments and Special Assessments levied by the Association shall be uniform for all Lots.

7.6. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessment shall commence as to each Lot on the earlier of the following dates:

(i) the first day of the first calendar month following the first conveyance of such Lot to a Nonaffiliated Owner; or

(ii) the first day of the fourth month following the completion of construction of a residence on the Lot.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days

in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.7 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon, by nonuse of the Common Areas or abandonment of the Lot belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid.

(ii) Notwithstanding anything contained in this paragraph 7.7 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to

any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance and, after the effective date of the Mortgage, 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 or the purchaser at such foreclosure sale, or grantee in the event of conveyance to a lien thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien thereof.

ASSESSMENTS AND SOCIAL ASSESSMENTS... TOWARD THE COMMON EXPENSES... ARTICLE VII... EXPENSES...

INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which the Association is required to maintain hereunder. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk" coverage. The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire or such other hazards as the Association may deem desirable. Such insurance coverage shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any employee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain 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 in any event with a minimum combined limit of One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and the Lake Easement and Landscape Easement areas (shown and identified as such upon any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) and shall insure the Association, its Board of Directors, officers, agents and employees, any

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committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

8.3 Other Insurance. The Association shall also purchase and maintain 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 officers' and directors' liability insurance.

8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as part of the Common Expense.

#### ARTICLE IX

##### MAINTENANCE AND DECORATION

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. In the event the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of the exterior maintenance shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are sufficient to cover the costs of repair or replacement of the property damaged or



destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas or any Landscape Easement, Lake Easement, Drainage Easement or Utility Easement Areas, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or such Easement areas) or of 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 constitute a special assessment against such Owner and his lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

9.3 Additional Restrictions Concerning Residence and Other Structures.

(i) No change shall be made in the exterior color of any residence or accessory buildings located on a Lot without the prior written approval of the Committee.

(ii) Existing or newly planted trees on any Lot shall not be removed by an Owner, after his occupancy, without the prior written approval of the Committee; provided, however, that nothing herein shall prevent the removal of trees by Developer, or any entity related to Developer, during the development of the Real Estate and during the construction by Developer, or any entity related to Developer, of a residence or accessory building on any Lot.

ARTICLE X

MORTGAGE

10.1 Notice to Association. Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed

effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgage and the name and address of Mortgagee are furnished to the Secretary as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association 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 of the Association, a proxy granted to such Mortgagee in connection with the mortgage or otherwise.

10.3 Notices to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days after the date of the last assessment due and not paid to be collected. ARTICLE XI

#### AMENDMENT

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association 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 of the members of the Association duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the votes of all Owners, provided, however, that any such amendment shall require the PRIOR written approval of Developer so long as Developer or any entity related to Developer owns any Lots within and upon the Real Estate. In the event any Lot 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 of the Association in accordance with the provisions of the foregoing paragraph 10.1. No notice to any Mortgagee as may be otherwise required by this Declaration, the (v) Special Amendments, or New Amendment 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 402.02 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, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.1.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). 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 Mortgagees of the time limitation contained in this sentence.

11.2 By Developer. Developer hereby reserves the right so long as Developer, or any entity related to Developer, owns any lot within and upon the Real Estate to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer, without the approval of any other person or entity, in order to bring Developer into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency 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 Developer

87009-1074

shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to the Declaration shall be executed by Developer only in any case where Developer 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 Developer shall contain Developer'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.

#### ARTICLE XII

##### GENERAL PROVISIONS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by Developer, the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

87009-1074

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons claiming under them, until January 1, 2009, and thereafter shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then Owners of Lots within and upon the Real Estate, it is agreed that this Declaration shall terminate in its entirety.

12.4 Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

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

12.6 Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

12.7 FHA/VA Approval. As long as there is a Class B membership, the following actions will require the approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property (except the property described in Exhibit B, as to which approval is not required), dedication of Common Areas and amendment of this Declaration.

12.8 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, and any entity related to the Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate and the sale of Lots and the

construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

HERMAN ASSOCIATES, INC.

By: Stanley Herman  
Stanley Herman

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the State of Indiana, personally appeared Stanley Herman, the President of Herman Associates, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 10th day of August, 1987.

Walter E. Wolf, Jr.  
Notary Public  
Walter E. Wolf, Jr.  
Printed Name

My Commission Expires:

Jan 3, 1990  
My County of Residence: Marion



This instrument prepared by Walter E. Wolf, Jr., KLINEMAN, ROSE, WOLF and WALLACK, 2130 One Indiana Square, Indianapolis, Indiana 46204.

57009-1074

LEGAL DESCRIPTION ✓

Part of the East Half of the Northeast Quarter of Section 19, Township 17 North, Range 5 East, in Marion County, Indiana, consisting of 60 acres taken by parallel lines off the South end of the said East Half Quarter Section, being more particularly described as follows, to-wit:

Beginning at a point on the East Line of said Half Quarter Section at the Southeast Corner of the property owned by Geist Christian Church, said point being 648.22 feet more or less South of the Northeast Corner of said Half Quarter Section; thence continuing South along said East Quarter Section Line to the Southeast Corner of said Quarter Section, a distance of 1,980 feet more or less; thence running West upon and along the South Line of said East Half Quarter Section to the Southwest Corner of the East Half of the said Quarter Section, a distance of 1,320 feet more or less; thence running North along the West Line of said East Half Quarter Section, a distance of 1,980 feet to a point; thence running East parallel with the North Line of said Half Quarter Section a distance of 1,320 feet more or less to the place of beginning.

EXHIBIT "A"

CONSENT OF MORTGAGEE

Paul W. Krone, Trustee of Cincinnati, Ohio, being the holder of a mortgage on that real estate located in Marion County, Indiana, which is described in Exhibit A attached hereto (the "Real Estate"), dated December 30, 1986, made by Housing Technology, Inc. (now known as Herman Associates, Inc.) and also a mortgage made by Herman Associates, Inc., dated May 29, 1987, (the "Mortgages"), which Mortgages were recorded in the Office of the Recorder of Marion County, Indiana, as Instrument Numbers 86-134691 and 87-61798, respectively hereby (a) consents to the execution, platting and recording of (i) a Declaration of Covenants, Conditions and Restrictions by Herman Associates, Inc., dated August 10, 1987, and (ii) two (2) Plats designated The Hamptons at Geist, Section I, and The Hamptons at Geist, Section II, together with Plat Covenants and Restrictions with respect to both Sections and (b) to the submission of the Real Estate to said Declaration and Plat. The undersigned further agrees that the Mortgage with respect to the Real Estate shall be subject to, and entitled to the benefits of, said Declaration and Plat. Except and to the extent that the Mortgage is modified by this Consent, the Mortgage shall remain in full force and effect, unaltered and enforceable in accordance with its terms.

EXECUTED this 10<sup>th</sup> day of August, 1987.

