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DECLARATION OF COVENANTS AND RESTRICTIONS

Morse Landing West

1997

This Declaration made as of the 9 day of October, 1997, by MLW LLP, an Indiana Limited Liability Partnership ("Declarant"),

WITNESSETH:

3709743286
FILED FOR RECORD IN
HENRITON COUNTY, INDIANA
NOV 10-10-1997 At 11:56 a.m.
DEC 00V RES 55,00

WHEREAS, the following facts are true:

- A. Declarant owns or has the right to acquire the real estate located in Hamilton County, Indiana, described in Exhibit "A" upon which Declarant intends, but is not obligated to develop a residential community to be known as Morse Landing West.
- B. Declarant intends but is not obligated, to construct certain improvements and amenities, which, if constructed, shall constitute Community Area.

C. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Morse Landing West and for the maintenance of the Tract and the improvements thereon, and to this end desire to subject the Tract together with such additions as may hereafter be made thereto (as provided in Paragraph 3) to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

D. Declarant deems it desirable for the efficient preservation of the values and amenities in Morse Landing West, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Morse Landing West. Declarant has, or will incorporate under the laws of the State of Indiana a non-profit corporation known as Morse Landing West Homeowners Association, Inc., for the purpose of exercising such functions.

NOW/ THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract and such additions thereto may hereafter be made pursuant to Paragraph 3 hereof, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of Residences, Lots, and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.

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

"Applicable Date" means the earlier of (i) the date when all Lots in the Development Area have been

improved by the construction thereon of Residences or (ii) December 31, 2006.

"**Architectural Control Assessment**" means the assessment levied by the Corporation pursuant to Paragraph 9(d).

"**Architectural Review Board**" means that entity established pursuant to Paragraph 10 of this Declaration for the purposes therein stated.

"**Articles**" means the Articles of Incorporation of the Corporation, as amended from time to time.

"**Assessments**" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the Bylaws.

"**Board of Directors**" means the governing body of the Corporation elected in accordance with the Bylaws.

"**Bylaws**" means the Code of Bylaws of the Corporation, as amended from time to time.

"**Community Area**" means (i) the Recreation Areas, (ii) the Drainage System, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through more than one Section, and (v) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"**Community Area Access Easement**" means the area designated on a Plat as a means of access to Community Areas.

"**Community Area Initial Assessment**" means the initial assessment for the Reserve for Replacements required by Paragraph 9(c).

"**Corporation**" means Morse Landing West Homeowners Association, Inc., an Indiana non-profit corporation, its successors and assigns.

"**Declarant**" means MLW, LLP and its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"**Development Area**" means the land described in Exhibit "A" together with any land contiguous thereto added to the Tract pursuant to Paragraph 3 of this Declaration.

"**Drainage Board**" means the Hamilton County, Indiana, Drainage Board, its successors or assigns.

"**Drainage System**" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the detention areas, and the other structures, fixtures, properties, equipment and facilities located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown

or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"**Entry Ways**" means the structures constructed and installed at an entrance to Morse Landing West or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles) and the signage, grassy area and/or landscaping surrounding such structures.

"**General Plan of Development**" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

"**Landscaping and Signage Easement**" means a portion of a Lot denoted on a Plat as an area to be landscaped and, at Entry Ways, to provide signage for Morse Landing West.

"**Lot**" means a platted lot as shown on a Plat.

"**Lot Development Plan**" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"**Maintenance Costs**" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"**Member**" means a member of the Corporation and "Members" means all members of the Corporation.

"**Morse Landing West**" means the name by which the Tract shall be known.

"**Mortgagee**" means the holder of a first mortgage on a Residence.

"**Owner**" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

"**Part of the Development Area**" means any part of the Development Area included in the Tract.

"**Person**" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"**Plat**" means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

"Ravine" means the Recreation Area and Drainage System components denoted on a Plat as the "Ravine" and/or Block "B".

