

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

INDIAN POINTE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as "the Declaration" or "this Declaration" where appropriate) made this 27<sup>th</sup> day of December, 1994, by D.S.M. DEVELOPMENT, INC. d/b/a INDIAN POINTE DEVELOPMENT, an Indiana Corporation (hereinafter referred to as the "Declarant"),

WITNESSETH:

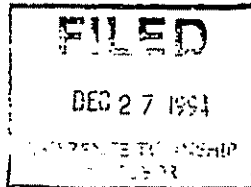
WHEREAS, Declarant is the owner of certain real estate located in Marion County, Indiana, more particularly described in Exhibit "A", the same of which is attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant is in the process of developing the Real Estate into a residential community, the same of which will be known as "Indian Pointe" (hereinafter generally referred to as the "Community" or "Indian Pointe", where appropriate); and

WHEREAS, Declarant, as a part of the development process, desires to subdivide the Real Estate as generally shown on the Plat (hereinafter defined) being recorded simultaneously herewith;

WHEREAS, it is Declarant's intent to provide for the preservation and enhancement of the value of the Real Estate which comprises the Community and the Common Areas (hereinafter defined) with respect thereto, including the amenities and improvements thereon, if any, which are a part of such Community and, in this regard, Declarant intends to subject both the Lots and the Owners (hereinafter defined) of such Lot to the terms of this Declaration, as hereinafter provided; and

WHEREAS, in order to preserve and enhance the value of the Real Estate, Declarant has deemed it necessary to create a separate entity, to which the following powers shall be delegated and assigned: (1) owning, maintaining and administering the Common Areas and facilities (if any) located in the Community; (2) administering and enforcing the covenants and restrictions contained in this Declaration; (3) collecting and disbursing the assessments and charges imposed and created hereby and hereunder; (4) performing certain maintenance, repairs and replacements of any such improvements or amenities located within the Common Areas; and (5) promoting the health, safety and welfare of the Owners of Lots in the Community; and



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WHEREAS, Declarant will cause to be incorporated, under the laws of the State of Indiana, a not-for-profit corporation under the name "Indian Pointe Homeowners Association, Inc.", or other similar name, as the entity which is granted the powers generally set forth in the foregoing recital paragraph and other powers as set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Real Estate and all Lots in the Community are, and shall be, held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of Declarant's plan to preserve and enhance the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Community as a whole and of each Lot to be created therein, and which shall run with the Real Estate and Lots and be binding upon and inure to the benefit of all parties having any rights, title or interest in any part of the Real Estate or any Lot, their heirs, successors and assigns.

#### ARTICLE I

#### DEFINITIONS

Section 1. The following words, as they appear in this Declaration or any supplements or amendments hereto (unless the context shall prohibit), shall have the following meanings:

(A) "Applicable Date" shall mean the "Applicable Date" as defined and determined in accordance with Article III, Section 3(B), below.

(B) "Association" shall mean Indian Pointe Homeowners Association, Inc., an Indiana not-for-profit corporation, which Declarant will cause to be incorporated under said name or other similar name, its successors and assigns.

(C) "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

(D) "Committee" shall mean the Architectural Control Committee established pursuant to Article VII, Section 1, of this Declaration for the purposes stated therein.

(E) "Community" shall mean the Real Estate comprising Indian Pointe subdivision, including all Lots, Common Areas and the improvements and amenities thereto.

(F) "Common Areas" shall mean those portions of the Real Estate designated on the Plat of the Real Estate and identified as such on said Plat.

(G) "Declarant" or "Developer", used synonymously throughout this Declaration, shall mean D.S.M. Development, Inc. d/b/a Indian Pointe Development, and any of its successors and/or assigns which it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of any rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of such foreclosure action against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder.

(H) "Home" shall mean a single-family residence, approved by the Committee, built on any Lot in the Community.

(I) "Lot" shall mean and refer to each and every plot of land included in the Real Estate (with the exception of any designated Common Area) designed and intended for use as a building site for a Home and identified as a Lot on the recorded Plat of the Real Estate including the Initial Plat or any part thereof.

(J) "Member" shall mean any person or entity holding membership in the Association as provided in Article III below.

(K) "Mortgage" shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered.

(L) "Mortgagee" shall mean any person or entity named as the Mortgagee under any Mortgage or any successors in or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage.

(M) "Officer" shall mean any Officer, including but not limited to the President, Vice President, Treasurer and/or Secretary of the Association.

(N) "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(O) "Person", whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership,

association, trust, or other legal entity, or any combination thereof.

(P) "Plat" shall mean the initial plat of the Real Estate and any amendments or corrections thereto.

(Q) "Real Estate" shall mean those parcels or any parcel of real estate located in Marion County, Indiana, and more particularly described in Exhibit "A" attached to and incorporated in this Declaration.

Section 2. Any other term or word defined throughout this Declaration shall have the meaning attributed to it as set forth herein.