  
Paul W. Krone, Trustee

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STATE OF OHIO )  
 ) SS:  
COUNTRY OF HAMILTON )

Before me, a Notary Public in and for the State of Indiana,  
personally appeared Paul W. Kione, as Trustee, who acknowledged  
the execution of the foregoing Consent of Mortgagee.

WITNESS my hand and Notarial Seal this 16th day of  
August, 1987

Louis N. Di Vincenzo  
Notary Public

Printed Name

My Commission expires:



My County of Residence:

Ohio

This instrument prepared by Walter E. Wolf, Jr., Attorney  
at Law, KLINEMAN, ROSE, WOLF and WALLACK, 2130 One Indiana  
Square, Indianapolis, Indiana 46204.

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CONSENT OF MORTGAGEE

First National Bank of Louisville, being the holder of a mortgage on certain real estate located in Marion County, Indiana, and more specifically described in Exhibit A attached hereto (the "Real Estate"), dated May 27, 1987, made to the undersigned by Herman Associates, Inc., an Indiana corporation, and recorded on June 1, 1987, in the office of the Recorder of Marion County, Indiana as Instrument No. 87-61802 (the "Mortgage") hereby consents (a) to the execution, platting and recording of (i) a Declaration of Covenants, Conditions and Restrictions, and (ii) two (2) Plats designated The Hamptons at Geist, Section I and The Hamptons at Geist, Section II, together with Plat Covenants and Restrictions with respect to both Sections, all in the office of the Recorder of Marion County, Indiana, by Herman Associates, Inc., and (b) to the submission of the Real Estate to said Declaration and Plat. The undersigned further agrees that the Mortgage with respect to the Real Estate shall be subject to, and entitled to the benefits of, said Declaration and Plat. Except and to the extent that the Mortgage is modified by this Consent, the Mortgage shall remain in full force and effect, unaltered and enforceable in accordance with its terms.

EXECUTED this 10<sup>th</sup> day of August, 1987.

FIRST NATIONAL BANK OF LOUISVILLE

ATTEST:

BY [Signature]  
Printed Name John C. Stewart  
Title Vice President

BY [Signature]  
Printed Name JAMES M. SCHRADER  
Title MORTGAGE BANKING OFFICER

STATE OF KENTUCKY )  
COUNTY OF Jefferson ) SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared James M. Schrader and John C. Stewart, the Vice President and Vice President respectively, of First National Bank of Louisville, who acknowledged the execution of the

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ORIGINAL ILLEGIBLE

foregoing Consent of Mortgagee for and on behalf of said First  
National Bank of Louisville for uses and purposes therein set  
forth.

WITNESS my hand and Notarial Seal this 10<sup>th</sup> day of  
August, 1987

Sharon Church  
Notary Public

Sharon Church  
Printed Name

My Commission expires:

June 1, 1989

My County of Residence:

Jefferson

This instrument was prepared by Walter E. Wolf, Jr.,  
Attorney at Law, KLINEMAN, ROSE, WOLF and WALLACK, 2130 One  
Indiana Square, Indianapolis, Indiana 46204.

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GROSS REFERENCE

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CROSS REFERENCE

CURTIS  
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PLAT COVENANTS AND RESTRICTIONS

THE HAMPTONS AT GEIST - SECTION IV

The undersigned, Land Innovators Co., an Indiana limited partnership (the "Developer"), is the owner of the real estate more specifically described in Exhibit A attached hereto (the "Real Estate"). Developer intends to plat and subdivide the Real Estate as shown on the plat for The Hamptons at Geist - Section IV, dated 12/13, 1989, which is concurrently being recorded as Instrument No. 90-7660 in the office of the Recorder of Marion County, Indiana (the "plat") and desires in such plat to subject the Real Estate to the provisions of these Plat Covenants and Restrictions. The subdivision created by the plat (the "Subdivision") shall be known and designated as The Hamptons at Geist - Section IV, an addition in Marion County, Indiana. In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to certain additional covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions of The Hamptons at Geist, dated August 10, 1987, and recorded August 14, 1987, as Instrument No. 87-94074, in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided (the "Declaration"); to commitments and to the rights, powers duties and obligations of The Hamptons at Geist Association, Inc. (the "Association"), as set forth in the Declaration. If there is any irreconcilable conflict between any of the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration, the conflicting covenant or restriction contained herein shall govern and control only to the extent of the irreconcilable conflict, it being the intent hereof that all such covenants and restrictions shall be applicable to Real Estate to the greatest extent possible.

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RECORDER

In order to provide adequate protection to all present and future owners of lots in the Subdivision ("Lot Owners"), the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

- STREETS:  
All streets shown and not heretofore dedicated, are hereby dedicated to the public for its use. All lots shall be accessed from the interior streets of the subdivision. No access to any lots shall be permitted from Mud Creek Road.
- EASEMENTS FOR DRAINAGE, SEWER AND UTILITIES:  
Lots are subject to drainage easements, sewer easements and utility easements, either separately or in combination of the three, as shown on the plat, which are reserved for the use of the Lot Owners, public utility agencies and governmental agencies as follows:

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LAWRENCE TOWNSHIP  
ASSESSOR

- A. DRAINAGE EASEMENTS (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage system; and it shall be the individual responsibility of the Lot Owner to maintain the drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Developer of the subdivision.
- B. SEWER EASEMENTS (S.E.) are created for the use of the local government agency having jurisdiction over the storm and sanitary waste disposal system of said city and/or county designated to serve the Subdivision for the purposes of installation of maintenance of sewers that are a part of said system. Each Lot Owner must connect with any public sanitary sewer available.
- C. UTILITY EASEMENTS (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation of pipes, mains, ducts and cables as well as for the uses specified in the case of sewer easements.
- D. All Lot Owners in the Subdivision shall take title subject to the rights of public utilities, governmental agencies, and the right of the other Lot Owners in the Subdivision to said easement herein granted for ingress and egress in, along, and through the strips of ground for the purposes herein stated.
3. LANDSCAPE EASEMENTS:  
Any areas of ground on the plat marked "Landscape Easements" are hereby created and reserved: (i) for the use of Developer during the Development Period for access to and the installation and replacement of foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance, repair and replacement of foliage, landscaping, screening materials and other improvements. Except as installed by Developer or installed and maintained by the Association, no permanent structure, including, without limitation, fences shall be erected or maintained in or upon any Landscape Easements. The Lot Owners in the Subdivision shall take and hold title to the lots subject to any Landscape Easements herein created and reserved.