"Recreation Area(s)" means such land as may be denoted on a Plat as a "Block" or "Recreation Area" in a Plat or designated as "Recreation Area" in any recorded instrument executed by Declarant. The use of all Recreation Areas shall at all times be subject to and subordinate to the use of the area for the Development Area and Tract's Drainage System and other utility use.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, all applicable Supplemental Declarations and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

"Section" means that portion of the Development Area that is depicted on a Plat.

"Supplemental Declaration" means any other supplementary declaration of covenants, conditions or restrictions which may be recorded and which extends the provisions of this Declaration, any conditions or restrictions recorded on or with the Plat of a Section or any previously recorded Supplemental Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by this Declaration.

"Tract" means the land described in Exhibit "A" and such other real estate as may from time to time be annexed thereto under the provisions of Paragraph 3 hereof.

"Zoning Authority" with respect to any action, means the Administrator of the Cicero Plan Commission, or where he or she lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Administrator.

2. Declaration. Declarant hereby expressly declares that the Tract and any additions thereto pursuant to Paragraph 3 hereof shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and

with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

3. **Additions to the Tract.** Declarant shall have the right to bring within the scheme of this Declaration and add to the Tract real estate that is a Part of the Development Area or that is contiguous to the Development Area. In determining contiguity, public rights of way shall not be considered.

The additions authorized under this Paragraph 3 shall be made by the filing of record of one or more Supplemental Declarations with respect to the additional real estate and by filing with the Corporation any revisions to the General Plan of Development necessary to reflect the scheme of development of the additional real estate. Unless otherwise stated therein, such revisions to the General Plan of Development shall not bind Declarant to make the proposed additions. For purposes of this Paragraph 3, a Plat depicting a portion of the Development Area shall be deemed a Supplemental Declaration.

4. **Recreation Areas.** Declarant shall convey title to the Recreation Areas to the Corporation. The Corporation shall be responsible for maintaining the Recreation Areas and the Maintenance Costs thereof, together with any costs incurred by the Corporation in connection with the improvement thereof, shall be assessed as a General Assessment against all Lots subject to assessment. The use of the Recreation Areas shall be subordinate to the use of the Recreation Areas in conjunction with the Drainage System, the restrictions imposed upon the improvement or alteration of the Drainage System by this Declaration or any Supplemental Declaration and further subject to rules and regulations adopted by the Corporation which are not inconsistent with the provisions of this Declaration or any Supplemental Declaration. Declarant shall have no liability to any Person with respect to a Recreation Area, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Recreation Area or the proximity of a Lot thereto, including, but not limited to loss or damage from erosion.

5. **Ravine.** Declarant shall convey title to any Ravine to the Corporation. The Corporation shall be responsible for maintaining any Ravine and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Each Ravine shall, consistent with the public health and safety, be maintained in a natural condition conducive to the protection of fauna and beneficial flora which inhabit and exist in the air, land and waters of the Tract. No structure or improvement, other than underground utility facilities, the Drainage System and such facilities as may be permitted under any recorded easement to which this Declaration is subordinate, may be installed or maintained in, on or over any Ravine. Nothing herein contained shall preclude the Corporation from planting wild flowers and other plants, shrubs and trees in a Ravine, but no Owner of a Lot adjacent to a Ravine shall make any planting or otherwise disturb a Ravine without the prior written consent of the Architectural Review Board.