## ARTICLE: II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate, including each Lot in the Community and the Common Areas, shall be held, transferred, sold, conveyed and occupied subject to all the terms, covenants, conditions, restrictions and provisions of this Declaration. As of the date of execution of this Declaration, the Real Estate shall consist solely of those Lots and Common Areas specifically designated on the Plat. The Owner of any Lot shall be automatically subjected to the terms, covenants, conditions, restrictions and provisions of this Declaration (i) by accepting a deed conveying title to a Lot, or by executing a contract for the purchase of a Lot, whether from Declarant or a subsequent Owner of such Lot, or (ii) by occupying any Lot in the Community. By accepting a deed for a Lot, executing a contract for the purchase of a Lot, or undertaking occupancy of a Lot, each Owner acknowledges the rights and powers of the Declarant, the Association, and the Committee with respect to or under this Declaration, and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owner and subsequent Owner of each Lot affected by this Declaration, and to keep, observe, perform and comply with the terms and provisions of this Declaration.

Section 2. Dedication of Public Streets. Declarant hereby expressly declares that all streets shown on the Plat, to the extent that they have not been previously dedicated, are hereby dedicated to the public.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot, except as otherwise provided herein to the contrary, shall be entitled and required to become a Member of the Association. If title to a Lot is held by more than one person, each such person owning a Lot shall be a Member. An Owner of more than one Lot shall be entitled and required to be a Member for each such Lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot to any subsequent Owner. Except as otherwise expressly provided for herein, no person or entity other than an Owner may be a Member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of a mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a Member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title to such Lot, the Association may issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two (2) classes of voting membership, as follows:

(A) Class A. Class A Members shall consist of all Owners of Lots in the Community, with the exception of the Declarant prior to termination of Class B membership (hereinafter defined), and such Class A Members shall be entitled to one (1) vote for each Lot owned with respect to each matter submitted to a vote of the Members upon which the Class A Members are entitled to vote. When more than one person holds title to any one Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as the Owners collectively determine, but in no event shall more than one (1) vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the

Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other person has filed a general voting authority or proxy with the Secretary, the same of which shall be applicable to all votes until rescinded.

(B) Class B. The Class B Member shall be the Declarant, its successors and assigns. The Class B Member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each Lot owned by the Declarant and five (5) votes for each single numbered parcel of land shown upon and identified as a Lot on any recorded Plat of the Real Estate. The Class B membership shall cease and terminate upon the earlier date of the following: (a) the date of the written resignation of the Class B Member as such is delivered to the resident agent of the Association; (b) all of the Lots in the Property have been conveyed to Owners other than Declarant; (c) six (6) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant, the same of which shall be known as the Applicable Date (hereinafter referred to as the "Applicable Date").

Declarant shall each be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of the Class B membership.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults are remedied.

#### ARTICLE IV

#### PROPERTY RIGHTS

##### Section 1. General Provisions.

(A) All easements described in this Declaration are permanent easements which shall be appurtenant to and run with the land comprising the Real Estate. Such easements shall at all times inure to the benefit of and be binding upon the Owner, and the Mortgagee from time to time, of any Lot and the Owner and Mortgagee, if any, from time to time, of the Common Areas, and their respective heirs, successors, personal representatives and/or assigns.

(B) The covenants and restrictions contained in this Declaration shall run with and bind the land comprised of the Real Estate and shall inure to the benefit of and be enforceable by the

Declarant, the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and/or assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2014, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas, limited, however, to and for the uses and purposes for which any portion of any Common Area is designed and intended, which right and easement shall include, but not be limited to, use and enjoyment of open spaces and all other parts of the Common Areas. Such rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association to pass reasonable rules, with respect to the Common Areas, for the health, comfort, safety and welfare of persons using the same;

(B) The right of the Association to suspend an Owner's voting rights and/or the rights of an Owner to use of the recreational facilities, if any, situated upon the Common Areas (but not rights of access to Lots) for any period during which any assessment against his Lot remains unpaid for a violation or infraction of the Association's published rules and regulations;

(C) The right of the Association to levy assessments as provided in this Declaration;

(D) The rights of the Association and Declarant reserved under this Article IV or elsewhere in this Declaration; and

(E) The rights of the Committee reserved under Article VII or elsewhere in this Declaration.

Section 3. Delegation of Enjoyment. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Areas to residents of his Lot, including the members of his family, his tenants, or contract purchasers.

Section 4. Association's Rights and Obligations.

(A) The Association shall have the obligation to manage, repair, maintain, improve and operate the Common Areas.

(B) The Association shall have the right to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used for other purpose specified in subsection 4(A) of this Article IV, provided that the rights of such mortgagee of the Common Areas shall be subordinate to the rights of the Owners

under this Declaration, and further provided, that the Association receives prior written approval to mortgage the Common Areas as specified below.

(C) The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any governmental subdivision or public agency or utility, and to grant permits, licenses, and easements over the Common Areas for utilities and other purposes necessary or useful for the proper maintenance or operation of the project, subject to any prior written approval which may be required as hereinafter set forth.

(D) The Real Estate shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Areas which may at any time be granted by Declarant or the Association, subject to any prior written approval which may be required, as hereinafter set forth, to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewer or water pipes, coaxial cable, or any other utility services serving any of the Lots or the Common Areas.

(E) No abandonment, partition, subdivision, encumbrance, sale or transfer of any portion of the Common Areas or other common property shall be effective unless it shall have received the prior written approval specified below, except as otherwise expressly provided for herein.