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4. COMMON AREAS:

All areas designated as a Block, as shown on the Plat, are hereby declared to be Common Areas. Portions of the Common Areas are designated as "Lake" which shall be the area which is reserved for the water of the lake. No structures of any kind shall be built within the area shown as the Lake. All Common Areas are hereby reserved for the use of the Developer during the development period, and for the use of the Association after the development period for any purposes deemed to be for the benefit of the Development as well as for access to the Lake and for construction, management and control thereof. The Common Area including the Lake, are hereby reserved for the use and enjoyment of all the Lot Owners, subject to the right of the Association to promulgate reasonable rules and regulations governing such use and enjoyment. The Lot Owners which are contiguous to the Lake shall have exclusive use of the Common Areas between their lot lines and the edge of the water in the Lake. Each Lot Owner shall be responsible for mowing and maintaining any Common Area located directly between his lot line and the edge of the water in the Lake unless and until the Association shall elect to take over such maintenance. There shall be no swimming or boats in the Lake, unless after the Development period the Association shall otherwise provide. The Association may adopt reasonable rules and regulations governing the use of Common Areas. The Lot Owners in the Subdivision shall take and hold title to the lots subject to the rights herein granted with respect to Common Areas. There are no Landscape Easements or other Easements designated as such in the Common Areas. The Developer, during the Development Period, and the Association thereafter, shall have the power and authority to grant drainage, utility, sewer, and landscape easements in the Common Areas and the same shall thereafter be binding on all the Lot Owners.

5. FENCES:

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines. No trees shall be permitted to remain within said distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

6. NUISANCES:

No outside toilets shall be permitted on any lot in the Subdivision (except port-o-lets or like structures during construction).

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7. CONSTRUCTION OF SEWAGE LINES:

All sanitary sewage lines on the lots shall be designated and constructed in accordance with the provisions and requirements of the City of Indianapolis Department of Public Works.

8. IN GENERAL:

No noxious or offensive activities shall be carried on on any lot in the Subdivision, nor shall anything be done on any of the said lots that shall become or be an unreasonable annoyance or nuisance to any other Lot Owner in the Subdivision.

9. ANIMALS:

No animals shall be kept or maintained on any lot in the Subdivision except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.

10. VEHICLE PARKING:

No trucks, campers, trailers, recreational vehicles, boats, boat trailers or similar vehicles (excepting temporary construction trailers being used in conjunction with work in progress) shall be parked on any street or lot in the Subdivision for a period of more than forty-eight hours unless such vehicles are stored within a garage.

11. GARBAGE, TRASH AND OTHER REFUSE:

No Lot Owner in the Subdivision shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Lot Owner accumulate or permit the accumulation out of doors of such refuse on his lot. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a lot and shall not be allowed to accumulate thereon. All Dwellings built in the Subdivision shall be equipped with a garbage disposal.

12. FUEL STORAGE TANKS AND TRASH RECEPTACLES:

Every tank for the storage of fuel that is installed outside any building in the Subdivision shall be buried below the surface of the ground or entirely screened from view of surrounding properties and public street frontages. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Subdivision at any time, except at times when refuse collections are being made.

13. MODEL HOMES:

No Lot Owner in the Subdivision shall build or permit the building upon said lot of any Dwelling that is to be used as a model home or exhibit house without permission to do so from the Developer.

14. OUTBUILDINGS:

No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any lot in the Subdivision, except that used by a builder during the construction of a residential building in the Subdivision, which temporary construction structures shall be promptly removed upon completion of construction of the building. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

15. TEMPORARY STRUCTURES:

No temporary house, trailer, tent, garage or other outbuilding (excepting construction trailers per paragraph 14, above) shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

16. DITCHES AND SWALES:

It shall be the duty of every Lot Owner in the Subdivision on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purpose of this subsection. All Lot Owners, if necessary, shall install drive culverts between the road rights-of-way and their lots in conformity with the specifications and recommendations of the City of Indianapolis Department of Transportation.

17. RESIDENTIAL DEVELOPMENT REQUIREMENTS:

All lots in the Subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwellings Districts Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein other than one (1) detached single family dwelling not to exceed thirty-five (35) feet in height, and residential accessory buildings. Any garage or accessory building erected shall be of a permanent type of construction and shall conform to the general architecture and appearance of such dwelling. The minimum square footage of living space for dwellings constructed on all lots shall be 1800 square feet for ranch-type, and 2200 square feet for multi-story dwellings, provided that a minimum of 1000 square feet shall be on the ground floor, excepting if changing conditions in the marketplace, state of the art changes in development patterns or other unforeseeable conditions should occur during the time of build-out of the entire Subdivision, the Declarant, upon



petition to the Metropolitan Development Commission and public hearing thereon for what is presently designated an "AP Approval", may reduce living unit sizes excepting on perimeter ("P") lots for good cause shown provided that in no event shall interior lots be reduced below a minimum space of 1600 square feet for ranch-type dwellings and 1900 square feet for multi-story dwellings. As an exception to the minimum house size, the Developer may retain the existing single family residence in the Subdivision which is below the minimum size herein covenanted for new houses.

The square footage of living space is exclusive of porches, terraces, garages, carports, accessory buildings and basements (excepting finished lower levels such as bi-levels or tri-levels).

18. RESIDENTIAL SETBACK REQUIREMENTS:

- A. In General - Unless otherwise provided in these restrictions or on the recorded plat, all development standards shall meet at least D-2 restrictions and no Dwelling or above grade structure shall be constructed or placed on any lot in the Subdivision except as provided herein.
- B. Definitions - "Side line" means a lot boundary that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the Dwelling on the lot fronts except that on corner lots, it may be determined from either abutting road.
- C. Front Yards - The front building setback lines shall be thirty (30) feet on collector streets, if any are constructed, and twenty-five (25) feet on local streets all as set forth upon the plat of the Subdivision.
- D. Side Yards - The side yard setback lines shall not be less than an aggregate of nineteen (19) feet. Provided, however, no side yard shall be less than seven (7) feet from the side line of the lot.
- E. Rear Yards - Rear setback lines shall be at least thirty-five (35) feet.

19. ARCHITECTURAL CONTROL COMMITTEE:

Prior to application for Improvement Location Permits for the Department of Metropolitan Development of the City of Indianapolis for the construction of a Dwelling or other

structure, site plans and building plans shall be approved in writing by the Architectural Control Committee as defined in the Declaration of Restrictions. Such approval shall, during the development period, include building design, color and location, private drives, tree preservation and proposed landscaping. This committee shall be composed of Robert N. Thompson and two persons appointed by him, both of whom are knowledgeable in residential development. Only one member's signature shall be required by the Committee to evidence approval or action of the Committee, unless the Committee shall otherwise provide. Members of the Committee shall receive notice of meeting for review of plans and specifications personally or by telephone within forty-eight hours after plans and specifications have been submitted for approval.

All Dwellings will be built by custom builders who have experience in custom construction of housing comparable to the standards of these commitments and development in the general area. No Dwelling shall use aluminum siding on its exterior surfaces for more than eight percent (8%) of the aggregate exterior surface area.

No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Subdivision without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Lot Owner requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports as hereinbefore required. All such plot plans shall be prepared by professional draftsmen, registered land surveyor, engineer or architect.