6. **Drainage System.** The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of: the release of drainage maintenance bonds required by a governmental entity or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his or her Lot and is not maintained by the Drainage Board. No structure or improvement, other than underground utility facilities and such facilities as may be permitted under any recorded easement to which this Declaration is subordinate, may be installed or

maintained in, on or over any part of the Drainage System. Other than specifically allowed in this Declaration, no Person shall in any way alter the grade or contouring of the Drainage System with out the prior written consent of the Drainage Board and, if the Declarant still owns an interest in the Development, the prior written consent of the Declarant. Other than specifically allowed in this Declaration, no Person shall add or deposit fill material of any kind in or to any part of the Drainage System including but not limited to soil, grass clippings, fire wood, trash or leaves. Nothing herein contained shall preclude the Corporation from enhancing a Recreational Area by planting wildflowers and other plants, shrubs and trees in a Recreational Area constituting a part of the Drainage System provided that: (i) prior written consent of the Architectural Review Board has been obtained and (ii) the plantings do not impair the Drainage System. Further, nothing herein contained shall preclude the Corporation from enhancing a Recreational Area constituting a part of the Drainage System, other than a Ravine, by installing play equipment provided that: (i) prior written consent of the Architectural Review Board has been obtained and (ii) the equipment does not impair the Drainage System.

7. **Maintenance of Entry Ways and Landscape and Signage Easements.** Subject to the provisions below, the Corporation shall maintain the Entry Ways and any Landscape and Signage Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or in a Landscape and Signage Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Morse Landing West or a part thereof. All entrance signs located on an Entry Way or in a Landscape and Signage Easement shall be maintained at all times in good and sightly condition appropriate to a first class residential subdivision. The Owner of each Lot upon which a Landscape and Signage Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape and Signage Easement which were not installed by the Declarant or the Corporation neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first class residential subdivision and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.

8. **Morse Landing West Homeowners Association, Inc.**

(a) **Membership.** Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and Bylaws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

(b) **Powers.** The Corporation shall have such powers as are set forth in this Declaration, any Supplemental Declaration and the Articles, together with all other powers that belong to it by law.

(c) **Classes of Members.** The Corporation shall have a two (2) classes of members.

(d) **Voting and Other Rights of Members.** Each Owner (other than the Declarant) shall have one (1) vote per Lot and the Declarant shall have three (3) votes for each lot depicted in the Development Area in the General Plan of Development which has not been sold to an Owner (other than the Declarant). Additional rights of Members shall be as specified in the Articles and Bylaws.

(e) **Reserve for Replacements.** The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined

annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America, or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Replacements may be withdrawn and applied at the direction of Declarant to meet the cost of periodic maintenance, repairs, renewal or replacement of the Community Area.

(f) **Limitations on Action by the Corporation.** Unless at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 10(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintained and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(g) **Mergers.** Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Tract together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

9.

Assessments:

(a) **Creation of the Lien and Personal Obligation of Assessments.** Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments, (2) Community Area Initial Assessment, (3) Architectural Control Assessments (to the extent levied) and (4) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(h) General Assessment.

i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners on Lots and for the improvements, maintenance, repair, replacement and operation of the Community Area.

ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed upon recommendation by the Board of Directors if such change is approved by two-thirds (2/3) of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgages (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such Members duly called for this purpose.

iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing the Community Area has been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots

improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) **Community Area Initial Assessment.** On the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), there shall be due and payable to the Corporation by the Owner of such Lot the sum of One Hundred Dollars (\$100.00) which shall be deposited in the Reserve for Replacement maintained by the Corporation.

(d) **Architectural Control Assessment.** If any Owner fails to comply with the provisions of Paragraph 10(c) of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars (\$100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Ten Thousand Dollars (\$10,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (h) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration and all applicable Supplemental Declarations.

(e) **Special Assessment.** In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Declarant and of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(f) **Date of Commencement of General Assessments.** The General Assessment shall commence with respect to assessable Lots within a Section on the first day of the month following conveyance of the first Lot in the Section to an Owner who is not Declarant. The initial General Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. Notwithstanding the foregoing, if an Owner owns more than two (2) Lots which have not been improved by the construction of a residence thereon, the General Assessment shall not commence with respect to such unimproved Lots until the earlier of (i) the date the Owner commences construction of a Residence thereon or (ii) the first day of the sixth month following the date the Owner acquired title to the Lots.