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise expressly provided for herein. In addition, until the last single numbered parcel of land shown upon, and identified as a Lot on any recorded Plat of the Real Estate (whether heretofore or hereafter recorded, including the initial Plat) is conveyed to an Owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Areas for the completion of improvements and making repairs to improvements (whether in the Common Areas, or upon unsold Lots, or upon other portions of the Real Estate) and the right to maintain and use any facilities and/or signs upon the Common Areas and any other portions of the Community (other than Lots owned by an Owner other than Declarant) for the purpose of marketing units, and to invite and escort the public thereon for such purpose.

Section 6. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any Plat of any part of the Real Estate shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Areas to the public or to or for any public use or purpose whatsoever, all of such Common Areas being reserved to the Owners and the Association as provided in



this Declaration; provided, however, that the same shall be subject to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Areas to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 7. Easement for Unintentional Encroachment.

Notwithstanding any other provisions contained herein, in the event that any Home encroaches, or any improvements to any Home encroach, upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Real Estate, then a perpetual easement appurtenant to such encroaching Home or improvement thereto, shall exist for the continuance of any such encroachment on any Common Area; provided, however, that the Owner of any such encroaching Home or any improvement thereto hereby expressly waives any and all rights to a claim for adverse possession of any portion of the Common Areas over which such Home, or improvement, thereto encroaches.

Section 8. Title to Common Areas. Declarant hereby covenants

that it shall convey and transfer the Common Areas included in and constituting a part of the Real Estate (if any) to the Association not later than the Applicable Date. The Common Areas so conveyed by Declarant to the Association, at the time of such conveyance, shall be subject to any dedicated or public street or road rights-of-way affecting the same and all easements, covenants, conditions, limitations and restrictions then of record, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association, or other liens or encumbrances that the Association may agree to assume and pay.

ARTICLE V

ASSESSMENTS

Section 1. Personal Obligations. Each Owner by accepting a deed or other conveyance document to a Lot, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (A) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses associated with the Common Areas, including such expenses for the upkeep, maintenance, repair and replacement of any amenities, if any, located on Common Areas, and all other expenses incurred or to be incurred by the Association or the Committee for or in connection with the performance by the Association or the Committee of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to the following: (i) the

expenses and costs of hazard and liability insurance for the Common Area and any other common property, and (ii) an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and any other property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain; and (B) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

Any assessments authorized herein, together with interest, costs and reasonable attorney's fees, shall be a continuing lien from the first day of January (for annual assessments) and from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in advance in twelve (12) equal monthly installments on the first day of each and every month or, if so determined by the Association, in such other periodic installments as may be specified by the Association. Each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the Office of the Recorder of Marion County, Indiana. No Owner shall escape liability for any assessment which became due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Home on his Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Community, to construct, manage, improve, maintain, repair and administer the Common Areas, and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Areas and any other amenity that must be replaced on a periodic basis. Such reserve fund shall be maintained out of the regular annual assessments.

Section 3. Annual Assessments. Until December 31, 1995, the maximum annual assessment shall be at the annual rate of One Hundred Seventy-Five Dollars (\$175.00) per Lot.

(A) From and after December 31, 1995, the maximum annual assessments may be increased each year not more than twenty percent

(20%) above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of membership.

(B) From and after December 31, 1995, the maximum annual assessments may be increased by more than ten percent (10%) above the maximum assessments permitted for the previous year by a vote of two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose; provided, however, that there is a quorum (hereinafter defined) of Members attending any such meeting.

(C) The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted in Article V, Section 3(A) above.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of not less than two-thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose; provided, however, that there is a quorum (hereinafter defined) of Members attending any such meeting.

Section 5. Notice and Quorum. Written notice of any meeting of the Members of the Association called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the proposed meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast fifty-one percent (51%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be fifty percent (50%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected on a monthly basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines. The provisions of this Section 6 are subject to the provisions of Section 13 of this Article V.

Section 7. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to each

Lot subjected to this Declaration on the first day of the month following the month of recording of the instrument by which such Lot is conveyed to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed and such Owner shall have thirty (30) days within which to pay the Association any such pro-rated assessments.

Section 8. Commencement of Annual Assessments. By November 1 of each year, beginning November 1, 1995, the Board shall fix the amount of annual assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner. The provisions of this Article V notwithstanding, annual or special assessments shall not be due and payable on each Lot owned by Developer.

Section 9. Proof of Payment. Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written notice signed by an authorized Officer of the Association setting forth whether or not there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such written notice shall be conclusive evidence of whether or not any annual or special assessments are due and owing on said Lot.

Section 10. Nonpayment of Assessments. Any assessments which are not paid when due, as designated by the Board of Directors of the Association, shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the rate of twelve percent (12%) per annum and shall become a continuing lien in favor of the Association against the assessed Lot and the improvements thereon and the Association may bring an action at law or in equity against the Owner or other person who is personally obligated to pay the assessment, including interest, costs, recording fees, and reasonable attorney's fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 11. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article V, the Association may prepare a written notice of lien setting forth the amount of the assessment (including recording fees and attorney's fees, if applicable), the date due, the amount remaining unpaid, the name of the record Owner of the Lot or the name of the person personally obligated to pay the same, and a description of the Lot. Any such notice shall be signed by an authorized Officer of the

Association, and it or a notice of lien or adverse claim thereof may be recorded in the Office of the Recorder of Marion County, Indiana, against the assessed Lot. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days from the due date. Within ninety (90) days following the recording of such notice, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the assessment. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including, but not limited to, the Association's reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the assessment and subsequent lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof.

