

depositing of such a security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property within ten (10) days after written notice from the Board to the respective Owner to do so.

(g) Nothing shall be done or permitted in any Condominium Unit which will impair the structural integrity of any Building or which would structurally change any Building or which would affect the exterior appearance of any Condominium Unit, except as otherwise provided in the Declaration or these By-Laws. No Condominium Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of Muir Woods or which might be a nuisance, annoyance, inconvenience or damaging to other Owners and occupants of Condominium Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(h) No Owner may hang anything inside or outside his window or patio doors which will show any color other than white or beige tones on the outside. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property.

(j) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Property or any Condominium Unit without the prior written consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Property in connection with any unsold or unoccupied Condominium Units.

(k) All Owners and members of their families, their guests, or invitees, and all occupants of any Condominium Unit or other persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Condominium Units, the Common Areas and Limited Areas.

(l) Except for vehicles being used by Declarant or by persons providing services to the Declarant, the Corporation or an Owner, no boats, campers, trailers of any kind, buses, mobile homes, trucks (other than 3/4 ton or less pick-up trucks), motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent (1) the parking or storage of such vehicles completely enclosed within a garage and (2) the driving or using of such vehicles for ingress and

egress to and from such Owner's Condominium Unit provided the shortest route to and from a public road is used. No repair work shall be done on the Property on any vehicles, including passenger automobiles.

(m) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Areas, except with express written permission from the Board and if such permission is granted such Owner shall be obligated to maintain any such trees or landscaping.

(n) No Owner shall be allowed to place or cause to be placed in the lobbies, vestibules, stairways, hallways or areas of a similar nature and used for a similar purpose, both Common Areas and Limited Areas, any furniture, packages or objects of any kind, without the consent of the Board of Directors.

(o) All garbage, trash and refuse shall be deposited only in covered sanitary containers, shall be regularly removed from the premises and shall not be allowed to accumulate. Such containers shall be kept in a garage, except that such containers may be placed at the curb no earlier than dusk on the evening before the scheduled pick-up and shall be returned to the garage within twelve (12) hours of such pick-up. No open fires shall be permitted on any part of the Property other than fires in charcoal grills or other similar devices located within the Limited Common Areas.

(p) Common Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(q) No Owner may rent or lease his Condominium Unit for transient or hotel purposes.

(r) Any Owner who leases a Condominium Unit shall lease the entire Condominium Unit and shall have a written lease with a term of at least six (6) months and such lease shall provide that the lease is subject to the provisions of the Declaration, the By-Laws and the Rules and Regulations as adopted by the Board and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. A copy of the lease shall be delivered to the Corporation or Managing Agent.

Section 6.02. Compliance with Covenants, Conditions and Restrictions. Every Owner, mortgagee, lessee or other occupant of a Condominium Unit shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the By-Laws and with the Rules and Regulations in relation to the use and operation of the Tract. A violation committed by any persons residing in, occupying or visiting a Condominium Unit at the behest or with the implied or express permission of the Owner or any other occupant of the Condominium Unit, or committed by any agent, employee, business invitee, or contractor of the Owner or of any person occupying a Condominium Unit, shall be attributed to that Condominium Unit and the Owner thereof. Failure to comply with any of said covenants, conditions and/or restrictions shall be grounds for withdrawal by the Board of Directors of privileges with respect to the use of any of the Common Areas by any defaulting Owner and by his tenants, invitees, guests and all members of his family and/or his tenant's family. The Board may also prohibit any Owner from entering into any new lease of his Condominium Unit with anyone so long as he is in default in the performance of any of his obligations under the Declaration, By-Laws, or Rules and Regulations. An action seeking a declaratory judgment, the recovery of sums due for damages, or injunctive relief, or any or all of them may be maintained by any interested party against any Owner, or any person entitled to occupy a Condominium

Unit who refuses to comply or threatens to refuse to comply with any provisions of this Declaration, the By-Laws, the Rules and Regulations, or any other document establishing ownership or control over any part of the Tract. One or more Owners may bring a class action on behalf of all Owners.

After giving not less than 10 days prior written notice to an Owner who has not complied, and after giving such party the opportunity to be heard by the Board of Directors, the Board of Directors shall have the right to impose a fine of not more than \$100 for the second violation attributable to a particular owner in a calendar year against that Owner and the Condominium Unit in which such Owner holds an ownership interest. For a third violation attributable to the same Owner in the same calendar year (whether or not this third violation involves the same term or provision of the above-described condominium instruments as the first or second violations), the Board of Directors, after giving the above-described notice and opportunity to be heard, may levy a fine against that Owner and the Condominium Unit in which such Owner holds an ownership interest in an amount not in excess of \$200. For the fourth and every subsequent such violation of said condominium instruments by the same Owner in the same calendar year (whether these violations involve the same provisions as the previous violations), the Board of Directors, after giving the above-described notice and opportunity to be heard, may levy a fine against that Owner and the Condominium Unit in which such Owner holds an ownership interest in double the amount of the fine for the immediately preceding violation in that calendar year.

All fines described above, any fines imposed by the Board of Directors and any and all expenses incurred by the Corporation in enforcing any of the terms and provisions of the condominium instruments,

including reasonable attorney's fees, may be levied as a special assessment against the Owner in question and his Condominium Unit.

Any action brought by the Corporation hereunder may be brought in its own name, in the name of its Board of Directors or in the name of the Managing Agent. In any case of flagrant or repeated violation by an Owner, he may be required by the Board of Directors to give sufficient surety or sureties for his future compliance with the covenants, conditions and restrictions contained in this Declaration and with the By-Laws and Rules and Regulations.

Section 6.03. Right of Entry. All Owners and occupants of a Condominium Unit shall be deemed to have granted the right of entry thereto to the Managing Agent or any other person authorized by the Board in case of any emergency originating in or threatening his Condominium Unit or the Building in which it is located, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter his Condominium Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

Section 6.04. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operating of the Property, including but not limited to the use of the Common Areas and Limited Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

ARTICLE VII Amendment to By-Laws

Section 7.01. Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these By-Laws may be amended in the same manner, and subject to the same limitations and requirements, as amendments to the Declaration, as set forth in paragraph 18 of the Declaration. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Hamilton County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these By-Laws prior to the Applicable Date without the consent and approval of Declarant.

ARTICLE VIII Mortgages

Section 8.01. Notice to Association. Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws or the Act shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration, these By-Laws or the Act shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled

by virtue of the Declaration, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Declaration or these By-Laws which is not cured within thirty (30) days. Any Mortgagee shall have the right to inspect the books and records of the Corporation during normal business hours.

A guarantor or insurer of a Mortgage may, upon written request to the Corporation giving the Corporation its name and address, receive from the Corporation any notice that would be given to a Mortgagee.

Section 8.02. 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 Condominium Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Condominium Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Condominium Unit shall not be liable for nor shall the Condominium Unit conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 5.03 hereof.

ARTICLE IX Miscellaneous

Section 9.01. Fiscal year. The fiscal year of the Corporation shall be the calendar year.

Section 9.02. Membership Certificates. Each member of the Corporation shall receive a certificate from the Corporation, signed by the president or vice-president, and secretary or assistant secretary thereof, stating that he is a member of the Corporation. Such certificates shall be non-transferable and a member's certificate shall become void and of no force and effect upon sale by a member of his Condominium Unit. Such membership certificates shall be in a form and style determined by the Board.

Section 9.03. Personal Interests. No member of the Corporation shall have or receive any earnings from the Corporation as a result of being an officer or director of the Corporation except a member may receive principal and interest on moneys loaned or advanced to the Corporation as provided in the Statute.

Section 9.04. Contracts, Checks, Notes, Etc. All contracts and agreements entered into by the Corporation and all checks, drafts and bills of exchange and orders for the payment of money shall, in the conduct of the ordinary course of business of the Corporation, unless otherwise directed by the Board of Directors, or unless otherwise required by law, be signed by the President or in his absence the Treasurer. Any one of the documents heretofore mentioned in this section for use outside the ordinary course of business of the Corporation or any notes or bonds of the Corporation shall be executed by and require the signature of the President and Secretary.

Section 9.05. Financial Statement. Upon the written request from any entity that has an interest or prospective interest in any Condominium Unit, the Corporation shall prepare and furnish to such entity

within a reasonable time an audited financial statement of the Corporation for the immediately preceding fiscal year.

This instrument prepared by Philip A. Nicely, Attorney-at-Law, Bose McKinney & Evans, LLP, 8888 Keystone Crossing, Suite 1500, Indianapolis, Indiana 46240.