(g) **Effect of Nonpayment of Assessments; Remedies of the Corporation.** Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorney's fees, incurred

by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his or her Lot.

(h) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(i) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(k) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations will be met.

10. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as provided in the Bylaws shall be appointed by the Board of Directors, subject to the right of appointment approval by the Declarant. Declarant's right of appointment approval shall terminate the earlier of (i) the date that the Architectural Review Board approves the design of the last Lot in the Development Area or (ii) after the Declarant notifies the Board of Directors that it is the Declarant's intention not to exercise its approval rights for any further appointments to the Architectural Review Board. The Declarant reserves the right to create a supplemental improvement review board, with rights and privileges no greater than the Architectural Review Board, for the purpose regulating improvements on Lots after the completion of the initial construction.

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

(c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner

shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefore. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no residence, other building, fence, wall, swimming pool, tennis court, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Morse Landing West, and no Owner shall undertake any construction activity within Morse Landing West unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c) "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches or the installation of plants and trees which are in addition to the initial landscaping plan in the Lot Development Plan which do not interfere with or detract from the Development Area.

(d) *Procedures.* In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approve a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) *Guidelines and Standards.* The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration or Supplemental Declarations. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving. At a minimum all guidelines or standards shall assure that a Residence and Lot shall be improved and meet the minimum standards contained in the *Town of Clevo and Jackson Township Subdivision Control Ordinance* in effect as of the date that the Plat was approved, including but not limited to a requirement that the Owner, at his or her expense, at the time of constructing the Owner's Residence on the Owner's Lot, shall install on the Lot in conformance with the standards set forth in said Ordinance: (1) street lights and/or dusk to dawn exterior lighting; (2) sidewalks and (3) shade trees.

(f) *Application of Guidelines and Standards.* The Architectural Review Board shall apply the guidelines and standards established pursuant to subparagraph (e) in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Lot Development Plan, the Architectural Review Board shall furnish the

applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Board if resubmitted.

(g) *Design Consultants.* The Architectural Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating Lot Development Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Architectural Review Board.

(h) *Existing Violations of Declaration.* The Architectural Review Board shall not be required to consider any Lot Development Plan submitted by an Owner who is, at the time of submission of such Lot Development Plan, in violation of the requirements of the provisions of subparagraph (c) of this Paragraph 10, unless such Owner submits to the Architectural Review Board with such Lot Development Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements or landscaping constructed and/or installed prior to the submission or approval of a Lot Development Plan (or constructed and/or installed in violation of a previously approved Lot Development Plan) to the extent any such previously constructed and/or installed improvement or landscaping is not subsequently approved by the Architectural Review Board. The Architectural Review Board shall have the power to recommend to the Board of Directors that the Corporation assess an Architectural Control Assessment against any Owner who fails to comply with the requirements of this Paragraph 10 of the Declaration. Under no circumstances shall any action or inaction of the Architectural Review Board be deemed to be unreasonable, arbitrary or capricious if, at the time of such decision, the Person having submitted a Lot Development Plan for approval by the Architectural Review Board has violated this Paragraph 10 of the Declaration and such violation remains uncorrected.

(i) *Exercise of Discretion.* Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of subparagraph (f), and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable Person, weighing the evidence and drawing all inferences in favor of the Board, could only conclude that such determination constituted an abuse of discretion.

(j) *Liability of Board.* Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant 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. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