The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due, provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims an interest and its notice address.

Section 12. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage (hereinafter referred to as a "First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. The sale or transfer of any Lot shall not affect the assessment of a lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure proceedings or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the assessment, the subsequent lien, and accrued assessments which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments becoming due thereafter from any lien associated therewith or shall relieve the person personally obligated to pay resulting from his personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments or the lien created thereby, which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a common expense.

Section 13. Limitations on Assessments Owed by Developer. Notwithstanding anything contained herein to the contrary, Developer shall not be obliged to pay any assessments, whether

regular annual assessments or special assessments, for any Lot owned by it from time to time.

#### ARTICLE VI

##### OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Area. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for and vested with, the exclusive management and control of the Common Areas and all improvements and amenities thereto, if any, including, but not limited to, furnishings and equipment, and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association's responsibility, to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots in the Community, shall include, but shall not be limited to, the following: (A) the maintenance and repair of the Common Areas and improvements and amenities thereto, if any; and, (B) all other improvements or materials located within or used in connection with the Common Areas, if any.

Section 2. Services. The Association may obtain and pay for the services of any person or entity, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Community, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Community, or any other contract providing for services by Declarant or an entity owned or controlled by the same person as Declarant, must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less prior written notice and by either party for cause upon thirty (30) days or less prior written notice and shall have a maximum contract term of one (1) year, the same of which may be renewable by agreement of the parties for successive one (1) year terms.

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners of Lots in the Community tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot; provided, however, an Owner may delegate his right

of enjoyment of such personal property (if any) to those persons residing in the Home on his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

Section 4. Utilities. The Association shall pay as a common expense all charges for electricity, water, sewer and other utilities directly associated with and used within the Common Areas.

Section 5. Hazard and Liability Insurance for Common Property. The Association shall procure and maintain fire and extended coverage insurance on insurable Common Areas and other common property based on a current replacement cost basis, in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement only); and shall use the proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable Common Areas and other common property, including insured improvements and amenities, if any. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages (hereinafter referred to as "First Mortgagees") on Homes, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage upon the lapse of a policy, for the Common Areas and other common property, and First Mortgagees making such payments shall be reimbursed for such payment by the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of any Home on any Lot in the Community to establish entitlement to any such reimbursement.

Section 6. Board of Directors. Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors, through the elected Officers, shall manage the affairs of the Association. Until the Applicable Date, the Board shall consist of three (3) persons designated by Declarant, as long as it shall own one (1) or more Lots in the Community. No Director or Officer of the Association shall receive compensation for his services as a Director or Officer, except to the extent expressly authorized by a majority vote of the Owners.

Section 7. Non-Liability of Officers and Directors. The Officers and Directors of the Association, or the Members of the Committee which is a part thereof, 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 Officers or

Directors 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 an Officer or Director of the Association or a member of the Committee 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 Officers and Directors 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.

Section 8. Additional Indemnity of Officers and Directors.  
The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (hereinafter collectively referred to as 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 an Officer or Director of the Association or a member of the Committee, against all costs and expenses, including attorney's 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 Officer, Director or member of the Committee 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 Officer, Director or member of the Committee 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 Officer, Director or member of the Committee 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 Officer, Director or member of the Committee had actual knowledge of the falsity or incorrectness thereof; nor shall an Officer, Director or member of the Committee 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 or any other type of meeting or appointment. 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 Section 8.

Section 9. 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 deem 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 of the Association.

## ARTICLE VII

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Creation. There shall be, and is hereby, created and established an Architectural Control Committee to perform the functions provided for herein. The Committee shall consist of an authorized representative of the Developer and two (2) other members appointed, from time to time, by Developer, who also may be authorized representatives of the 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.

Section 2. Purposes and Powers of Committee. The Committee shall regulate the external design, appearance and location of Homes, buildings, structures and 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.

(A) In General. No Home, 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 specification 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 one inch (1"), equals ten feet (10'); or one-quarter inch (1/4") or one-eighth inch (1/8") equals one foot (1'); or to such other scale as the Committee may require. When required by the Committee, such plans shall be prepared by either a registered land surveyor, engineer or architect. Any such plans submitted for a Improvement Location Permit shall bear the stamp or signature of the Committee acknowledging the approval thereof.

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

(i) 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 Plat of the Real Estate recorded in the Office of the Recorder of Marion County, Indiana;

(ii) 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 Homes or structures; or

(iii) 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.

(C) 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 be reviewed for approval by 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 any Plat.

Section 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 by an Owner. One (1) copy of submitted material shall be retained by the Committee for its permanent files. All notifications to Owners making application 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.

Section 4. Liability of Committee. Neither the Committee, nor the Developer, nor 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.