The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these plat covenants.

(b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures.

(c) The proposed improvements, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other Owners.

**20. HEATING PLANTS AND GARAGES:**

Every Dwelling in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the Dwelling. Every Dwelling in the Subdivision must have at least an attached two-car garage.

**21. LANDSCAPING:**

A minimum of two (2) trees, of 2-1/2" or more, will be required to be on, or be planted on, each residential lot, together with adequate shrubbery. Landscaping will be provided by cluster of deciduous and conifer trees, planted in groups of two, three and four approximately 20 feet on center with groups of shrubbery in between.

**22. DILIGENCE IN CONSTRUCTION:**

Every building whose construction or placement on any lot in the Subdivision is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of such destruction or damage. If the Lot Owner shall fail to move or repair same within the time allowed then the Developer or the Association may repair or remove the same and the cost thereof shall be assessed against the Lot Owner and become a continuing lien upon the land in the same manner and enforceable by the same means and charges as the levying and collection of charges for maintenance of Common Areas as set forth in the Declaration of Covenants, Conditions and Restrictions as recorded in the Office of the Recorder of Marion County, Indiana.

**23. PROHIBITION OF USED STRUCTURES:**

All structures constructed or placed on any lot in the Subdivision shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

24. MAINTENANCE OF LOTS AND IMPROVEMENTS:

All Lot Owners in the Subdivision shall at all times maintain the lot and any improvements situated thereon in a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such Lot Owner shall:

- A. Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- B. Remove all debris or rubbish;
- C. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Subdivision;
- D. Cut and remove dead trees;
- E. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

25. DRIVEWAYS:

Each driveway in the Subdivision shall be of concrete or asphalt material and shall not exceed in width the side boundaries of the garage. No additional parking shall be permitted on a lot other than the existing driveway.

26. ANTENNAE AND SATELLITE DISHES:

No antenna in the Subdivision shall exceed five (5) feet above a roof peak. No satellite dishes shall be installed or permitted in the Subdivision.

27. ENFORCEMENT:

- A. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Developer, the Association, any person or entity having any right, title or interest in the Real Estate (or any part thereof), or any person or entity having any right, title or interest in a lot in any Subdivision which is now or hereafter made subject to and annexed to the Declaration, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

- B. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-A0-3, as amended, or any conditions attached to approval of the plat by the Plat Committee.

28. AMENDMENT:

These covenants and restrictions may be amended at any time by the then owners of at least two-thirds (2/3) of the lots in all Subdivisions which are now or hereafter made subject to and annexed to the Declaration; provided, however, that until all of the lots in such Subdivisions have been sold by Developer, any such amendment of these covenants and restrictions shall require the prior written approval of Developer. Each such amendment shall be evidenced by a written instrument, signed and acknowledged by the lot owner or owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana.

These covenants and restrictions, as the same may be amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until January 1, 2008, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a vote of a majority of the then owners of the lots in all Subdivisions which are now or hereafter made subject to and annexed to the Declaration, it is agreed that said covenants and restrictions shall terminate in their entirety; provided, however, that no termination of said covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

29. INVALIDATION:

Invalidation of any of the foregoing covenants and restrictions by judgment or court order shall in no way affect any of the other covenants and restrictions of this plat, which shall remain in full force and effect.

LAND INNOVATORS, CO., an INDIANA LIMITED PARTNERSHIP DOES HEREBY  
FLAT, LAYOFF AND SUBDIVIDE THE ATTACHED DESCRIBED REAL ESTATE INTO  
LOTS AND EASEMENTS AS SHOWN ON THE PLAT TO BE KNOWN AS "THE HAMPTONS  
AT GRIST, SECTION IV."

IN WITNESS WHEREOF, the undersigned Developer, as the owner of  
the Real Estate, has herunto caused its name to be subscribed  
this 8th day of JANUARY, 198990

LAND INNOVATORS CO.

By R. N. Thompson  
R. N. Thompson, General Partner

STATE OF INDIANA )  
                  ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the State of Indiana,  
personally appeared R.N. THOMPSON, the General Partner  
of Land Innovators Co., an Indiana limited partnership, who  
acknowledged the execution of this instrument as his voluntary act  
and deed as such officer on behalf of such limited partnership for  
the uses and purposes hereinabove set forth.

Witness my signature and Notarial Seal this 8th day  
of JANUARY, 198990

Judy K. Kiemever  
Notary Public

JUDY K. KIEMEYER  
Printed Name

My Commission expires:

APRIL 6, 1990

My County of Residence:

MARION

This instrument prepared by Walter E. Wolf, Jr., Klineman, Rose,  
Wolf and Wallack, 135 N. Pennsylvania Street, Suite 2100,  
Indianapolis, IN 46204-2456.

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JOHN R. VON ARX  
MARION COUNTY AUDITOR

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SUBJECT TO FINAL ACCEPTANCE

**AMENDMENTS TO COVENANTS & RESTRICTIONS FOR  
HOMEOWNERS AT HAMPTONS AT GEIST**

**THESE AMENDMENTS** are made this 01 day of August 1997 by the Hamptons at Geist Homeowners Association (hereinafter referred to as "Association").

**WITNESSETH:**

**WHEREAS**, more than two-thirds (2/3) of the lot owners in Hamptons at Geist desire to amend the Covenants and Restrictions recorded:

- (A) Made 10th of August 1987, by Herman Associates, Instrument #87-94074 - 21 pages, Section I and II;
- (B) Made 16th of August 1989, by Land Innovators Co., Instrument 89-113371 - 11 pages, on the plat to be known as "Hamptons at Geist" Section III;
- (C) Made 13th of December 1989 by Land Innovators Co., Instrument 90-7660 - 11 pages, Section IV.

in the Office of the Recorder of Marion County, Indiana; and

**WHEREAS**, such lot owners have voted by ballot to revise such Covenants & Restrictions;

**NOW THEREFORE**, the Association hereby amends the Covenants & Restrictions for Homeowners at Hamptons at Geist as attached pages 1 thru 24.

This instrument prepared by Covenant Committee of Hamptons at Geist, D.E. Hamme, Chairman, 8211 Narragansett Court S, Indianapolis, IN 46256, Phone 849-2207.

## **COVENANTS AND RESTRICTIONS FOR HOMEOWNERS AT HAMPTONS AT GEIST**

This instrument will supersede the following "Plat Covenants and Restrictions" filed with the Recorder of Marion County:

- (A) Made 10th of August 1987, by Herman Associates, Instrument #87-94074 - 21 pages, Section I and II;
- (B) Made 16th of August 1989, by Land Innovators Co., Instrument 89-113371 - 11 pages, on the plat to be known as "Hamptons at Geist Section III.
- (C) Made 13th of December 1989 by Land Innovators Co., Instrument 90-7660 - 11 pages, Section IV

The three previous covenants are now superseded by this covenant and restriction instrument.