(k) *Inspection.* Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

11. **Community Area**

- (a) **Ownership.** The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks, recreation areas or other public purposes.
- (b) **Density of Use.** Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon.
- (c) **Obligations of the Corporation.** The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.
- (d) **Essentials of Enjoyment.** No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration. Such rights and easements as are thus granted shall be *appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.* Unless otherwise provided in a Supplemental Declaration or a Plat, all Owners may use the Community Area subject to the reserved rights of Declarant and the Corporation.
- (e) **Extent of Easements.** The easements of enjoyment created hereby shall be subject to the following:
- (i) the right of the Corporation to establish reasonable rules for the use of the Community Area and to charge reasonable admission and other fees for the use of any recreational facilities located in or constituting a part of the Community Area except that no fee shall be charged to those specifically authorized to use such facilities by this Declaration or any Supplemental Declaration unless the Corporation is specifically authorized to do so by this Declaration or a Supplemental Declaration;
- (ii) the right of the Corporation to suspend the right of an Owner and all Persons whose right to use the Recreation Areas derives from such Owner's ownership of a Lot to use such portions of the Community Area for any period during which any Assessment against His or her Lot remains unpaid for more than thirty (30) days after notice;
- (iii) the right of the Corporation to suspend the right of an Owner or any Person claiming through the Owner to use the Recreation Areas for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;
- (iv) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purpose of improvements to, or repair of, the

community Area or facilities constructed thereon, pursuant to approval of two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose;

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the votes of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded; and

(vi) the right of Declarant in any Supplemental Declaration or Plat to restrict the use of Community Area located in a Section to (a) Owners of Residences located in such Section or (b) to other Owners of less than all of the Lots in the Tract.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged, destroyed, altered or used in any manner inconsistent with this Declaration by an Owner or any of his or her guests, tenants, licensees, agents or member of his family, such Owner authorizes the Corporation to repair and restore said affected damaged area; the Corporation shall repair and restore said affected damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs and/ or restoration shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Recreation Areas to the Corporation, free and clear of all liens and financial encumbrances except as otherwise provided herein, not later than the Applicable Date. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes for such Community Area until title is conveyed.

12. Use of Tract:

(a) Protective Covenants.

(i) Land Use. Lots may be used only for residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there

will be thereby a greater number of Residences in Morse Landing West than the number of original Lots depicted on the Plans. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be created, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(ii) **Temporary Residences Prohibited.** No trailer, stack, tent, boat, basement, grade, or other outbuilding may be used at any time as a residence, temporary or permanent.

(iii) **Trash.** Garbage, refuse and trash shall be kept in approved containers, kept in a clean and sanitary manner, kept in a location which is not visible from the street (except on trash removal day) and shall be removed on a regular basis, not less often than every two (2) weeks. To avoid excessive wear to the streets in the Development, the Board of Directors may contract with a trash removal company to provide trash removal for the Owners of the Lots in the Development and include the costs thereof in the computation of the annual General Assessment.

(iv) **Construction.** An Owner shall complete the construction of any improvements on a Lot within the time specified by the Architectural Review Board and if no such time is specified, then no later than one (1) year from the date that construction is commenced.

(v) **Outside Storage.** There shall be no outside or open storage of materials, toys, equipment or vehicles (including but not limited to recreational vehicles, boats campers and/or trailers) in the Development other than licensed motor passenger vehicles with a gross weight not exceeding 5,000 pounds.

(vi) **Nuisances.** No nuisance, unsightly condition or material annoyance shall be permitted to exist or operate upon a Lot so as to be detrimental to any other Lot in the vicinity thereof or to its occupants.

(vii) **Other Restrictions.** In addition to the adoption of guidelines and rules for the purposes set forth in paragraph 10, the Architectural Review Board may adopt reasonable rules and regulations to implement the provisions set forth in and to supplement any covenants or restrictions set forth in this Declaration or in a Supplemental Declaration, including but not limited to rules to regulate the storage, use, uniformity, screening from view, placement of parking of, and if necessary the banning of: animals; antennas; satellite dishes; signs; fences; walls and screens; mailboxes; storage tanks; awnings; recreational vehicles; boats; trucks; buses; vehicles; machinery; outdoor drying lines; trash containers; and planting, maintenance and removal of vegetation on the Tract. The Architectural Review Board may adopt general rules and regulations appropriate to each Section, which rules and regulations may vary among Sections. Such general rules may be amended by a two-thirds (2/3) vote of the Architectural Review Board. Subsequent to the Applicable

Date, any such amendment may be made only after a public hearing for which dues notice to all affected Owners has been provided, and if such amendments are approved by a two-thirds (2/3) vote of the Board of Directors. All general rules and any subsequent amendments thereto shall be placed in the Register of Regulations and shall constitute Restrictions.