Section 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 VII.

Section 6. Nonapplication to Developer. Notwithstanding the provisions of this Article VII or any other provisions of this Declaration requiring the approval of the Committee, Developer, or any entity related to 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 VIII

#### USE RESTRICTIONS

Section 1. Lot Use and Size of Buildings. Every Lot is a residential Lot and shall be used exclusively for single-family residential purposes. No business buildings shall be erected on any Lot, and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana. No Home shall be erected, altered, placed or permitted to remain on any Lot, other than one (1) detached single-family dwelling not to exceed two and one-half (2½) stories in height and permanently attached residential accessory buildings. Any attached garage, attached tool shed, attached storage building or any other attached accessory building erected or used as an accessory to a Home shall be of a permanent type of construction and shall conform to the general architecture and appearance of such Home.

The ground floor area of the Home, exclusive of one (1) story open porches and garages and other attached residential accessory buildings, shall not be less than two thousand two hundred (2,200)

square feet in the case of a one (1) story structure, nor less than one thousand two hundred (1,200) square feet in the case of a multiple story structure, provided, however, no structure of more than one (1) story shall have less than aggregate of two thousand four hundred (2,400) square feet of finished and liveable floor area. Each Home shall be constructed with not less than three (3) designated bedrooms with the smallest bedroom being not less than ten feet (10') by ten feet (10').

The existing Home located on the real estate described in Exhibit "B" attached hereto and made a part hereof, the same of which is also known as Lot 13, shall be excluded from this Section 1, for the reason that the Developer has agreed to preserve the historic value of the Home. The Home on said Lot 13, as it presently exists, does not meet the size requirements set forth in this Section 1; provided, however, that the Owners of said Lot 13 have agreed to expand the size of the Home and to add a second level to the Home. The Home, upon completion of the addition will be approximately two thousand two hundred (2,200) square feet.

Section 2. Setback Lines. Building setback lines are established on the Plat of the Real Estate. No Home shall be erected or maintained between the established setback lines and the Lot lines of said Lot.

No Home or attached accessory building shall be erected closer than twenty-five feet (25') to the rear Lot line (unless a greater setback line is established on any Plat of all or any part of the Real Estate). No Home or attached accessory building shall be erected closer to the side of any Lot than seven feet (7') (unless a greater setback line is established on any Plat of all or any part of the Real Estate), with each Lot having an aggregate side yard requirement of nineteen feet (19'). In the event a building is erected on more than one (1) single Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

Section 3. Garages and Storage Area. No garage shall be erected which is not permanently attached to the Home and no unenclosed storage area may be erected on any Lot. No enclosed storage area shall be erected which is not permanently attached to the Home. All Homes are required to have a garage which will accommodate at least two (2) automobiles.

Section 4. Accessory and Temporary Buildings. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot herein, except that used by the Developer or the builder of an Owner's Home during the construction.

Section 5. Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time

as a residence, temporary or permanent. No structure of a temporary character may be used as a residence.

Section 6. Nuisances. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot. No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance in the Community.

Section 7. Fences. No fence shall be erected on or along any Lot line or on any Lot, the purposes or result of which will be to obstruct reasonable vision, light, or air. All fences shall be kept in good repair and erected so as to enclose the Lot and decorate the same without hinderance or obstruction to any other Lot. No fence shall be higher than six feet (6'). No fences shall be permitted to be constructed between the front set back line and the street curb. Fencing style and color shall be consistent in the Community; provided, however, that no fencing shall be installed on any Lot without the prior written approval of the Committee.

Section 8. Site Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street and property lines and a line connecting points twenty-five feet (25') from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten feet (10') from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 9. Driveways. All driveways shall be paved simultaneously with construction of the Home, and the type of construction and materials must be first approved by the Committee.

Section 10. Sidewalks. All sidewalks shall conform to the standards set forth by the Committee and shall be installed by the builder of an Owner's Home simultaneously with the construction of the Home.

Section 11. Vehicle Parking. No camper, motor home, truck, trailer, boat, or recreational vehicle of any kind may be stored on any Lot in open public view.

Section 12. Mailboxes. All mailboxes shall conform to the standards set forth by the Committee and shall be installed by the

builder of an Owner's Home simultaneously with the construction of the Home.

Section 13. Signs. No sign of any kind shall be displayed to the public view on any Lot except that one (1) sign of not more than six square feet (6') may be displayed at any time for the purposes of advertising a Lot for sale or rent, or may be displayed by a builder to advertise the Lot during construction and sale; provided, however, that the Developer shall be excluded from this Section 13, and may place signs in designated areas established by the Developer.

Section 14. Vegetation. Each Owner shall keep his Lot clear from unsightly weeds and growth at all times; provided, however, that the foregoing provision shall not prevent the Owner, with the prior written approval of the Committee, from maintaining portions of his Lot in its natural unimproved state as long as such natural areas are part of an integrated landscape plan. Failure to comply with this provision shall entitle (but not obligate) Developer, the Association, or the Department of Metropolitan Development of Marion County, Indiana, to cut weeds and clear the Lot of such growth at the expense of the Owner, and any cost incurred by the Association with respect thereto 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 enforcement of assessments generally.