16.00
4
2.00
none

**FIRST AMENDMENT TO CODE OF BY-LAWS OF
MUIR WOODS HORIZONTAL PROPERTY REGIME AND OF
MUIR WOODS HOMEOWNERS ASSOCIATION, INC.**

This First Amendment is made this 12th day of March, 2001, by Hills Communities, Inc., an Ohio corporation ("Declarant").

200100021799
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
04-23-2001 03:36 pm.
AMENDMENT 16.00

WITNESSETH:

WHEREAS, the following facts are true:

A. On September 29, 1999, Declarant filed of record in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 199909957249, a Declaration of Horizontal Property Ownership for Muir Woods Horizontal Property Regime (the "Declaration").

B. The Declarant has also recorded n the office of the Recorder of Hamilton County, Indiana the following documents: Supplemental Declaration recorded on February 18, 2000 as Instrument No. 20007663, Supplemental Declaration recorded on May 19, 2000 as Instrument No. 20002431, Supplemental Declaration recorded on December 15, 2000 as Instrument No. 200062120, Supplemental Declaration recorded on January 25, 2001 as Instrument No. 20013850 and Supplemental Declaration recorded on March 2, 2001 as instrument No. 200110481 (the Supplemental Declarations and the Declaration shall hereafter collectively be referred to as the "Declaration").

C. The Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc. ("By-Laws") was adopted and made a part of the Declaration and recorded with the Declaration.

D. Declarant wishes to amend the By-Laws to change the date of the annual meeting and to change the percentage of the assessments which is designated as a reserve fund.

E. Declarant is executing this First Amendment pursuant to Section 7.01 of the By-Laws and Paragraph 18(g) of the Declaration.

NOW THEREFORE, the By-Laws are amended to read as follows:

1. Section 2.02 of the By-Laws is amended to read as follows:

The annual meeting of the members of the Corporation shall be held during the fourth quarter of each calendar year. At the annual meeting, the Owners shall (subject to the provisions of Section 3.02

hereof) elect the Board of Directors of the Corporation in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

2. Section 5.06 of the By-Laws is amended to read as follows:

The purpose of this section is to provide for the maintenance and upkeep of Muir Woods and for the payment of the Common Expenses during the period prior to the Applicable Date. Accordingly, and notwithstanding any other provision contained in the Declaration, these By-Laws, the Act or otherwise, prior to the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established solely by the Initial Board.

Payment of the Regular Assessments prior to the Applicable Date with respect to each Condominium Unit (including those owned by Declarant) shall commence on the date of the conveyance of the first Condominium Unit to a new Owner. In addition, at the initial closing of each Condominium Unit, the purchaser or new Owner is required to pay a sum equal to the full Regular Assessment applicable to such Condominium Unit for two months as his initial contribution to the working capital of the Corporation. Such amounts shall be used by the Corporation for Common Expenses. This amount is not an advance payment of Regular Assessments and will not be held in any trust or reserve account. Additionally, at each closing, the purchaser of a Condominium Unit shall pay his pro rata share of the Regular Assessment due in the month of closing. Thereafter, payment of the Regular Assessment shall be made on the first day of each calendar month.

Twenty percent (20%) of the Regular Assessment paid prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by the Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and, if required, applied to the replacement of the Property. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

It is understood that Declarant shall be obligated to pay that portion of the Regular Assessment applicable to an unoccupied Condominium

Unit for those Condominium Units which Declarant owns and which are in those portions of Muir Woods which from time to time have been submitted by Declarant to the Declaration.

3. All capitalized terms not defined herein shall be defined as set forth in the By-Laws and Declaration as applicable. To the extent not amended by this First Amendment, all other terms, provisions and conditions of the By-Laws remain the same.

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc. to be executed the day and year first above written.

HILLS COMMUNITIES, INC.

By: *Stephen Guttman, Pres.*

Printed: Stephen Guttman, President

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON_)

Before me, a Notary Public in and for said County and State, personally appeared Stephen Guttman, by me known to be the President of Hills Communities, Inc., an Ohio corporation, who acknowledged the execution of the foregoing "First Amendment to Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc." on behalf of said corporation.

WITNESS my hand and Seal this 19th day of march, 2001.



AMY L. HOWARD
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JUNE 18, 2001

Amy L. Howard
Notary Public

Amy L. Howard
(Printed Signature)

My Commission Expires:

June 18, 2001

My County of Residence:

Hamilton

This instrument prepared by and after recording return to Tammy K. Haney, BOSE
McKINNEY & EVANS LLP, 600 East 96th St., Suite 500, Indianapolis, IN. 46240

200100021800
Filed for Record in
HAMILTON COUNTY, INDIANA
MARY L CLARK
04-23-2001 03:36 pm.
AMENDMENT 90.00

90.00
41
200 none

**FIRST AMENDMENT TO DECLARATION OF
HORIZONTAL PROPERTY OWNERSHIP FOR
MUIR WOODS HORIZONTAL PROPERTY REGIME**

This First Amendment is made this 4th day of April, 2001 by Hills Communities, Inc., an Ohio corporation ("Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. On September 29, 1999, Declarant filed a record in the office of the Recorder of Hamilton County, Indiana as Instrument No. 199909957249, a Declaration of Horizontal Property Ownership for Muir Woods Horizontal Property Regime (the "Declaration").

B. The Declarant has also recorded in the Office of the Recorder of Hamilton County, Indiana the following documents: Supplemental Declaration recorded on February 18, 2000 as Instrument No. 20007663, Supplemental Declaration recorded on May 19, 2000 as Instrument No. 20002431, Supplemental Declaration recorded on December 15, 2000 as Instrument No. 200062120, Supplemental Declaration recorded on January 25, 2001 as Instrument No. 20013850 and Supplemental Declaration recorded on March 2, 2001 as Instrument No. 200110481 (the Supplemental Declarations and the Declaration shall hereafter collectively be referred to as the "Declaration").

C. Declarant desires to amend the Declaration to add a specific reference to certain sewer related agreements which affect the Tract.

D. Declarant is executing this First Amendment pursuant to Paragraph 18(g) of the Declaration.

NOW THEREFORE, the Declaration is amended to read as follows:

1. Paragraph 13 of the Declaration is amended to read as follows:

Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his own Condominium Unit and to the extent provided in this Declaration or the By-Laws for the Limited Areas reserved for his use. Each Owner shall repair any defect occurring in his Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Area. Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas shall be furnished by the Corporation as part of the

Common Expenses, except as otherwise provided herein or in the By-Laws.

The Board of Directors shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate. Notwithstanding the foregoing, the Board of Directors shall comply with and be bound by the terms and conditions of (i) that Special Contract for Extension of Sewer Mains and Facilities for Muir Woods dated May 14, 1998, by and between Hamilton Southeastern Utilities, Inc., Hills Communities, Inc., and Muir Woods Homeowners Association, Inc., a copy of which is attached to this First Amendment as Exhibit A; (ii) that certain Operation, Maintenance and Replacement Contract Local Collection System for Muir Woods, by and among Hills Communities, Inc., Muir Woods Homeowners Association, Inc. and Sanitary Management and Engineering Company, Inc., a copy of which is attached to this First Amendment as Exhibit B and (iii) that certain Waiver of Responsibility by and between Hamilton Southeastern Utilities, Inc., Hills Communities, Inc. and Muir Woods Homeowners Association recorded on February 2, 1999 as Instrument No. 99-7450 in the Office of the Recorder of Hamilton County, Indiana.

The Board of Directors or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in the cases of emergency in which case no notice shall be required), to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

2. All capitalized terms not defined herein shall be defined as set forth in the Declaration. To the extent not amended by this First Amendment, all other terms, provisions and conditions of the Declaration remain the same.

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

HILLS COMMUNITIES, INC.

By: 
Printed: Stephen Guitman, President

EXHIBIT A

HAMILTON SOUTHEASTERN UTILITIES, INC.