### **1. DEFINITIONS**

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

- A. "Association" means the Hamptons at Geist Association, Inc., an Indiana not-for-profit corporation, which is incorporated, its successors and assigns.
- B. "Common Areas" means (i) all portions of the Real Estate (including improvements thereto) shown on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, which are not Lots and which are not dedicated to the public, (ii) any landscape islands located in any public right-of-way within and upon the Real Estate and (iii) all facilities and personal property owned or leased by the Association from time to time.
- C. "Common Expenses" means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, maintenance, repair and replacement of the Common Areas and the performance of the responsibilities and duties of the Association including, without limitation, expenses for the improvement, maintenance and repair of the Lake Easements, Drainage Easements and Utility Easements and any Landscape Easements, shown and identified as such on any subdivision plat



of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, (iii) all sums lawfully assessed against the Owners by the Association and (iv) all sums declared by this Declaration to be Common Expenses.

- D. "Lot" means any numbered parcel of land shown and identified as a lot on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana.
- E. "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.
- F. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

**2. NAME**

The name by which the Real Estate shall be known is "The Hamptons at Geist."

**3. APPLICATION**

All owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of the Association provided for by this Declaration, and for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

4. **ASSOCIATION**

- A. **Membership.** Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.
- B. **Multiple or Entity Owners.** Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot.
- C. **Board of Directors.** The Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.
- D. **Responsibilities of the Association.** The responsibilities of the Association include, but shall not be limited to:
- (i) Installation and replacement of such fences, walls, foliage, landscaping, signs and other improvements in and upon the Common Areas as the Association deems necessary or appropriate, and maintenance of the Common Areas and any installation thereon in a clean and attractive condition and in good repair. The Association shall not be required to replace fences, landscaping or improvements in the Common Areas installed there by any Lot Owner.
  - (ii) Replacement of such foliage, landscaping, screening materials and other improvements in and upon any Landscape Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) as the Association deems necessary or appropriate and maintenance of any Landscape Easements and any installation thereon installed by the Association in a clean and attractive condition and in good repair.
  - (iii) Management and control of detention and retention ponds or lakes in and upon the Lake Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) for the

exclusive benefit of the Owners of the Lots and maintenance of the same in a clean, attractive and sanitary condition, and installation and replacement of such improvements in and upon said Lake Easements as the Association deems necessary or appropriate and maintenance of any such improvements installed by the Association in good condition and repair. Without limiting the generality of the foregoing, such maintenance obligations shall include overflow maintenance to protect the ponds or lakes from erosion, algae control and maintenance of minimum water levels. It is intended that such actions shall be taken in accordance with recommendations regarding the same from applicable governmental agencies having jurisdiction, but nothing herein shall constitute an undertaking or duty to exceed the requirements of applicable law and prudent pond and lake operation.

- (iv) Any necessary replacement of the drainage system in and upon the Drainage Easements (shown and identified as such on any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon said Drainage Easements by the Association in good condition and repair, subject, however, to the obligation of the Owner of a Lot subject to a Drainage Easement to keep the portion of the Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded, or to reimburse the Association for its expense of repairing or maintaining that part of the drainage system which the Association repairs and/or maintains because such obligated Owner failed to do so.
- (v) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required under this Declaration and such other insurance as the Association deems necessary or advisable.
- (vi) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.
- (vii) Assessment and collection from the Owners of the Common Expenses.
- (viii) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable.

- (ix) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas, the use and enjoyment of the lakes and ponds located in and upon the Lake Easements by the Owners, and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.
  - (x) Replacement and maintenance of any street identification signs within and upon the Real Estate designated as private street signs.
- E. **Compensation.** No Director of the Association shall receive compensation for his services as such director, except to the extent expressly authorized by a majority vote of the Owners.
- F. **Non-Liability of Directors and Officers.** The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. The Association shall indemnify and hold harmless and defend each person, his heirs, assigns or legal representatives, who is or was a director or officer of the Association against any and all liability to any person, firm or corporation arising out of contracts made by or at the direction of the Board of Directors (or the managing agent, if any) of the Association, unless any such contract shall have been made in bad faith. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.
- G. **Additional Indemnify of Directors and Officers.** The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which

it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for 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 or officer was not guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director or officer deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by an Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this paragraph 4F.

- H. **Bond.** The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, 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 sureties as may be approved by the Board of Directors, and any such bond shall specifically include protection for any insurance proceeds received by any reason by the Board of Directors. The expense of any such bonds shall be a Common Expense.

5. **INSURANCE**

- A. **Casualty Insurance.** The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full replacement cost of all improvements, if any, which the Association is required to maintain hereunder. If the Association can obtain such coverage for a

reasonable amount, it shall also obtain "all risk coverage." The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire or such other hazards as the Association may deem desirable. Such insurance coverage shall name the Association as the insured. Such insurance policy or policies shall contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any employee of the Association or of the Board of the Directors, and all owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

- B. **Liability Insurance.** The Association shall also purchase and maintain 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 in any event with a minimum combined limit of One Million Dollars (\$1,000,000.00) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and the Lake Easement and Landscape Easement areas (shown and identified as such upon any subdivision plat of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana) and shall insure the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners and all other persons entitled to occupy any Lot. Such public liability insurance policy shall include a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.
- C. **Other Insurance.** The Association shall also purchase and maintain 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 Directors and Officers liability insurance.
- D. **Miscellaneous.** The premiums for the insurance described above shall be paid by the Association as part of the Common Expense.

6. **MORTGAGE**

- A. **Notice to Association.** Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgage and the name of address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association 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 of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.
- B. **Notice to Mortgagees.** The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

7. **STREETS**

All streets are hereby dedicated to the public for its use. All Lots shall be accessed from the interior streets of the subdivision. No access to any Lots shall be permitted from Mud Creek Road.

8. **EASEMENTS FOR DRAINAGE, SEWER, AND UTILITIES**

Lots are subject to Drainage Easements, Utility Easements, and Sewer Easements, either separately or in combination of the three as shown on the plat, which are reserved for the use of the Lot Owners, public utility companies and governmental agencies as follows:

- A. **Drainage Easements (D.E.)** are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage system; and it shall be the individual responsibility of the Lot Owner to maintain the drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner by construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner.

- B. **Sewer Easements (S.E.)** are created for the use of the local government agency having the jurisdiction over the storm and sanitary waste disposal system of said city and/or county designated to serve the subdivision for the purposes of installation and maintenance of sewers that are a part of said system. Each Lot Owner must connect with any public sanitary sewer available.
- C. **Utility Easement (U.E.)** are created for the use of public utility companies, not including transportation companies, for the installation of pipes, mains, ducts, and cables as well as for the uses specified in the case of Sewer Easements.
- D. All Lot Owners in the subdivision shall take title subject to the rights of public utilities, governmental agencies, and the right of the other Lot Owners in the subdivision to said easement herein granted for the ingress and egress in, along, and through strips of ground for the purposes herein stated.