Section 15. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall at all times 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. Owners of Lots, and the builders of their Homes, shall maintain appropriate sized commercial dumpsters on the Lot at all times during construction of the Home and shall keep the Lot free and clear of trash, rubbish and blowing and drifting debris.

Section 16. Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be located in a garage or house such that they are completely concealed from public view. Any such gas or oil storage tank may not be buried on an Owner's Lot.

Section 17. Tree Preservation. No trees may be removed from any Lot without the approval of the Committee, and such requests shall be made to the Committee in writing. In the event the Committee does not indicate in writing its approval or disapproval of a request for tree removal within thirty (30) days after submission, the Committee is deemed to have approved such request.

Section 18. Water Supply and Sewage Systems. No private or semi-private water supply and/or sewage disposal system may be located upon any Lot which is not in compliance with regulations

or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction over such matters. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any lot.

Section 19. Antenna. Any antenna used by an Owner on any Lot shall be maintained in the attic space of the Home and shall not be attached to or made a part of the exterior of the Home.

Section 20. Satellite Dishes. A maximum of one (1) satellite dish may be installed on each Lot; provided, however, no satellite dish shall be installed (i) which is larger than twenty-four inches (24") in diameter; and (ii) without the prior written approval of the Committee. All permitted satellite dishes shall, by landscaping or otherwise, be aesthetically concealed on all sides, unless attached to a Home in which case it shall be substantially concealed, from views by other Owners in the Community. All permitted satellite dishes shall be installed so as not to constitute a nuisance or to have an offensive effect on other Owners in the Community. Any Owner desiring to install a satellite dish which meets the requirements of this Section shall submit to and for the approval of the Committee an application and two (2) copies of plot plans, showing the proposed location and description of the satellite dish and the surrounding landscaping and other means of concealment. No satellite dish shall be positioned in a front yard, on a roof or, if not attached to a Home, more than four feet (4') off the ground unless, in addition to meeting all other criteria, the Committee determines, in its sole discretion, that the proposed location is necessary because any other location on the Lot would be inadequate and would have a more offensive effect on surrounding Owners.

Section 21. Awnings. No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot.

Section 22. Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

Section 23. Solar Panels. No solar heat panels shall be permitted on roofs of any structures on any Lot. All such panels shall be enclosed within a fenced area and shall be concealed from the view of neighboring Lots and the streets.

Section 24. Modular Homes. Modular-type construction shall not be permitted on any Lot.

Section 25. Lot Access. All Lots shall be accessed from the interior streets of the subdivision.

ARTICLE IX

GENERAL RESTRICTIONS,  
OBLIGATIONS AND RIGHTS APPLICABLE TO PROPERTY

Section 1. Common Area Restrictions. No industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Common Areas, nor shall any "for sale" sign or "for rent" sign on any part of the Common Areas; provided, however, that Developer reserves the right for itself or its agents to maintain a model home business and sales office, storage areas and construction offices on the Common Areas during the construction and sales period until the last Lot existing as part of the Community on the Applicable Date is conveyed to an Owner other than Developer, and to place "for sale", "for rent" or any other signs on any part of the Common Areas and to use any part of the Common Areas for sale or display purposes during such period.

Section 2. Obstruction. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored on any part of the Common Areas without the prior written consent of the Association, subject to Developer's right to maintain construction materials and equipment during the construction period or except as otherwise specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon the prior written consent of the Developer or, after the Applicable Date, the Association.

Section 3. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on or in any Common Area or any part thereof which would increase the rate of insurance the Association is required to pay, but for such activity, without the prior written consent of the Association. Nothing shall be done or kept on or in any Common Area or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or there validly imposed requirement of any governmental body. No damage to, or waste of, any Common Area or any part thereof shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants, to the Association and other Owners. No noxious, destructive or offensive activities shall be allowed to take place upon the Common Areas or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing in the Community.

Section 4. Signs. No signs of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on the Common



Areas; provided, however, that Developer shall be permitted to erect and maintain such signs within the Community as it deems appropriate to advertise the development during the construction and sale periods.

Section 5. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time in order to properly govern the use and enjoyment of the Common Areas, as the Board in its sole discretion deems appropriate or necessary.

#### ARTICLE X

##### FIRST FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage of a Lot or Home on a Lot and the address of such party (a holder of a First Mortgage on a Lot or Home on a Lot who has so requested such notice) shall be hereinafter referred to as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage of a Lot or Home on a Lot who has so requested such notice shall be hereinafter referred to as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of the following:

(A) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Lot or Home on a Lot on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurers or guarantors, as applicable.

(B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Home on a Lot subject to a First Mortgage held, insured, or guaranteed by such holder, insurer or guarantor, which remains uncured for a period of thirty (30) days.

(C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article.

(E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within thirty (30) days.

Section 3. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such foreclosure action on the First Mortgage shall not be liable for the unpaid assessments of the Lot which were payable prior to the acquisition of title to or possession of such Lot by the First Mortgagee.

Section 4(A) Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Lots or their successors or assigns (based upon one vote for each First Mortgage owned), and at least seventy five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor or builder, including the Developer) or the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association, nor the Owner shall be entitled to:

(i) Terminate the legal status of the project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation).