SPECIAL CONTRACT FOR EXTENSION
OF SEWER MAINS AND FACILITIES

MUIR WOODS

THIS SPECIAL CONTRACT FOR EXTENSION OF SEWER MAINS AND FACILITIES ("Contract"), executed as of this 14th day of May, 1998, by and between Hamilton Southeastern Utilities, Inc. (the "Utility"), an Indiana Corporation and a public utility regulated by the Indiana Utility Regulatory Commission (the "Commission"), Hills Communities, Inc., an Ohio corporation (the "Subscriber"), and Muir Woods Homeowners Association, Inc., an Indiana non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, Subscriber owns or has the option to purchase real estate located in Delaware Township of Hamilton County, Indiana located on the south side of 106th Street, approximately 1,300 feet east of the intersection of Lantern Road and 106th Street, and commonly known as the Muir Woods Development, more particularly described on Exhibit A attached hereto and made a part hereof (all such real estate whether or not in separate parcels is herein referred to as the "Development" or as "Muir Woods");

WHEREAS, Subscriber intends to develop or cause Muir Woods to be developed into a condominium project ultimately consisting of one hundred seventy-two (172) equivalent dwelling units ("EDU") and related common facilities (the "Development"), subject to condominium ownership under the provisions of the Indiana Horizontal Property Law (I.C. 32-1-6-1), all in accordance with the site plan for the Development attached hereto as Exhibit B (the "Site Plan");

WHEREAS, the Utility is a public utility as determined by the Commission and has been granted a Certificate of Territorial Authority or indeterminate permit ("C.T.A.") by the Commission to provide sanitary sewage disposal service to the area in which the Development is to be located;

WHEREAS, the Subscriber has requested the Utility to extend sewer mains and facilities of its sewage disposal system in Hamilton County, Indiana, in order to provide sanitary sewage disposal service to the Development;

WHEREAS, the Subscriber has submitted Preliminary Plan Review ("PPR") forms to the Utility accompanied by the PPR fees for one hundred seventy-five EDUS;

WHEREAS, the parties acknowledge that this Contract and the extension of sanitary sewage disposal service hereunder arises out of circumstances which are abnormal and out of the ordinary (due, in part, to the substantially undeveloped nature of the area in which the Development is to be located, the substantial development proposed by the Subscriber requiring an extensive collection system and the fact that there heretofore has existed no sanitary sewage

disposal service in said area), and the parties desire to provide for the extension of such service by special contract pursuant to 170 IAC 8.5-4-39, upon the terms and conditions herein provided;

WHEREAS, the Utility is willing to provide such sanitary sewage disposal services and capacity as aforesaid, provided, however, that the Utility is guaranteed PPR Fees, Contribution Fees, Connection Fees, System Contributions, and monthly sewer service fees from the Subscriber and the Association in amounts and upon the terms and conditions herein set forth;

WHEREAS, the Utility recognizes the area within its C.T.A. is experiencing extremely rapid growth, creating unusually high demand for sanitary sewage disposal service; and

WHEREAS, the Utility wishes to cooperate with Subscriber and others in its C.T.A. area and is willing, on a trial basis, to allow Subscriber and other developers to construct extensions of the Utility's sewer mains and facilities by private contract with contractors approved by the Utility,

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements to be kept and performed hereunder, including the aforesaid recitals which shall be incorporated herein by reference and construed as terms of this Contract with full force and effect equal to the following terms, the parties hereto agree as follows:

1. Application for Service The Subscriber hereby applies to the Utility for sanitary sewage disposal service sufficient to satisfy the demands, as projected by the Subscriber, of the Development, as set forth in this Contract, and requests such service from the Utility in accordance with the Utility's tariffs as approved by the Commission from time to time and in effect, the rules and regulations of the Commission, the rules and regulations of the Utility, and the laws of the state of Indiana. The Utility hereby agrees to provide such sanitary sewage disposal service subject to such rules, regulations, laws and the terms and conditions of this Contract.

2. Construction of the Local Collection System

a. Local Collection System Plans and Specifications The Subscriber shall design, construct and install, at Subscriber's expense, an extension of the Utility's sewer mains and facilities within and outside the Development (the "Local Collection System") as depicted on the construction plans for the Local Collection System (the "Local Plans"). The parties agree that the Local Plans shall be prepared by an engineering firm approved by the Utility, at the Subscriber's expense, prior to construction of the Local Collection System. The parties acknowledge that the Development, and therefore the Local Collection System, may be constructed in phases. The Local Plans for each phase of the Local Collection System shall be acceptable to the utility, and must be submitted to, and approved by, the Utility prior to construction of the respective phase of the Local Collection System. Upon approval by the Utility, the Local Plans shall become a part of this Contract.

b. Local Collection System Off-Site Connection Points The parties agree that the Local Collection System shall connect to the Utility's sewer system at two points in Wellington Place Development. The first point of connection shall be at manhole #WA-2-155.00. The second point of connection shall be at manhole #WG-3-060.00. Both points of connection are more clearly depicted on the attached Exhibit C. All manhole numbers referenced in this paragraph 2b and on Exhibit C are the numbers assigned to the manholes by the Utility's Geographic Information System as of May 1998. Previous plats, site

SENT BY:

plans, or construction plans may have identified the above manholes by different numbering.

c. Permits and Easements. The Subscriber agrees to provide to the Utility, or assist the Utility in obtaining, all permits and easements or other rights-of-way necessary to construct the Local Collection System in accordance with the Local Plans. The costs to obtain such permits, easements or rights-of-way shall be paid for by the Subscriber. The easements for the Local Collection System shall be provided in substantially the same form as the easement attached hereto as Exhibit D.

d. Compliance with Plans and Specifications. The Subscriber agrees to design, construct and install the Local Collection System and each phase thereof in accordance with the Utility's Design Specifications, Construction Specifications, Details, Completion Specifications, Standards for Design and Construction of Building Sewers (Laterals), and Maintenance Specifications for Sanitary Sewer Facilities (together the "Standards and Specifications"), as may be amended from time to time, and in accordance with the Local Plans, as applicable. Subscriber agrees and acknowledges that the Local Plans and the Standards and Specifications for the Local Collection System, or any phase thereof, must be submitted to and approved by applicable regulatory agencies or other governmental bodies prior to commencing construction and installation of the Local Collection System, or any phase thereof.

e. Approved Contractors. The Subscriber agrees to use one or more of the following contractors approved by the Utility to construct the Local Collection System: R.N. Thompson Company, Bowen Engineering, Ray Harvey Construction Company, Valenti-Held, Inc., Central Engineering, Poindexter Excavating Company, or Weihe Construction, Inc.. The Utility reserves the right to revoke approval of contractors, if in the opinion of the Utility, construction performed by an approved contractor does not conform to the Utility's Standards and Specifications.

f. Design and Consultation Costs. The Subscriber covenants and agrees to pay to the Utility, or the Utility's agent or engineer, any costs for design, redesign, or consultation which may be incurred by the Utility, or the Utility's agent or engineer in connection with construction of the Local Collection System or any phase thereof, prior to or during construction.

g. Maintenance Bond and Testing. Upon substantial completion of construction of the Local Collection System or any phase thereof, and subsequent to satisfactory performance of infiltration tests and/or low pressure air tests and/or mandrel tests and/or vacuum tests, as specified in the Standards and Specifications, the Subscriber shall provide the Utility with a standard three (3) year Maintenance Bond substantially in the form attached hereto as Exhibit E, underwritten by suitable surety, which bond shall provide financial security to the Utility against faulty materials or improper workmanship respecting the construction and installation of the Local Collection System or the respective phase thereof. The Maintenance Bond shall be in an amount equal to ten percent (10%) of all construction costs of the Local Collection System or the respective phase thereof. During the three (3) year period, the Subscriber shall own and maintain the Local

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Collection System or the respective phase thereof and, as the owner, shall be responsible for all costs and expenses associated with repairing, operating, and maintaining the Local Collection System or the respective phase thereof, including but not limited to labor, materials, electrical power, taxes, emergency service and repair, and any and all other costs necessary to keep the same in proper working order. For so long as the Subscriber owns the Local Collection System or the respective phase or any portions thereof, the Subscriber agrees to enter into maintenance, repair, and emergency service contracts, with a firm selected by the Utility, to provide said maintenance, repair, and emergency services.

h. Inspection and Testing During construction, the Muir Woods Collection System shall be subject to daily inspection by the Utility or the Utility's agents in order to insure conformance to the Local Plans and Standards and Specifications as approved by the Utility. Subscriber agrees that all testing of sanitary sewers, as specified in the Standards and Specifications, shall be performed by the Utility, or the Utility's agents, at the Subscriber's expense. The Subscriber agrees that testing shall not be performed until after all other utility facilities (water, gas, electric, cable television, etc.) have been constructed and installed. The Subscriber covenants and agrees to pay to the Utility or to the Utility's agents, inspection fees equal to eight percent (8%) of the actual documented costs of constructing the Muir Woods Collection System, which inspection fees shall be paid monthly, or as otherwise approved by the Utility, as construction proceeds. To allow the Utility to determine inspection fees due and to properly account for the cost of the Local Collection System, the Subscriber shall provide the Utility with copies of all contracts, invoices, statements, material lists, payment requests, and any and all other documents pertaining to the construction of the Local Collection System and all respective phases hereof. Said documents shall be provided by the Subscriber on a monthly basis, or as otherwise approved by the Utility, as construction proceeds.