(viii) Exceptions. The Architectural Review Board may authorize exceptions to or variances from the general rules and regulations adopted pursuant to clause (vii) if the Architectural Review Board can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Tract. To the extent that exterior maintenance is not provided for in a Supplemental Declaration, each Owner shall keep all Lots owned by him or her; and all improvements thereon, in good order and repair and free of debris including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board. In the event an Owner of any Lot in the Tract shall fail to maintain the premises and the improvements situated thereon, as provided herein, the Corporation, after notice to the Owner as provided by the Bylaws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

13.

Essements.

(a) Plat Essements. In addition to such essements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Hamilton County, Indiana, Lots are subject to Drainage Essements, Utility Essements, Entry Way Essements, Landscape and Signage Essements, Community Area Access Essements and Non-access Essements, either separately or in any combination thereof, as shown on the Plats and generically denoted as (E), which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Essements. (D) are created to provide paths and courses for area and local storm drainage, either overhead or in adequate underground conduit, to serve the needs of Morse Landing West and adjoining ground and/or public drainage systems, and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstances shall said esement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading, restrid, or change, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage. By Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake

any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) **Utility Easements.** (U) are created for the use of Declarant, the Corporation, governmental agencies and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses necessary and useful in the installation and maintenance of storm sewers, sanitary waste disposal sewers and water systems.

(iii) **Entry Way Easements.** (E, W, E) are created for the use by Declarant, the Architectural Review Board and the Corporation, at their election, for the installation, planting and maintenance of signage, trees, shrubs and other plantings.

(iv) **Landscape and Signage Easements.** (L, E) are created for the use by Declarant, the Architectural Review Board and the Corporation, at their election, for the installation, planting and maintenance of signage, trees, shrubs and other plantings.

(v) **Community Area Access Easements.** (CA, E) are created for the use of Declarant, utilities, local government and the Corporation for the purpose of gaining access to the Recreation Areas, a Ravine and the Community Areas in the course of maintenance, repair or replacement of facilities and utilities and for the use of Owners for the purpose of gaining access to such Community Area to enjoy the use thereof to the extent authorized herein or in a Supplemental Declaration.

(vi) **Non-Access Easements.** (NA, E) are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

(vii) **Building Setback Lines.** (B, L), are created to establish the minimum distance from which a Residence may be placed in conjunction to a street or lot line.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) **General Easement.** There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewer, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant, local government or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes of Declarant or the providing utility or service company to install and maintain

facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in a Section except as proposed and approved by Declarant prior to the conveyance of the first Lot in a Section to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms herof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) **Public Health and Safety Easements.** An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) **Drainage Board Easement.** An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its right with respect to any legal drain constituting a part of the Drainage System.

(e) **Crossing Underground Easements.** Easements utilized for underground service may be crossed by driveways, walkways and Community Area Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including all buildings, patios or other pavings, other than crossings, driveways, walkways or Community Area Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) **Declarant's Easement to Correct Drainage.** For a period of fifteen (15) years from the date of conveyance of the first Lot in a Section, Declarant reserves a blanket easement and right on, over and under the ground within that Section to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) **Water Retention.** The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (D) on such Owner's Lot.

14. **Use of Lots During Construction.**

(a) **By Declarant.** Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the

period of construction and sale of Lots and Residences in the Tract or the Development Area, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices. Declarant specifically reserves the right to maintain a sales office in Morse Landing West during the period that it is engaged in the sale of Lots in Morse Landing West.