(ii) By act or omission, seek to abandon, petition, subdivide, encumber, sell or transfer any Common Area; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed such a transfer.

(iii) Use hazard insurance proceeds for losses to any Common Area or other common property for anything other than the repair, replacement or reconstruction of such common property.

(iv) Add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

(1) Voting;

- (2) Assessments, assessment liens or subordination of such liens;
- (3) Reserves for maintenance, repair and replacement of any Common Area (or exterior maintenance of a Home if applicable);
- (4) Insurance of Fidelity Bonds;
- (5) Rights to use the Common Areas;
- (6) Responsibility for maintenance and repair of the Common Areas in the Community;
- (7) Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community;
- (8) Boundaries of any Lot;
- (9) The interests in the general Common Areas;
- (10) Convertibility of Lots into Common Areas or of any Common Area, or any portion thereof, into a Lot;
- (11) Leasing of a Lot or a Home on a Lot;
- (12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot; and
- (13) Any provisions which are for the express benefit of a First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots, except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination is made as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Area which might occur pursuant to any plan of expansion or phased development contained in this Declaration;

(j) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of a Home on a lot.

For the purposes of this section, an addition or amendment to such documents shall not be considered material if it is made for the purpose of correcting clerical, typographical or technical errors; for clarification only; to comply with 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, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; to induce any of the agencies or entities mentioned or referred to above to make, purchase, sell, insure or guarantee First Mortgages covering Lots or Homes on Lots; or to bring such documents into compliance with any statutory requirements, and any such addition or amendment to such documents which is so considered not to be material may be made by Declarant acting alone and without the consent, approval or joinder of the Owners, the Association, any First Mortgagees, any other mortgagees or any other person or entity.

In the event that an eligible mortgage holder who receives a written request to approve additions or amendments fails to deliver or mail to the requesting party a negative response within thirty (30) days of the date of the requesting party's notice shall be deemed to have approved such request.

Section 4(B) FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration if, at the time such action is taken, the Federal Housing Administration or the Veterans Administration is then the Owner of a Lot in the Community, any eligible mortgage holder or an eligible insurer or guarantor:

(i) Dedication to the public or to or for any public use or purpose of any part of any Common Area; provided, however, that such approval is not and shall not be required for the granting of easements to utility companies, public or private, for the installation, maintenance repair, replacement and servicing of equipment and facilities necessary to provide all utility services to the Community.

(ii) Amendment of this Declaration; provided, however, that such approval is not and shall not be required for any amendment or supplement to this Declaration made by Declarant or the Owners of any

Lots for any purposes set forth in Section 4(A) above.

Section 5. Examination of Books and Records. First Mortgages and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association in accordance with the By-Laws of the Association.

Section 6. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance or secure a new hazard insurance coverage on the lapse of a policy for any Common Area or other common property, and First Mortgagees making such payment shall be reimbursed for such payment by the Association.

Section 7. Designation of Representative. Any holder of a First Mortgage on a Lot or a Home on a Lot may designate a representative to attend meetings of the Association, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved

Section 8. Distribution of Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the By-Laws shall be construed as giving the Owner, or any other party, priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or resulting from a taking of any portion of any Common Area or other common property.

#### ARTICLE XI

#### INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Developer, the Association shall maintain, to the extent reasonably available, the various types of insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of, the agencies and entities mentioned or referred to herein as follows:

(A) A master or blanket type of policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Common Areas and all improvements and amenities thereon. Said insurance

policy shall afford, as a minimum, protection against the following:

(i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

(ii) All other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows:

"Indian Pointe Homeowners Association, Inc. for the use and benefit of the individual Owners".

The policies may also be issued in the name of the authorized representative of the Association, including any insurance trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payables shall be in favor of the Association or Insurance Trustee, as a Trustee for each Owner, and each such Owner's First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of the policy with respect to the Common Areas equally with each other Lot. Policies must provide for the recognition of any Insurance Trust Agreement.

If reasonably available, such policies shall include:

(1) Agreed Amount Endorsement (or like endorsement);

(2) Inflation Guard Endorsement;

(3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would

become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril;

(4) Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location; and

(5) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.

(B) Errors and Omissions coverage for the Officers, Directors, members of the Committee and the Developer, relating to their duties and obligations set forth herein.

(C) Workmen's compensation, occupational disease and like insurance (if the Association has eligible employees);

(D) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least the following:

(i) events occurring anywhere within the Common Areas (and public and private ways) or arising out of or in connection with the use, ownership or maintenance of the Common Areas;

(ii) without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;

(iii) each Officer and member of the Board of Directors, the managing agent (if any) and each

Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and

(iv) In amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. [However, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence.]

(E) Such other insurance as the Board of Directors may determine to be necessary.

(F) All such policies must provide that they may not be cancelled or substantially modified by any party without at least ten (10) days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owner's Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, and other personal property, and fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant.

Section 3. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, the Association may name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any Insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Section 4. Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, and such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.