i. Sanitary Sewer Record Drawings. Upon completion of construction of the Local Collection System, or any phase thereof, the Utility will have prepared under its direction, but at Subscriber's expense, sanitary sewer record drawing plans ("Record Drawings"). The Utility's current schedule of Costs for Preparation of Sanitary Sewer Record Drawings is attached hereto as Exhibit E. The Utility reserves the right to increase or decrease the schedule of Costs for Preparation of Record Drawings at any time without prior notice to Subscriber.

j. Final Inspection Prior to Conveyance. Within six (6) months prior to the conveyance of the Local Collection System or any phase thereof, an inspection ("Final Inspection") of the Local Collection System or respective phase thereof shall be conducted by a firm selected by the Utility. The Final Inspection shall be conducted at the Subscriber's expense, and shall consist of walk-through and closed circuit television inspections of the Local Collection System or respective phase thereof. The purpose of the Final Inspection is to identify any defects in the Local Collection System or phase thereof which the Subscriber must rectify, at the Subscriber's expense, prior to conveyance. A Final Inspection may also consist of flow monitoring, smoke, infiltration, exfiltration, vacuum, low

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pressure air, pumping, or pressure (for force mains) testing or any other reasonable test to determine the quality of construction of the Local Collection System or respective phase thereof. The Utility's Engineer shall have the sole discretion as to the necessity of the optional tests. The Subscriber shall be notified of the date and time of the walk-through inspection so that the Subscriber or Subscriber's representative may attend. The Utility shall provide to the Subscriber a copy of the results of the Final Inspection and a list of any defects the Subscriber shall rectify prior to conveyance. Any defects shall be rectified by the Subscriber as directed by the Utility's Engineer. Further, the Local Collection System or phase thereof shall be cleaned, at the Subscriber's expense, a minimum of once prior to conveyance of the Local Collection System or phase thereof to the Utility. However, if all developments, lots, buildings, or facilities which will be served by the Local Collection System or respective phase thereof are not developed or connected to the Local Collection System or phase thereof within three (3) months prior to conveyance, the minimum one cleaning above may be delayed, as determined by the Utility's Engineer, for a period of time not to exceed three (3) years. If cleaning of Local Collection System or respective phase thereof is delayed and the Local Collection System or respective phase thereof is conveyed to the Utility prior to cleaning, the Subscriber shall nonetheless remain responsible for the above cleaning costs, conveyance of the Local Collection System or respective phase thereof notwithstanding. To secure the payment of the above costs, the Subscriber shall, if required by the Utility, make a cash deposit in an amount equal to the estimated costs for the above cleaning, plus ten percent (10%). All cleaning shall be performed by use of a jet-rodder with vacuor truck. Subscriber shall be notified by the Utility prior to cleaning of the Local Collection System or respective phase thereof.

k. **Conveyance.** Upon the expiration of the three (3) year period starting from the date of substantial completion of construction and satisfactory performance of all testing provided in paragraphs 2g and 2h hereof on the Local Collection System or any phase thereof, the Subscriber shall convey to Utility all of Subscriber's rights, title, and interest in the portions of the Local Collection System, or the respective phase thereof, located within public rights-of-way, platted utility easements or easements granted to or assigned to the Utility, which conveyance shall at that date be treated as a "System Contribution." All other portions of the Local Collection System, or portions of the respective phase thereof, shall remain the property of the Subscriber, and the Subscriber shall be responsible for maintaining, repairing and replacing, if necessary, any portion of the Local Collection System located outside public rights-of-way, platted utility easements or easements granted to or assigned to the Utility. All System Contributions shall be treated as contributions-in-aid-of-construction. At the time of conveyance, the Subscriber shall deliver to the Utility such deeds, bills of sale, assignments, and other instruments of transfer as may be necessary to vest in the Utility all of the Subscriber's title to the facilities comprising the Local Collection System, or the respective phase thereof, located within public rights-of-way, platted utility easements or easements granted or assigned to the Utility, including, without limitation, a bill of sale in substantially the same form as the Bill of Sale attached hereto as Exhibit G. Thereafter, the portion of the Local Collection System or the respective phase thereof conveyed to the Utility, including all pipes, mains,

lift stations, service lines, meters, other equipment and apparatus, and the facilities which compose such portion of the Local Collection System or the respective phase thereof, or to which the same is or may be connected (except customers' appliances and outlets and that part, if any, of each service line which connects a customer's appliances or meter with the Utility's section of the service line), shall be and remain the sole property of the Utility, and the Utility shall be responsible for the maintenance and repair of the same. The Subscriber shall not, after the date on which the System Contribution is made, have any right of property in the portion of the Local Collection System or the respective phase thereof conveyed to the Utility, or any part thereof by reason of or on account of its having made a System Contribution, or by reason of or on account of its having furnished a part or all of the funds used in the purchase of materials and equipment for, or the employment of labor incident to, the construction of the Local Collection System or the respective phase thereof.

3. Capacity Reserved The Utility shall construct or approve the construction of the Local Collection System to provide reasonably adequate service to the Development as requested by the Subscriber. The Subscriber intends to construct one hundred seventy-two condominium units in the Development. As determined by the Utility, each condominium unit consists of one (1) EDU, resulting in an EDU allocation of one hundred seventy-two (172) EDUs. The Subscriber also proposes to construct a swimming pool, clubhouse and related facilities ("Clubhouse Facilities") estimated to consist of an additional four (4) EDUs. Because plans for the Clubhouse Facilities have not been reviewed and approved by the Utility, upon review by the Utility, the above EDU allocation of four (4) EDU may increase or decrease. Therefore, the Subscriber requests capacity, as presently calculated by the Subscriber, of approximately one hundred seventy-six (176) EDUs for present and future use in the Development (all as indicated in the Site Plan), and the Utility agrees to provide capacity to service those EDUs and to use reasonable efforts to ensure capacity is available when needed by the Subscriber. Such EDU calculations shall be subject to the review of the Utility, provided that approval thereof by the Utility shall in no way constitute a representation or assurance by the Utility that the calculations are correct or will be sufficient to service the actual needs of the Development. Should the capacity requested by the Subscriber prove insufficient or if the Site Plans are changed resulting in an increase in necessary capacity, upon reasonable determination by the Utility, the capacity requested shall be increased and the various fees, rates and charges herein shall be increased accordingly; and, to the extent that construction has already commenced, the Subscriber agrees to pay all costs of any necessary modifications, revisions, or additions to the Local Plans or to the facilities, plant and equipment to service such increased capacity for the Development, which payments shall be nonrefundable System Contributions.

4. Commencement of Construction Construction shall not be commenced on the Local Collection System, or any respective phase thereof, until:

a. The Subscriber has provided the Utility all information and authority reasonably requested by the Utility and/or required by this Contract, including exclusive easements, rights-of-way, licenses, permits or other authority which may be required for the construction of the Local Collection System or any phase thereof,

b. the exact line, grade and location of all streets and other routes for the Local Collection System has been established in the Local Plans or otherwise for construction of the Local Collection System or the applicable phase thereof,

- c. the Subscriber has submitted to the Utility completed PPR forms with accompanying fees;
- d. the Subscriber has paid to the Utility all fees, design costs, engineering costs, or any other amounts due and payable by the Subscriber hereunder at the time; and
- e. the Utility has approved in writing the Local Plans for construction of the Local Collection System or the applicable phase thereof.

If the Subscriber is unable to accomplish items 4a through 4e enumerated above within one (1) year after the date hereof, the Utility may, in its sole discretion, terminate any further obligation it may have under this Contract.

5. Tax on Contributions. If the receipt by Utility of any System Contribution, Contribution Fees or other payment by the Subscriber to the Utility (except monthly sewer service fees) shall result in income tax liability on the part of the Utility by virtue of a federal or state law that treats contributions-in-aid-of-construction as taxable income, the Subscriber shall pay or reimburse the Utility for such tax liability within thirty (30) days of the Utility's delivery of demand for such payment or reimbursement.