(b) **By Builders.** Notwithstanding any provisions to the contrary contained herein, a builder who has constructed a Residence in Morse Landing West may, with the prior consent of the Declarant or the Board of Directors, use such Residence as a "model" home and may hold such home open to the public, either individually or as part of a "home show" approved by the Board of Directors for such reasonable period as the Board of Directors may specify. With the approval of Declarant, Lots adjacent to or in proximity to such model home may be used for parking by visitors to such model home.

15. **Enforcement.** The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declarations, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so hereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence, or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

16. **Limitations on Rights of the Corporation.** Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf of the Corporation.

17. **Approvals by Declarant.** Notwithstanding any other provisions hereof, prior to Declarant's sale of 95% of all Lots in the General Plan of Development, the following actions shall require the prior approval of Declarant: the addition of real estate to the Tract; dedication or transfer of the Community Area; mergers and consolidations of Sections within the Tract or of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration and any Supplemental Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment.

18. Mortgages.

(a) **Notice to Corporation.** Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the

terms of the Declaration any Supplemental Declaration, the Articles or the Bylaws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may or otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

(b) **Notices to Mortgagees.** The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

- (i) Any condemnation or casualty loss that affects a material portion of the Community Area;
 - (ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;
 - (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;
 - (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and
 - (v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.
- (c) **Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.
- (d) **Financial Statements.** Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.
- (e) **Payments by Mortgagees.** Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof, and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

19. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration, and, to the extent required by Paragraph 17, (ii) the Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to the Applicable Date. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish materially the rights or increase or expand materially the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgages holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgages of any amendments. Except to the extent authorized in Paragraph 16(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

20. Interpretation. 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 provision 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.

21. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2024, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

22. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

23. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are

expressly assumed by Declarant, and no duty of, or warranty by. Declarant shall be implied by or inferred from any term or provision of this Declaration.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

MLW, LLP
an Indiana Limited Liability Partnership
By: James R. Steckley
James R. Steckley, Partner

STATE OF INDIANA)
)
COUNTY OF HAMILTON)

SS: ACKNOWLEDGMENT

Before me, a Notary Public in and for said County and State, personally appeared MLW, LLP by James R. Steckley, Partner, who acknowledged the execution of the foregoing DECLARATION OF COVENANTS AND RESTRICTIONS, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 04 day of October, 1997

My commission expires: 8/26/2000

Signature
Printed

Sharon Ringery
Sharon Ringery

Resident of Hamilton County, Ind.



This instrument prepared by Christine Crull Altman, Attorney at Law.

MLW covenants 8-8-97.wpd 22

MORSE LANDING WEST
Overall Description
August 5, 1997

A part of the east half of Section 2, Township 19 North, Range 4 East and a part of the Northwest Quarter of Section 1, Township 19 North, Range 4 East described as follows:

Beginning at the railroad spike at the southwest corner of the east half of the said North-east Quarter Section, which bears North 00 degrees 38 minutes 53 seconds East (assumed bearing) 2,639.92 feet from a stone at the southwest corner of the east half of the said Southeast Quarter Section and South 89 degrees 37 minutes 40 seconds West 1,342.41 feet from a stone at the southeast corner of the said Northeast Quarter Section; thence North 01 degree 12 minutes 18 seconds East along the west line of the east half of the said Northeast Quarter Section 1089.00 feet to a P. K. nail; thence North 90 degrees 00 minutes 00 seconds East 1333.70 feet to a point on the east line of the said Northeast Quarter of Section 2; thence North 90 degrees 00 minutes 00 seconds East 11.51 feet to a 5/8" iron rod with yellow cap stamped S0083; thence North 00 degrees 31 minutes 40 seconds East 1343.73 feet to a 5/8" iron rod with yellow cap stamped S0083, said 5/8" iron rod with yellow cap stamped S0083 being South 89 degrees 35 minutes 52 seconds iron rod with yellow cap stamped S0083 being South 89 degrees 35 minutes 52 seconds East 6.19 feet from the west line of the Northwest Quarter of Section 1, Township 19 North, Range 4 East; thence South 89 degrees 35 minutes 52 seconds East 283.80 feet to a 5/8" iron rod with yellow cap stamped S0083 on the southerly extension of the east line of a 5.00 acre tract of real estate described in Deed Record 139, Page 43; thence North 00 degrees 20 minutes 37 seconds East 767.28 feet on and along said southerly extension and on and along said east line to a P. K. nail on the north line of the Northwest Quarter of Section 1, Township 18 North, Range 3 East at the northeast corner of said 5.00 acre tract; said P. K. nail being 284.5 feet east of the northwest corner of the Northwest Quarter of Section 1, Township 19 North, Range 4 East; thence South 89 degrees 56 minutes 41 seconds East 287.13 feet to a P. K. nail at the northwest corner of a 1.26 acre tract of real estate described in Deed Record 336, page 747; thence South 00 degrees 29 minutes 30 seconds West 275.00 feet to the 5/8" iron rod with yellow cap stamped S0083 at the southwest corner of said 1.26 acre tract; thence South 89 degrees 56 minutes 41 seconds East 200.00 feet to a 5/8" iron rod with yellow cap stamped S0083 at the southeast corner of said 1.26 acre tract; thence South 00 degrees 29 minutes 30 seconds West 435.23 feet; thence North 90 degrees 00 minutes 00 seconds East 778.73 feet to a 5/8" iron rod with yellow cap stamped S0083 at the southeast corner of a 5.07 acre tract of real estate described in D.R. 292, PG. 383, said point also being the angle point on the west line of Lot #8 in Morse Landing Section 1, (recorded in Plat Book 8, Page 80); thence South 13 degrees 30 minutes 00 seconds West 1129.28 feet to a 5/8" iron rod with yellow cap stamped S0083 at the southwest corner of Lot #57 in Morse Landing, Section Two (recorded in Plat Book 11, Page 180-182); thence South 79 degrees 30 minutes 00 seconds West 215.00 feet to a 5/8" iron rod at the northwest corner of Lot #61 in Morse Landing, Section 2; thence North 79 degrees 30 minutes 00 seconds West 590.00 feet to a 5/8" iron rod with Cipe cap at the angle point on the northerly line of Lot #103 in Morse Landing, Section 3, (recorded in Plat Book 13, Pages 49-53); thence South 39 degrees 30

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minutes 00 seconds West 465.00 feet to a 5/8" iron rod at the angle point on the westerly line of Lot 107 in Morse Landing, Section 3; thence South 10 degrees 00 minutes 00 seconds West 515.00 feet to a 5/8" iron rod at the angle point on the westerly line of Lot #115 in Morse Landing, Section 3; thence South 43 degrees 12 minutes 18 seconds West 449.39 feet to a concrete monument with cut cross at the southwest corner of Lot #120 in Morse Landing, Section 3; thence South 27 degrees 12 minutes 18 seconds West 336.50 feet to the angle point on the northerly line of Lot #170 in Morse Landing, Section 4, (recorded in Plat Book 15, Page 35); thence South 52 degrees 12 minutes 18 seconds West 423.00 feet to a concrete monument with cut cross at the northwest corner of Lot #176 in Morse Landing, Section 4; thence North 55 degrees 47 minutes 42 seconds West 385.00 feet to a concrete monument with cut cross at the angle point on the northerly line of Lot #182 in Morse Landing, Section 4; thence North 89 degrees 47 minutes 42 seconds West 375.00 feet to a P.K. nail on the west line of the east half of the Southeast Quarter of Section 2, Township 19 North, Range 4 East, said point also being the northwest corner of Morse Landing, Section 4; thence North 00 degrees 38 minutes 53 seconds East 77.00 feet along said west line to the POINT OF BEGINNING. Containing 81.50 acres, more or less and being subject to all applicable easements and rights-of-way of record.

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