ARTICLE XII

EMINENT DOMAIN

Section 1. The Association shall represent the Owners in any condemnation proceedings and in any negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for his, her or its Lot, each Owner appoints the Association as such Owner's agent and attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Areas by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

Section 2. Reconstruction. In the event of a partial taking of any portion of any Common Area (or conveyance in lieu thereof), the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of any Common Areas (or conveyance in lieu thereof), and the project is terminated by the election hereinabove required, the proceeds shall be allocated equally among each Lot, payable jointly to the Owners and mortgage holders thereof.

ARTICLE XIII

AMENDMENT

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

(A) 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.

(B) 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.

(C) 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 of the Association.

(D) 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 this Declaration.

(E) Special Amendments. 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 this Declaration.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if 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 herein.

Section 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, including but not limited to an Owner, 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 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.

Section 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 XIV

##### GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain any such violation, to compel compliance, or to recover damages, and against any Lot, to enforce any lien created by these covenants; and failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter. Attorney's fees and costs of any such action to restrain any such violation or to recover damages as determined by the court shall be assessable against and payable by any Owner or other persons violating the terms contained herein.

Section 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 nor threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in any subdivision plat of all or any part of the Community 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.

Section 3. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or

consolidated association or corporation, or alternatively, the properties, rights and obligation of another corporation may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Community, except as hereinabove provided.

Section 4. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 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.

Section 6. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appear on the records of the Association at the time of such mailing.

Section 7. Captions. The Article and Section headings herein are intended to convenience of reference only and shall not be given any substantive effect.

Section 8. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

Section 9. Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

IN WITNESS WHEREOF, Mark S. Conklin, Sec. and D.S.M. DeLozier, Jr. have caused this document to be executed as of the day and year first above written.

"DECLARANT/DEVELOPER"

D.S.M. DEVELOPMENT, INC. d/b/a  
INDIAN POINTE DEVELOPMENT

NOTARY PUBLIC  
MARK S. CONREUX  
12/27/94

  
\_\_\_\_\_  
Mark S. Conreux, Secretary

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared MARK S. CONREUX, the Secretary, of D.S.M. DEVELOPMENT, INC. d/b/a INDIAN POINTE DEVELOPMENT, and who acknowledged execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for and on behalf of said Declarant, and who, having been duly sworn, stated that the representations therein contained are true.

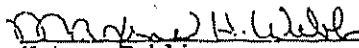
Witness my hand and Notarial Seal this 27th day of December, 1994.

MY COMMISSION EXPIRES:

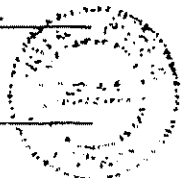
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COUNTY OF RESIDENCE:

Hamilton

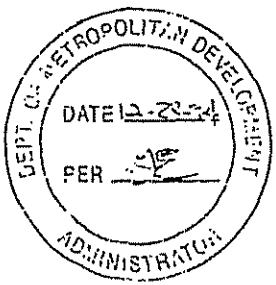
  
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Notary Public

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Prepared BY:  
Russell Jones  
Attorney at Law  
11711 N PENNSYLVANIA ST SUITE 109  
CARMEL, IN  
46032



INDIAN POINT

A part of the West Half of the Northeast Quarter of Section 29, Township 17 North, Range 5 East, in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Half Quarter Section; thence North 89 degrees 53 minutes 56 seconds East (assumed bearing) along the North line thereof 825.00 feet to the PLACE OF BEGINNING for this description; thence continuing North 89 degrees 53 minutes 56 seconds East on said North line 330.00 feet; thence South 00 degrees 09 minutes 01 seconds West parallel with the West line of said Half Quarter Section 560.00 feet; thence North 89 degrees 53 minutes 56 seconds East parallel with the aforesaid North line 179.00 feet to a point on the East line of said Half Quarter Section; thence South 00 degrees 10 minutes 13 seconds West along said East line 156.42 feet; thence North 00 degrees 00 minutes 00 seconds West parallel with the South line of said Half Quarter Section 1051.53 feet; thence North 00 degrees 09 minutes 01 seconds East parallel with the aforesaid West line 154.57 feet; thence South 89 degrees 53 minutes 56 seconds West parallel with the aforesaid North line 282.41 feet to a point on the aforesaid West line; thence North 00 degrees 09 minutes 01 seconds East along said West line 165.00 feet; thence North 89 degrees 53 minutes 56 seconds East parallel with the aforesaid North line 342.00 feet; thence North 00 degrees 09 minutes 01 seconds East parallel with the aforesaid West line 99.00 feet; thence North 89 degrees 53 minutes 56 seconds East parallel with the aforesaid North line 23.20 feet; thence North 00 degrees 09 minutes 01 seconds East parallel with the aforesaid West line 66.00 feet; thence North 89 degrees 53 minutes 56 seconds East parallel with the aforesaid North line 294.80 feet; thence South 00 degrees 09 minutes 01 seconds West parallel with the aforesaid West line 330.00 feet; thence North 89 degrees 53 minutes 56 seconds East parallel with the aforesaid North line 165.00 feet; thence North 00 degrees 09 minutes 01 seconds East parallel with the aforesaid West line 660.00 feet to the place of beginning, containing 12.422 acres, more or less. Subject to all legal highways, rights-of-way, restrictions and easements of record.

EXHIBIT "A"

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REV 12/28/94

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