6. Contribution Fees.

a. Payment of Contribution Fees. The Subscriber covenants and agrees to unconditionally pay Contribution Fees to the Utility for the applicable EDUs within the Development in accordance with the provisions of this paragraph 6. Contribution Fees for the EDUs shall be payable upon completion of all testing referenced in paragraph 2g and 2h hereof.

b. Take or Pay Obligation. The Subscriber covenants and agrees to pay Contribution Fees for one hundred twenty-five (125) EDUs on a "take or pay basis," i.e., the Contribution Fees shall be paid to the Utility in accordance with the terms of this paragraph 6, but if the Subscriber does not pay Contribution Fees for a minimum of one hundred twenty-five (125) EDUs within three (3) years from the date of execution of this Contract, the Subscriber shall pay to the Utility the Contribution Fees for one hundred twenty-five (125) EDUs less the Contribution Fees previously paid by the Subscriber to the Utility pursuant to this paragraph 6.

c. Current Contribution and PPR Fees. At the time of execution of this Contract, the Utility's Contribution Fee is two thousand four hundred dollars (\$2,400.00) per EDU. The Utility's PPR fee is one hundred dollars (\$100.00) per EDU. The Utility reserves the right to increase the PPR or Contribution Fee on a system-wide basis at any time. Should the number of EDUs, or the necessary capacity to serve the Development, be increased pursuant to paragraph 3 hereof, the PPR, Contribution, Connection and monthly sewer service Fees shall be increased accordingly. In no event shall the Utility be required to refund to the Subscriber any Contribution Fees paid, or any other expenses incurred in connection with this Contract.

7. No Refunds Based Upon Other Main Extensions Notwithstanding any other provisions of this Contract, the Utility shall have the absolute right at any time, and from time to time, to construct and install other main extensions or lateral main extensions and appurtenant facilities of any nature connecting to the Local Collection System. The Subscriber and Association agree to provide to the Utility any additional easements necessary to provide the Utility with access to the

Local Collection System for the purpose of connecting such extensions and facilities to the Local Collection System. Neither the connection of any such other main extension or facility nor any service furnished by or from such other main extensions or facility shall be subject to or in any manner affect this Contract, and neither the Subscriber nor the Association shall be entitled to any refund of all or any portion of the System Contributions made hereunder by reason of the connection of such other main extensions or facilities, or connections for service therefrom.

8. Required Redesign, Relocation or Other Change Anything to the contrary herein notwithstanding, in the event of a change in the line and/or grade of streets or a change in other physical or topographical aspects of the property or area through which the Local Collection System has been constructed and, after Subscriber has completed construction of the Local Collection System or any phase thereof, the Utility shall have the right to determine whether any redesign, relocation, or other change is required and to compute the cost of such change. At the option of the Subscriber, the Subscriber shall either pay the computed cost of the change to the Utility so that the Utility can make the change required, or perform the work required for the change. In either event, the cost of the work performed shall be a System Contribution at the time of conveyance of the Local Collection System by Subscriber to the Utility, separate and apart from that specified in paragraph 2 hereof, and the Utility shall be entitled to receive from the Subscriber any additional costs which result for design and inspection. If, after 15 days notice to Subscriber, Subscriber has not commenced the work, the Utility may, in its sole discretion, determine to proceed with the work prior to receipt of the aforementioned System Contribution, and shall have the right to enforce collection of such System Contribution in accordance with the remedies as hereafter provided, and to pursue other legal or equitable remedies available to it, with attorney's fees, and to withhold service to the Development until such System Contribution is paid to it. In the event the Subscriber pays the cost of the change to the Utility so that the Utility can make the change required under this paragraph 8, the Utility shall make the change as the agent for the Subscriber and the Subscriber shall own such sewer mains or facilities for three (3) years after substantial completion of construction of same by the Utility and shall, at the end of the three (3) year period, convey such sewer mains or facilities to the Utility in accordance with the terms and provisions of this Contract relating to sewer mains and facilities constructed by the Subscriber.

9. Monthly Sewer Service Fees The Subscriber and the Association covenant and agree to unconditionally pay the monthly sewer service fees (currently \$33.55 per EDU per month) for each EDU within the Development, commencing at the time water service is connected to the Development. The Subscriber and the Association warrant that no connections will be made to any sewer line of the Utility without the Utility's connection permit having been obtained. The Association's obligation to pay monthly sewer fees for all condominium units and the Clubhouse Facilities within the Development shall continue for so long as the condominium units and Clubhouse Facilities remain connected to the Local Collection System. The Subscriber's obligation to pay monthly sewer fees for all condominium units and the Clubhouse Facilities within the Development shall continue until transfer of management of the Association occurs under the terms of the Muir Woods Condominium Declaration. The parties acknowledge that the intent of this paragraph 9 is that the Subscriber or the Association, rather than the individual owners of the condominiums within the Development, shall be billed directly by the Utility and be responsible for payment of all monthly sewer service fees for the condominium units and the Clubhouse Facilities. In the event the Subscriber or the Association becomes delinquent in the payment of monthly sewer service fees and the Utility has mailed disconnect notices for two (2)

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consecutive months or for any three (3) months within the preceding twelve (12) month period, or when service has been disconnected pursuant to the Utility's Rules and Regulations, the Subscriber or Association must deposit with the Utility an amount equal to two months of the expected monthly sewer service fees as security for the payment of monthly sewer service fees. Simultaneous with the execution of this Contract, and as additional security for the payment of monthly sewer service fees, Subscriber and Association shall execute in favor of the Utility a Sewer Service Agreement in the form attached hereto as Exhibit H (the "Service Agreement").

10. Connection Permits and Fees The Subscriber covenants and agrees to obtain a connection permit from the Utility and pay the Utility's connection fee ("Connection Fee") before connection of any condominium unit or the Clubhouse Facilities within the Development to the Local Collection System or any other sanitary sewer of the Utility. The Connection Fee is currently \$305.00 for each EDU. In no event shall the Utility be obligated to refund any Connection Fee paid. The Utility shall not be obligated to issue connection permits until: (i) the Subscriber has paid all PPR Fees, Contribution Fees, monthly sewer service fees, design or engineering costs, inspection costs, construction costs, or any other amount due at the time by the Subscriber hereunder and until the Subscriber has posted any bond required hereunder; (ii) the Subscriber has complied with all requirements contained in the Local Plans and the Standards and Specifications; and (iii) the contractor(s) selected by the Subscriber to construct the sewer mains or facilities herein has paid the Utility or the Utility's agents for all costs, including overtime charges, relating to the construction or inspection of construction of said sewer mains or facilities.

11. Oversizing of Sanitary Sewer Mains and/or Facilities At the Utility's option, any sanitary sewer mains and/or facilities within the Development may be oversized to meet future demands for service from areas outside the Development. The Subscriber agrees to construct all sewer mains and/or facilities to a size or capacity requested by the Utility. The Subscriber further agrees, at the Subscriber's expense, to terminate the above sewer mains and/or facilities at locations within and/or on the perimeter of the Development, as specified by the Utility, to facilitate access for said future service. The Subscriber further agrees to install, at the Subscriber's expense, service line stubs, lateral stubs or building sewer stubs at locations within the Development specified by the Utility to facilitate access for said future service. The Utility agrees to pay, in accordance with its guidelines, as applicable in the year in which any phase of construction commences, the costs required to oversize any gravity main, or in the situation where a force main system is utilized and permitted by the Utility, any force main and related pump station, to a size larger than that necessary to serve the Development, as determined by the Utility; provided, however, the Subscriber agrees to pay, if requested by the Utility, the costs required to oversize gravity mains up to a maximum size of ten inches (10") in diameter or, in the situation where a force main system is utilized and permitted by the Utility, a size (both force main and pump station) equivalent in capacity to a ten inch (10") gravity sewer main. The above oversizing costs shall not be paid by the Utility until the Local Collection System is conveyed to the Utility as provided in paragraph 2k hereof. However, notwithstanding the above, the Utility shall not pay for oversizing costs for an increase in main size due to grade or slope requirements as determined by the Utility's engineer.

12. Payment of Additional PPR, Contribution, Connection and Monthly Sewer Service Fees The Subscriber has paid or has agreed to pay PPR, Contribution, Connection and monthly sewer service Fees for one hundred seventy-six (176) EDU's of sanitary sewage disposal service. In the event that the Utility determines, at any time after execution of this Contract, that additional EDU's are required to serve the Development, the Utility may, in accordance with its guidelines,

require the Subscriber, its personal representatives, heirs, (if applicable), successors and assigns to unconditionally pay additional PPR, Contribution, Connection and monthly sewer service fees for each additional EDU it determines is required to serve the Development.