9. **LANDSCAPE EASEMENTS**

Any areas of ground on the plat marked "Landscape Easements" are hereby created and reserved for the use of the Homeowner's Association for access to and the installation, maintenance, repair, and replacement of foliage, landscaping screening materials and other improvements. Except as installed and maintained by the Association, no permanent structures, including without limitation, fences, shall be erected or maintained in or upon any Landscape Easements. The Lot Owners in the subdivision shall take and hold title to the Lots subject to any Landscape Easements herein created and reserved.

10. **COMMON AREAS**

All Common Areas designated as a block, as shown on the plat, are hereby declared Common Areas. Portions of the Common Areas are designated as "Lake" which shall be the area which is reserved for water of the Lake. No structures of any kind shall be built within the area shown as the Lake. All Common Areas are hereby reserved for the use of the Association for any purposes deemed to be for the benefit of the Lot Owners as well as for the access to the Lake and for construction, management, and control thereof. The Common Areas including the Lake, are hereby reserved for the use and enjoyment of all the Lot Owners, and subject to the right of the Association to promulgate reasonable rules and regulations governing such use and enjoyment. The Lot Owners that are contiguous to the Lake shall not have exclusive use of the Common Areas between their lot lines and the edge of the water in the Lake. The Association shall be responsible for the mowing and maintaining of any Common Areas located directly between the lot line and the edge of the water of the Lake unless and until the Association shall elect to turn over such mowing and maintenance to each Lot Owner that is



contiguous to the Lake. There will be no swimming, ice skating, ice fishing, or boating in or on the Lake, unless the Association shall otherwise provide. The Association shall take and hold the titles to the Lots subject to the rights herein granted with respect to Common Areas. There shall be no Landscape Easements or other easements designated as such in the Common Areas. The Association shall have the authority and power to grant Drainage, Sewer, Utility and Landscape Easements in the Common Areas, and the same shall thereafter be binding on all the homeowners.

**Damage to Common Areas.** In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are not sufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all owners to cover the additional cost of repair or replacement. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas or any Landscape Easement, Lake Easement, Drainage Easement or Utility Easement areas, if due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or such Easement areas) or of 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 constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

#### **11. FENCES**

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines. No trees shall be permitted to remain within said distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be of chain link type, and none shall be in the front yard. The Architectural Committee approval shall be required of all fence designs prior to erection.

#### **12. NUISANCES**

No outside toilets shall be permitted on any Lot in the subdivision.

**13. CONSTRUCTION OF SEWAGE LINES**

All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of the City of Indianapolis Department of Public Works.

**14. IN GENERAL**

No noxious or offensive activities shall be carried on on any Lot in the subdivision, nor shall anything be done on any of the said Lots that shall become or be an unreasonable annoyance or nuisance to any other Lot Owner in the subdivision.

**15. ANIMALS**

No animals shall be kept or maintained on any Lot in the subdivision, except the usual household pets, and in such cases, such household pets shall be kept reasonably confined so as not to be a nuisance.

**16. VEHICLE PARKING**

No trucks, campers, trailers, recreational vehicles, boats, boat trailers, or similar vehicles (excepting temporary construction trailers being used in conjunction with work in progress) shall be parked on any street or lot in the subdivision for a period of more than forty-eight hours unless such vehicles are stored within a garage. All automobiles parked for a period of more than forty-eight hours must be parked within a garage or in a driveway.

**17. GARBAGE, TRASH, AND OTHER REFUSE**

No Lot Owner in the subdivision shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Lot Owner accumulate or permit the accumulation out of doors of such refuse on his Lot. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other wastes shall be regularly removed from a Lot. All dwellings built in the subdivision shall be equipped with a garbage disposal.

**18. FUEL STORAGE TANKS AND TRASH RECEPTACLES**

Every tank for the storage of fuel that is installed outside any building in the subdivision shall be buried below the surface of the ground or entirely screened from view of surrounding properties and public street frontages. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be placed and kept as not to be visible from any street in the subdivision at any time, except at times when refuse

collections are being made. Fuel tanks for not over 25# fuel used for outdoor grills shall be exempt from this article.

**19. OUTBUILDINGS**

No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot in the subdivision. No trailer, shack, tent, boat, basement, garage, or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

**20. TEMPORARY STRUCTURES**

No temporary house, trailer, tent, garage, or other outbuilding shall be placed or erected on any Lot. No overnight camping shall be permitted on any Lot for over 48 hours.

**21. DITCHES AND SWALES**

It shall be the duty of every Lot Owner in the subdivision on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purpose of this sub section.

**22. RESIDENTIAL DEVELOPMENT REQUIREMENTS**

All Lots in the subdivision shall be known and designated as residential lots. No business buildings shall be erected on said Lots and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwellings District Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein other than the one (1) detached single family dwelling not to exceed thirty-five (35) feet in height, and residential accessory buildings. Any garage or accessory building erected shall be of a permanent type of construction and shall conform to the general architecture and appearance of the attached dwelling. The minimum square footage of living space of the dwellings constructed on all lots shall be 1800 square feet for ranch-type and 2200 square feet for the multi-story dwellings, provided that a minimum of 1000 square feet shall be on the ground floor, excepting if changing conditions in the marketplace, state of the art changes in development patterns or other unforeseeable conditions should occur during the time of build-out of the entire subdivision, the declarant, upon petition to the Metropolitan Development Commission and public hearing thereon for what is presently designated an "AP Approval" may reduce the living unit sizes excepting on perimeter ("P") lots for the good cause shown provided that in no instance shall interior lots be reduced below a minimum space of 1600 square feet for the ranch-type dwellings and 1900 square feet for the multi-story dwellings.

The square footage of the living space is exclusive of porches, terraces, garages, carports, accessory buildings and basements (excepting finished lower levels such as bi-levels or tri-levels).

**23. RESIDENTIAL SETBACK REQUIREMENTS**

- A. In general - unless otherwise provided in these restrictions or on the recorded plat, all development standards shall meet at least D-2 restrictions and no dwelling or above grade structure shall be constructed or placed on any Lot in the subdivision except as provided herein.
- B. Definitions - "Side Line" means the boundary that extends from the road on which the Lot abuts to the rear of said Lot. "Rear Line" means the Lot boundary line that is farthest from and substantially parallel to the road on which the dwelling on the Lot fronts except that on corner lots, it may be determined from either abutting road.
- C. Front Yards - The front building setback lines shall be thirty (30) feet on the collector streets, if any are constructed and twenty-five (25) feet on local streets all as set forth upon the plat of the subdivision.
- D. Side Yards - The side yard setback lines shall not be less than an aggregate of nineteen (19) feet. Provided, however, that no side yard shall be less than seven (7) feet from the side yard line of the Lot.
- E. Rear Yard - Rear setback lines shall be at least thirty-five (35) feet.