13. Inspection and Access to Sanitary Sewer Facilities After Construction. The Subscriber and Association agree that the Utility or the Utility's agents, shall have the right, so long as the Local Collection System remains connected to the Utility's mains and facilities, to enter the premises of the Development, including the interior of individual condominium units, for purposes of inspection of any sanitary sewer mains or facilities including service lines or building sewers. Inspection may consist of, but shall not be limited to, flow monitoring, dye testing, televising, smoke and all other testing methods as determined by the Utility's engineer. The Subscriber and Association agree to cooperate and assist the Utility with said inspection. The Utility agrees to provide at least three (3) working days notice to the Subscriber or Association prior to the inspection. The Utility agrees to indemnify and hold harmless the Subscriber or Association from any reasonable damages, claims, or liabilities arising from any loss, injury or damage caused to any person, firm, corporation or other entity, in, on or about the Development resulting from the Utility's or the Utility's agents negligence in entering the premises of the Development and performing such inspection.

14. Pavement, Lighting, Mounding, Landscaping, Water Features and Irrigation Systems. In order to insure that access to sanitary sewer mains or manholes is not restricted in the event repair or excavation is required, the Subscriber and Association agree that, as determined by the Utility's engineer:

- a. no paved or concrete driveways, parking areas, sidewalks, patios, or similar structures shall be constructed over or within one (1) foot horizontal distance of sanitary sewer manhole castings;
- b. no paved or concrete roads, streets or other thoroughfares shall be constructed over or within five (5) feet horizontal distance of sanitary sewer manhole castings;
- c. no light poles, street lights, or outdoor lights of any kind shall be constructed directly over or within ten (10) feet horizontal distance of sanitary sewer mains, laterals, building sewers or manholes;
- d. the toe of the slope of earthen mounding shall not be placed within ten (10) feet horizontal distance of sanitary sewer mains, laterals, building sewers or manholes;
- e. no trees, shrubbery or similar growths shall be planted, or allowed to grow, directly over or within ten (10) feet horizontal distance measured from the dripline of the planting to sanitary sewer mains, laterals, building sewers, or manholes;
- f. no lakes, ponds, or similar such water features shall be constructed over or within twenty (20) feet horizontal distance measured from top of bank to the centerline of sanitary sewer mains, laterals, building sewers or manholes; and
- g. no irrigation systems shall be constructed within twenty (20) feet horizontal distance of sanitary sewer mains, laterals, building sewers or manholes

15. Utility Warranties The Utility does hereby warrant that as the date of this Contract:

- a. the Utility is a corporation duly organized and validly existing under the laws of the state of Indiana, and Kendall W. Cochran has the requisite corporate authority to execute this Contract on behalf of the Utility;

b. when properly executed, this Contract will constitute a valid and binding obligation on the part of the Utility with respect to the performance of all actions required under this Contract; and

c. to the best of the Utility's knowledge and belief, the consummation of the transactions contemplated by this Contract and the performance of this Contract will not result in any breach of, or constitute any default under, any law, regulation or order of a governmental body or court having jurisdiction, any bank loan, credit agreement, or any other instrument to which the Utility is a party or by which it may be bound or affected.

16. Subscriber Warranties Subscriber does hereby warrant that as of the date of this Contract:

a. Subscriber is a corporation duly organized under the laws of the State of Ohio and authorized to do business in the State of Indiana, and Stephen Guttman has the legal capacity and authority to execute this Contract on behalf of Subscriber;

b. when properly executed, this Contract will constitute a valid and binding obligation on the part of Subscriber with respect to the performance of all actions required under this Contract; and

c. to the best of the Subscriber's knowledge and belief, the consummation of the transactions contemplated by this Contract and the performance of this Contract will not result in any breach of, or constitute any default under, any law, regulation or order of a governmental body or court having jurisdiction, any bank loan, credit agreement, or any other instrument to which Subscriber is a party or by which it may be bound or affected.

17. Association Warranties

a. Muir Woods Homeowners Association, Inc. is a corporation duly organized and validly existing under the laws of the State of Indiana and John Acklen, the President of Muir Woods Homeowners Association, Inc., has the requisite corporate authority to execute this contract on its behalf.

b. When properly executed, this Contract will constitute a valid and binding obligation on the part of Association, with respect to the performance of all actions required under this Contract.

c. To the best of the Association's knowledge and belief upon reasonable investigation, the consummation of the transactions contemplated by this Contract and the performance of this Contract will not result in any breach of, or constitute any default under, any law, regulation or order of a governmental body or court having jurisdiction, any bank loan, credit agreement, or any other instrument to which the Association is a party or by which it may be bound or affected.

18. Prior Agreements and Amendments. This Contract supersedes all previous understandings, either written or verbal, and, as of the effective date of this Contract constitutes the entire agreement between the parties, and no modifications or amendments of the terms herein contained shall be effective unless set forth in writing and signed by both parties.

19. Default by Subscriber Each of the following events by, or applicable to, the Subscriber shall constitute an "Event of Default" by the Subscriber:

a. failure for more than thirty (30) days to pay when due any PPR Fee, Inspection Fees, design costs, Contribution Fees, required deposits, Connection Fees, monthly sewer service fees, or any other amount payable by the Subscriber hereunder;

b. as to any Subscriber which is a party to this Contract and which is a corporation or partnership, the dissolution, or otherwise ceasing to maintain in effect the existence, qualification and authority, of any such Subscriber for more than thirty (30) days;

c. the failure to observe or perform any of the Subscriber's obligations under the other terms, covenants or conditions of this Contract; or the failure to observe and perform any and all obligations and provisions of the published rules and regulations of the Utility as approved by the Commission from time to time in effect, or the rules and regulations of the Commission from time to time in effect, or the laws of the state of Indiana as they pertain to sewage disposal service and all matters related thereto, which failure persists for more than thirty (30) days;

d. the filing by the Subscriber (or any one or more of its general partners, if a partnership) in any court pursuant to any statute, either of the United States or any state, of a petition for bankruptcy or insolvency, or for reorganization, or for an arrangement, or for the appointment of a receiver or trustee or similar official of all or a portion of such Subscriber's (or such partner's) property, or for the liquidation or winding-up of such Subscriber's (or such partner's) affairs; or an assignment by such Subscriber (or such partner) for the benefit of creditors;

e. the filing against the Subscriber (or any one or more of its general partners, if a partnership) in any court, pursuant to any statute, either of the United States or of any state, of a petition in bankruptcy or insolvency, or for reorganization, or for appointment of a receiver or trustee or similar official of all or a portion of such Subscriber's (or such partner's) property, or for the liquidation or winding-up of such Subscriber's (or such partner's) affairs, if within sixty (60) days after the commencement of any such proceeding, such petition or other action shall not have been dismissed or stayed;

f. abandonment of the Development for a period of one hundred eighty (180) days or more; or

g. the taking by any party of the interest of the Subscriber in the Development, or any part thereof, upon foreclosure, levy, execution, attachment or other process of law or equity, or any transfer in lieu thereof. Upon the occurrence of any uncured Event of Default under this Contract by the Subscriber, and after fifteen (15) days written notice to the Subscriber, the Utility may:

(1) accelerate the full unpaid balance of the aggregate indebtedness payable by Subscriber under this Contract;

(2) withhold its own performance hereunder, including, without limitation, ceasing any construction of sewer plant and facilities, or ceasing to reserve capacity as herein provided, or withholding the provision of sanitary sewage disposal service to the Subscriber's Development.

(3) collect from the Subscriber all costs and expenses, including attorneys', architects' and engineers' fees, incurred or suffered by the Utility in

connection with this Contract and the enforcement of the Utility's rights hereunder, and

(4) pursue any other legal or equitable remedy available for the enforcement of its rights hereunder. The remedies available to the Utility shall be cumulative and the exercise of any one or more remedies shall not preclude or waive the exercise of any other remedy or the later exercise of the same remedy.

20. **Indemnification** The Subscriber and Association hereby indemnify and hold harmless the Utility from any and all damages, claims, liens or liabilities whatsoever arising from any work performed, or accident or injury, or any other matter whatsoever, caused to any person, firm, corporation or other entity, in, on or about the Development resulting from or alleged to have resulted from the construction, operation, or maintenance of the Local Collection System or any phase thereof by the Subscriber or Association, or Subscriber's or Association's agents, employees, contractors or principals. The indemnification herein provided shall include, without limitation, all reasonable costs, attorneys' fees, expenses and liabilities incurred in connection with any such damages, claims, liens or liabilities or any action or proceeding brought thereon.

21. **Notice** All notices or other communications required to be given hereunder shall be given in writing and shall be deemed to have been fully given on the date delivered, if delivered personally, or on the date mailed, if mailed by first-class United States Postage, postage prepaid, to the following address:

The Utility:
Hamilton Southeastern Utilities, Inc.
11911 Lakeside Drive
Fishers, IN 46038

The Subscriber:
Hills Communities, Inc.
7420 Montgomery Road
Cincinnati, OH 45236

The Association:
Muir Woods
Homeowners Association, Inc.
9098 Muir Lane
Fishers, Indiana 46038

or such other address as the parties may by written notice specify. Notice delivered to the Subscriber's or Association's address above shall be deemed notice to the Subscriber or Association.

22. **Binding Effect: Assignment** The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit of the parties hereto, and to their respective successors and assigns. The Subscriber may not assign its rights, duties and obligations under this Contract to another person or entity, other than the Association, without the prior written approval of the Utility, which approval shall not be unreasonably withheld or delayed. Provided, however, that any assignment of this Contract to the Association (i) shall be an assignment of all rights and obligations hereunder; (ii) is subject to Subscriber's satisfaction of all obligations hereunder that are due to be performed and/or paid by Subscriber at the time of assignment; and (iii) is subject to Subscriber providing a copy of the assignment documentation to the Utility for the Utility's prior review and comment.

23. **No Waiver: Severability** The consent or waiver, express or implied, by the Utility to, or of any Event of Default or non-performance of, any matter hereunder shall not be construed as a consent or waiver to or of any other Event of Default or non-performance of the same or any

other matter. If any portion of this Contract is invalid or unenforceable under applicable law, the remaining portions of this Contract shall not be affected thereby and shall nonetheless remain valid and enforceable.

24. Compliance With Commission Rules and Regulations This Contract is entered into by the Utility and the Subscriber subject to the rules and regulations of the Commission and the laws of the State of Indiana.

25. Testimony Before Governmental Bodies In consideration for the promises made by the Utility herein, the Subscriber agrees not to intervene or support interests or actions contrary to that of the Utility before the Commission, the Town Council of Fishers, the Indiana Department of Environmental Management and any other agency or governmental body.

26. Governing Law This Contract shall be governed by and construed under the laws of the State of Indiana.

27. Captions Captions and headings in this Contract are for reference purposes only and do not define or limit the scope of any particular provisions.

28. Counterparts This Contract may be executed in one or more counterparts each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused their duly authorized representatives to execute, this Contract as of the date first written above.

"UTILITY"

HAMILTON SOUTHEASTERN UTILITIES, INC.

By: 
Kendall W. Cochran, President

"SUBSCRIBER"

HILLS COMMUNITIES, INC.

By: 
Stephen Guttman, President

"ASSOCIATION"

MUIR WOODS
HOMEOWNERS ASSOCIATION, INC.

By: 
John Acklen, President

Attachments:

- Exhibit A — Legal Description of the Subscriber's Real Estate
- Exhibit B — Site Plan
- Exhibit C — Local Collection System Points of Connection
- Exhibit D — Form of Easement
- Exhibit E — Form of Maintenance Bond
- Exhibit F — Costs for Preparation of Sanitary Sewer Record Drawings
- Exhibit G — Bill of Sale
- Exhibit H — Sewer Service Agreement

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EXHIBIT A
Legal Description of Subscriber's Real Estate
[attached]

OVERALL LAND DESCRIPTION

A part of the Northwest Quarter of Section 7, Township 17 North, Range 5 East, of the Second Principal Meridian, in Hamilton County, Indiana, more particularly described as follows:

Commencing at the northeast corner of the Northwest Quarter of said Section 7; thence South 00°37'27" West a distance of 1324.70 feet along the east line of said Northwest Quarter (said east line defined as between the North and South Quarter corners) to the northeast corner of a 10.00-acre tract of land described in Deed Record 299, page 232, as recorded in the Recorders Office of Hamilton County, Indiana, (all references to record information in the remainder of this description are found in said recorder's office) and the POINT OF BEGINNING; thence continuing South 00°37'27" West along said east line (defined at the line between the North and South Quarter corners a distance of 796.75 feet to the southeast corner of an 8.00-acre tract of land described in Deed Record 299, page 338; thence North 89°04'40" West along the south line of said 8.00-acre tract of land a distance of 741.04 feet to the center line of a 14-foot ingress-egress easement described in Deed Record 299, page 178, said point also being the southwest corner of said 8.00-acre tract of land; thence South 00°32'04" East along said center line a distance of 97.97 feet to the southwest corner of a 2.03-acre tract of land described in Instrument No. 9354034; thence South 89°04'34" East along the south line of said 2.03-acre tract of land a distance of 7.00 feet to the northwest corner of a 6.387-acre tract of land described in Instrument No. 9250480 said point also being on the easterly line of said 14-foot ingress-egress easement (the following five (5) courses are along the easterly line of said 14-foot ingress-egress easement); (1) thence South 00°32'04" East a distance of 69.18 feet to the point of curvature of a curve concave Westerly having a central angle of 44°04'38" and a radius of 91.48 feet; (2) thence Southerly along the arc of said curve a distance of 70.37 feet (said arc being subtended by a chord having a bearing of South 21°30'15" West and a length of 68.85 feet); (3) thence South 43°32'34" West a distance of 116.18 feet to the point of curvature of a curve concave Southeasterly having a central angle of 27°01'58" and a radius of 214.22 feet; (4) thence Southwesterly along the arc of said curve a distance of 101.07 feet (said arc being subtended by a chord having a bearing of South 30°01'35" West and a length of 100.14 feet); (5) thence South 16°30'36" West a distance of 140.37 feet (measured) (129.59 feet by Deed Record 299, page 179) to a point on the south line (defined as the line connecting the west Quarter corner of said section marked by a Harrison Marker and the center of said section as previously marked by a stone) of said Northwest Quarter Section as said south line was perpetuated by an agreement dated July 16, 1992, as instrument No. 9229926, said point also being on the north line of Covington Estates, Section Three, recorded in Plat Cabinet No. 1, Slide No. 480; thence North 88°48'19" West along said south line a distance of 1687.57 feet to the southwest corner of said Northwest Quarter; thence North 00°03'33" East along the west line of said Northwest Quarter a distance of 16.00 feet to the southwest corner of a 62.402-acre tract of land described in Instrument No. 9449029; thence parallel with the south line of said Northwest Quarter South 88°48'19" East along the south line of said 62.462-acre tract of land a distance of 1314.54 feet to a point on a line being 16.00 feet by parallel lines East of the west line of the Southeast Quarter of the Northwest Quarter of said Section 7 and being the southeast corner of said 62.402-acre tract of land; thence North 00°16'45" East along the east line of said 62.402 acre tract of land a distance of 1318.61 feet to a point on the south line of a 10.000-acre tract of land described in Deed Record 288, page 244; thence North 89°04'40" West along said south line a distance of 16.00 feet to the west line of the Northeast Quarter of said Section 7 and the southwest corner of said 10.000-acre tract of land; thence North 00°16'45" East along said west line a distance of 1326.57 feet to the northwest corner of said quarter quarter section; thence South 89°00'00" East (bearing taken from various deeds) along the north line of the Northwest Quarter of said Section 7 a distance of 328.54 feet to the northeast corner of said 10.000-acre tract of land; thence parallel with the west line of said quarter quarter section South 00°16'45" West along the east line of said 10.000-acre tract of land a distance of 1326.12 feet to the southeast corner of said 10.000-acre tract of land being on the north line of said 10.00 acre tract of land described in Deed Record 299, page 232; thence South 89°04'40" East along said north line a distance of 990.42 feet to the Point of Beginning. Containing 40.316 acres (1,756,166 sq. ft.), more or less.