**24. HEATING PLANTS AND GARAGES**

Every dwelling in the subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year around human habitation of the dwelling. Every dwelling in the subdivision must have an attached, at least two-car garage.

**25. ARCHITECTURAL CONTROL COMMITTEE**

- A. **Creation:** There shall be, and hereby is, created and establish an Architectural Control Committee to perform the functions provided for herein. The Committee shall consist of three (3) persons appointed, from time to time, by the Board of Directors of the Association.
- B. **Purposes and Powers of Committee:** The Committee shall regulate the external design, appearance and location of dwellings, buildings, structures or other improvements placed on any Lot, and the installation and removal of landscaping on any Lot, in such a manner as to preserve and enhance the

value and desirability of the Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

- (i) **In General:** All dwellings will be built by custom builders who have experience in custom construction of housing comparable to the standards of these commitments and development in the general area. No dwelling shall use aluminum or vinyl on its exterior surfaces for more than eight percent (8%) of the aggregate exterior surface area.

No dwelling, building, structure or improvement of any type or kind shall be repainted, constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include elevations (where required) and plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings submitted to the Committee shall be drawn to scale as the Committee may require. When required by the Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

- (ii) **Power of Disapproval:** The Committee may refuse to grant permission to repaint, construct, place or make the requested improvement when:
  - (a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the proposed improvement to be in violation of any restrictions in this Declaration or any subdivision plat of the Real Estate

recorded in the office of the Recorder of Marion County, Indiana; or

- (b) The design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (c) The proposed repainting or improvement, or any part thereof, would, in the opinion of the Committee, be contrary to the interests, welfare or rights of any other Owner.

(iii) **Rules and Regulations:** The Committee may, from time to time, submit to the Board of Directors for its approval such additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or any subdivision plat of the Real Estate recorded in the office of the Recorder of Marion County, Indiana as long as the same are not inconsistent with this Declaration or such subdivision plat(s).

- C. **Duties of Committee:** The majority vote of the Committee shall determine approval or disapproval of proposed repainting, construction or improvements within thirty (30) days after all required information shall have been submitted to it. The submitted material will be dated and stamped as "Approved", "Approved as Noted" or "Rejected" (with reasons for rejection). One copy of all submitted material shall be retained by the Committee for its permanent files. If a proposal is rejected, the Owner may submit a formal written appeal to the Association Board of Directors.
- D. **Liability of Committee:** Neither the Committee, the Association nor any agent of any of the foregoing shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.
- E. **Inspection:** The Committee may inspect the work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article.
- F. **Enforcement:** In the event of any violation of this Article, the Committee may use the following sequence of enforcement:
  - (1) The Committee will issue, to the Owner, a written notification of the violation;

- (2) The Owner will have thirty (30) days to correct the violation;
- (3) If on the thirty first (31) day after the notification the violation has not been corrected, a fine may be assessed;
- (4) For each consecutive thirty day (30) day period thereafter, an additional fine may be assessed;
- (5) In the event the fines are not paid, the Association may place a lien upon the Owner's property until all assessments are paid in full.

**26. LANDSCAPING**

A minimum of two (2) trees of 2 1/2" or more will be required to be on, or planted on, each residential Lot, together with adequate shrubbery. Landscaping will be provided by cluster of deciduous and conifer trees, planted in groups of two, three, or four approximately 20 feet on center with groups of shrubbery in between.

**27. DILIGENCE IN CONSTRUCTION**

No improvement which has been partially or totally destroyed by fire or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of destruction or damage. If the Lot Owner shall fail to remove or repair same within the time allotted, then the Association may repair or remove the same and the cost thereof shall be assessed against the Lot Owner and become a continuing lien upon the land in the same manner and enforceable by the same means and charges as the levying and collection of charges for maintenance of the Common Areas.

**28. PROHIBITION OF USED STRUCTURES**

All structures constructed or placed on any Lot in the subdivision shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

**29. MAINTENANCE OF LOTS AND IMPROVEMENTS**

All Lot Owners in the subdivision shall at all times maintain the Lot and any improvements situated thereon in a manner as to prevent the Lot or improvement from becoming unsightly, and specifically, such Lot Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (B) Remove all debris and rubbish;

- (C) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the subdivision;
- (D) Cut and remove dead trees;
- (E) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of weeds and trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such Lot. In the event the Owner of any Lot fails to do so in a manner satisfactory to the Association, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements erected thereon. The cost of the exterior maintenance shall be and constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

**30. DRIVEWAYS**

Each driveway in the subdivision shall be of concrete or asphalt materials and shall not exceed in width the side boundaries of the garage. No additional parking shall be permitted on a Lot other than the existing driveway.

**31. ANTENNAE AND SATELLITE DISHES**

No antenna in the subdivision shall exceed five (5) feet above a roof peak. Satellite dishes shall be permitted provided the diameter is twenty-four (24) inches or less and it is placed as not to be readily visible from the street.

**32. ASSESSMENTS**

Each Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (i) Regular Assessments for Common Expenses ("Regular Assessments") and (ii) Special Assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all liens



except only: (i) tax liens on any Lot in favor of any unit of government of special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment shall come due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for the delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed mortgagee or proposed purchaser having a contractual right to purchase the Lot, furnish to such a mortgagee or purchaser statement setting forth the amount of any unpaid regular or special assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement. Note, however, that the Association shall not be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

**Purpose of Assessments.** The Regular or Special Assessments levied by the Association shall be used exclusively (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas and Landscape Easements, Lake Easements, Drainage Easements and Utility Easements shown and identified as such on any subdivision plat of the Real Estate now or thereafter recorded in the office of the Recorder of Marion County, Indiana, and of any public improvements in the Real Estate, (iii) for the performance of the responsibilities and duties of the Association and (iv) for such other purposes as are specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

**Annual and Special Assessments.** Common Expenses shall be assessed to the Lot Owners, either as an Annual Assessment, or as a Special Assessment, equally with respect to each Lot which is subject to assessment, all as set forth below:

- (A) An Annual Assessment shall be made for each Fiscal Year of the Association for all anticipated ongoing operating expenses of Association, including reserves. The amount of the aggregate Annual Assessments shall be equal to the total amount of expenses provided for in the Annual Budget, including reserve items.
- (B) Special Assessments may be made for any unusual and/or extraordinary items, including capital expenditures, and any unanticipated items. Special Assessments shall be payable in such amounts and at such times as may be provided in the resolution or other formal proposal setting forth the terms of such Special Assessments.

- (C) The Annual Assessment and all Special Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall be a continuing lien on the Lot upon which each such assessment is made as each installment thereof becomes payable. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the Assessment was payable.

Vote for Special Assessments. No Special Assessment shall be adopted unless voted for by sixty-six and two thirds percent (66 2/3%) of the members in good standing of the Association who are voting by special ballot or in person at a meeting called for this purpose. However, Special Assessments required because of an insufficiency of insurance shall not be subject to any vote by the Lot Owners.

Notice of Meetings for Assessments. Written notice of any meeting other than the Annual Meeting which is called for the purpose of approving the Annual Budget and Annual Assessments or a Special Assessment, shall be given or sent to all members and such notice shall state that the Annual Budget and/or a Special Assessment will be considered at such meeting.

Payment of Assessments. The Annual Assessments provided for herein shall be made for each Fiscal Year of the Association and shall be payable within thirty (30) days of the invoice date. If more than one Lot is conveyed or rented with a home then each Lot, or part Lot, shall be subject to the Annual Assessment. A part Lot shall be subject to a prorate share of such Assessment. The purchaser of each Lot shall be responsible to notify the Association his name and address for mailing purposes and satisfactory evidence of his ownership.

Delinquent Assessment. Any payment of an Assessment which is not paid within fourteen days of the date when due shall automatically be subject to a late charge of \$25.00. Late charges may continue to be assessed for each quarter a payment remains outstanding. The Board of Directors shall have the right to change the amount of the late charge, the time period before such charge is imposed; and to make other provisions for late charges and/or for imposing interest on late payments. The Association may bring an action at law against the Lot Owners personally obligated to pay the same; it may foreclose its lien against the Owner's Lot; or it may assert both rights and/or any other remedy available to it by law or in equity.

Lien of Assessments. All sums assessed by the Association, but unpaid, and any fines duly imposed by the Association, together with late charges, interest, attorneys' fees and the costs of collection thereof, shall constitute a lien on the Owner's Lot prior to all other liens, except only:

- (A) Tax liens on the Lot in favor of any assessing unit or special district; and

- (B) All sums unpaid on a first mortgage of record. The sale or transfer of any Lot by foreclosure or by deed in lieu of foreclosure shall not extinguish the assessment lien for payments which become due prior to the date of such sale or transfer, and shall not extinguish the personal liability of the Lot Owner for such assessments. No such sale or transfer shall relieve the Lot Owner from liability for any assessments thereafter becoming due or from the lien thereof. The lien for sums assessed may be foreclosed by a suit by the Association or the Managing Agent on its behalf in like manner as a mortgage of such property. In any such foreclosure the Lot Owner shall be required to pay a reasonable rental for the use and occupancy of the Lot. The Association, upon the affirmative vote of 90% of all the Lot Owners (so authorizing and setting up a special assessment to pay for the same), shall have the power to bid on the Lot at any foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**Liability of Grantee.** In a voluntary conveyance of a Lot other than deed in lieu of foreclosure, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the later for his share of the Common Expenses or for special assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon the request of any Lot Owner, purchaser or Mortgagee, the secretary or other authorized officer of the Association or the Managing Agent shall provide within seven (7) days of the request, a statement of the amount of current and delinquent assessments by the Association, including fines and charges, against a particular Lot. The Association may charge a reasonable charge for such statement if permitted by law and it may require the Lot Owner to confirm that the person requesting the statement is a Mortgagee or purchaser of or from the Lot Owner. Once having been furnished with such a statement, such person (other than the delinquent Lot Owner) shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth, plus costs of collection of such sums, if applicable.

**Failure of Owner to Pay Assessments.** Each Lot Owner shall be personally liable for the payment of all Annual and Special Assessments. Where the Lot Owner constitutes more than one person, the liability of such persons shall be joint and several. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Annual or Special Assessments without foreclosing or waiving the lien securing the same, or it may bring a joint action to recover money damages and to foreclose its lien on the Lot.

The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission: and provided further that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provision of the Subdivision Control

Ordinance 58-AO-3, as amended, or any conditions attached to approval of the plat by Plat Committee.

**33. AMENDMENTS**

These Covenants and Restrictions may be amended at any time by the Owners of at least two-thirds (2/3) of the Lots in the subdivision which is made subject to this Covenant. Each such amendment shall be evidenced by a written instrument, signed and acknowledged by the Lot Owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana.

These Covenants and Restrictions, as the same be amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate, or any part thereof, and on all persons or entities claiming under them, until January 1, 2015, at which time said Covenants and Restrictions shall be automatically extended for the successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by a voice vote a majority of the then Owners of the Lots in the subdivision, it is then agreed that said Covenants and Restrictions shall terminate in their entirety; provided, however, that no termination of said Covenants and Restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

No amendment 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 402.02 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, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 6.A.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). 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 Mortgagees of the time limitation contained in this sentence.

34. **GENERAL PROVISIONS**

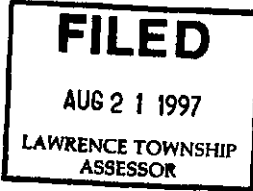
- A. **Right of Enforcement.** Violation or threatened violation of any of the Covenants, Conditions or Restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by the Association, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such Covenants, Conditions or Restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such Covenants and Restrictions; provided, however, that the Association shall not be liable for damages of any kind to any person for failing to enforce or carry out any such Covenants, Conditions or Restrictions.
- B. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any Covenants, Conditions or Restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such Covenants, Conditions or Restrictions.
- C. **Severability.** Invalidation of any of the Covenants, Restrictions or Provisions contained in this Declaration by judgment of court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.
- D. **Titles.** The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.
- E. **Applicable Law.** This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

35. **INVALIDATION**

Invalidation of any of the Covenants and Restrictions by judgment or court order shall in no way affect any of the other Covenants and Restrictions of this plat, which shall remain in full force and effect.

In witness whereof, the undersigned, Officers of the "Hamptons at Geist" Homeowners Association, have caused their names to be subscribed this 01 day of August, 1997.

<u>Carrie Petty</u>	President
<u>Deborah D. Gardner</u>	Vice President
<u>Donna Keaton</u>	Secretary
<u>Saul Schardt</u>	Treasurer
<u>[Signature]</u>	Board of Director
<u>[Signature]</u>	Board of Director
<u>Kathleen Southon</u>	Board of Director



STATE OF INDIANA )  
 ) ss:  
COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared Carrie Petty, the President of Hamptons at Geist Homeowners Association, an Indiana non profit corporation, who acknowledged the execution of this instrument as her voluntary act and deed as such an officer on behalf of the Association for the uses and purposes hereabove set forth.

Witness my signature and notarial seal this 01 day of August, 1997.

Donna L. Rushon

Notary Public

DONNA L. RUSHON

Printed Name

My Commission Expires: 11/25/97

My County of Residence: Marion

Four (4) copies taken to Lawrence Township Assessors for stamp and file; one (1) copy after above to the Marion County Recorders Office; one (1) copy to be sent to the Metropolitan Development Commission, 200 E. Washington Street, Suite 2122, Indianapolis, IN 46204 (Phone 327-5241), one (1) copy for the Secretary of the Hamptons at Geist Homeowners Association.