PAV

NOTE

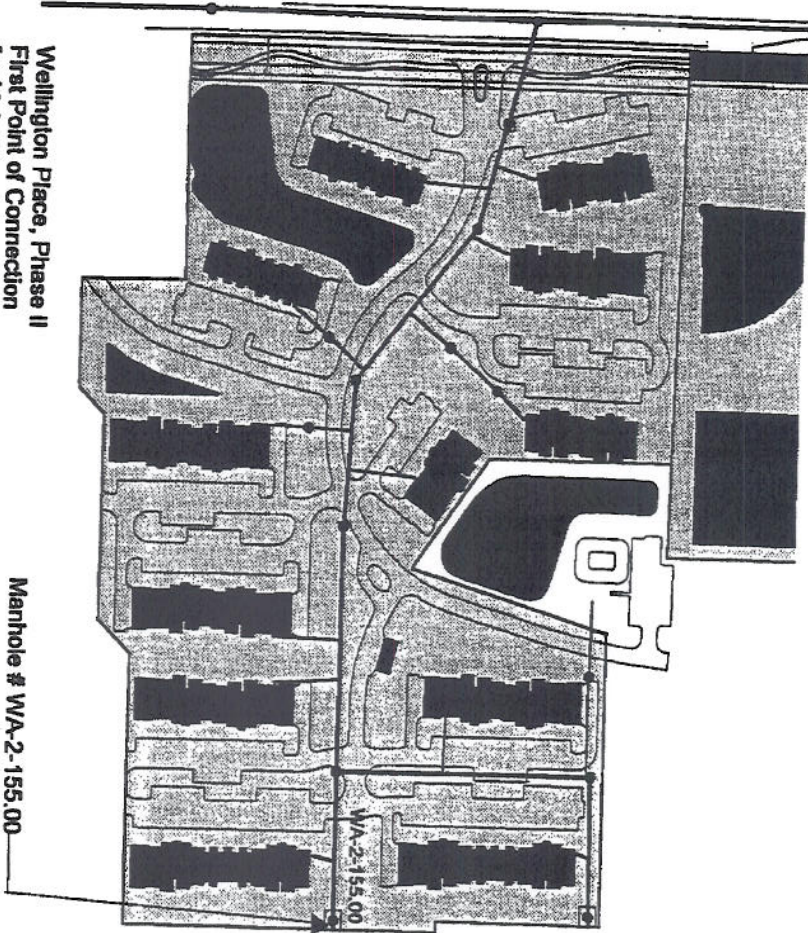
1. SEC
2. AL
WA
3. AL
AN
4. PA
CC
5. AL
AC
LA
6. SID
JOI
JOI
7. EXP
AN
8. ALL

EXHIBIT B
Site Plan
[attached]

Exhibit C

Special Contract Dated May 14, 1998
Between Hamilton Southeastern Utilities, Inc. and
Hills Communities, Inc.

Wellington Place, Phase II
First Point of Connection
for Mulr Woods Local
Collection System

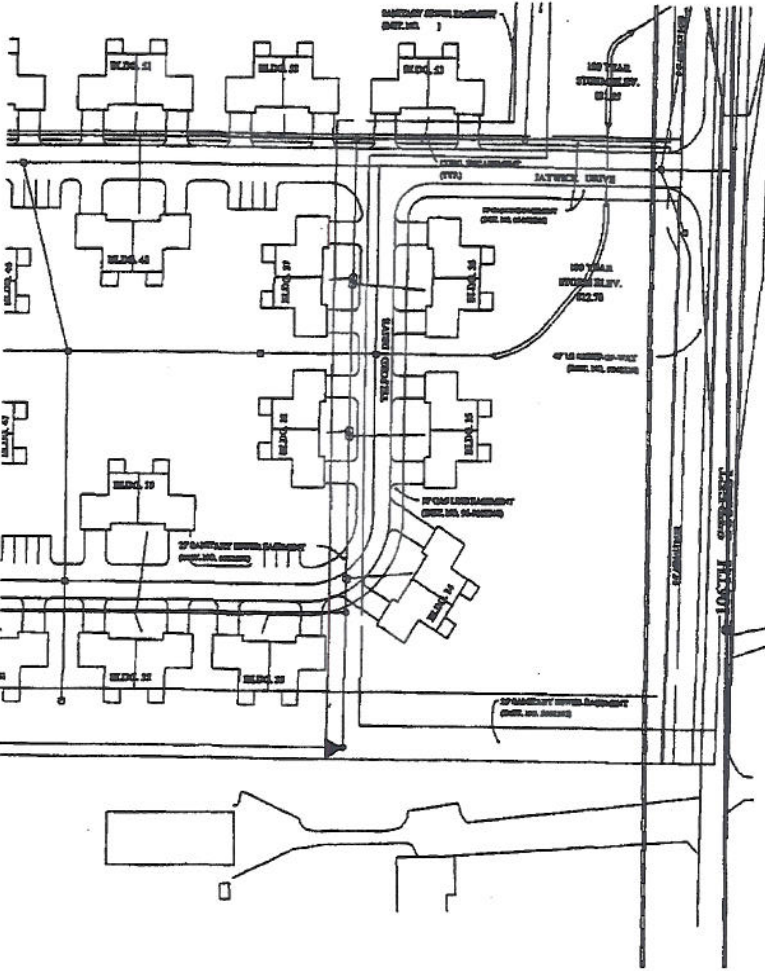


- Manholes
- Sewer Lines
- Laterals
- 4
- 6
- 8
- 10
- 12
- 15
- 18
- 21
- 24
- Interstate 69
- /// Easement Area Boundaries
- /// Easement Area Names
- /// Text - Easement Areas
- /// Southern Easements
- /// Miscellaneous Right-of-ways
- /// Pavement
- /// Facilities
- Lots
- Common Areas
- Water
- Other Areas
- Right-of-ways



Exhibit C - continued

Special Contract Dated May 14, 1998
 Between Hamilton Southeastern Utilities, Inc. and
 Hills Communities, Inc.



Wellington Place, Phase III
 Second Point of Connection
 for Mulr Woods Local
 Collection System

Manhole # WG-3-06-.00

- Wellingsd Ave
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- Interstate 69
- Easement Area Boundaries
- Easement Area Names
- Yard - Easement Areas
- Southern Easements
- Miscellaneous Right-of-ways
- Pavement
- Facilities
- Lots
- Leas
- Common Areas
- Water
- Other Areas
- Right-of-ways



EXHIBIT D

Form of Easement

This document is exempt from Sales Disclosure Form requirement of P.L. 63-1993 Section 2.

SEWER EASEMENT

This indenture witnesseth that:

HILLS COMMUNITIES, INC
2120 MONTGOMERY ROAD
CINCINNATI, OH 45236

of HAMILTON County, State of OHIO (hereinafter called "Grantor") for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, sell and convey to Hamilton-Southeastern Utilities, Inc., 11911 Lakeside Drive, Fishers, IN, 46038, (hereinafter called "Grantee") a permanent easement and right-of-way to place, construct, operate, control, maintain, reconstruct, relocate, change the size of, repair and remove sewer mains, pipes and conduits, all necessary or incidental auxiliary, or feeder, service mains, pipes or conduits, lift stations, manholes and other facilities, appliances, apparatus and structures convenient or proper for the purpose of rendering sewage disposal services (the "Sewer Facilities") along, under, through and across the entire parcel of Real Estate owned by the Grantor and situated in Hamilton County, State of Indiana, more particularly described on Exhibit(s) A+B attached hereto and made a part hereof ("Real Estate").

Access to the Real Estate over the adjoining lands of the Grantor, where necessary, is hereby granted to the Grantee, provided however, that wherever the Sewer Facilities are accessible from an adjoining public street or highway, the access shall be from such street or highway.

Grantor shall have the right to fully use and enjoy the Real Estate except for such use as may impair, impede or unreasonably interfere with the exercise by Grantee of the rights granted herein. Grantor shall not construct or permit to be constructed any house, structure, or obstruction (other than ground cover or pavement for driveway or parking purposes) on, over or interfering with the construction, maintenance or operation of any part of the Sewer Facilities. Further, Grantor agrees not to change the grade of earth covering the Sewer Facilities.

The Grantee may cut, trim, or remove any and all trees, shrubs, underbrush, bushes, saplings and other similar growths, now or hereafter growing upon or extending over the Real Estate, insofar as may be reasonably necessary, in the exercise by the Grantee, of any and all of the rights and authorities herein and hereby granted to Grantee. The exercise of this right by the Grantee shall not establish in the Grantor any right or claim for damages to such trees, shrubs, underbrush, bushes, lawns or gardens. Further, any damage to any private drives, pipe, tile or fences of the Grantor (other than ground cover or pavement for driveway or parking purposes installed after the date of execution of this Sewer Easement) caused by the construction, operation, maintenance or repair of the Sewer Facilities shall be repaired or replaced by the Grantee.

Grantor covenants that it will not hereafter convey any other conflicting easement or right within the area covered by this grant. Grantee, however, shall have full right and authority to assign or convey the easement hereby granted or any part thereof.

Grantee agrees to execute a release of this easement, of any portion hereof, if such easement, or portion, is included in a recorded subdivision plat, which plat contains an easement dedicated for sanitary sewer purposes which was, prior to recordation, approved in writing by Grantee.

The grants, covenants and stipulations hereto shall extend to and be binding upon the respective heirs, successors and assigns of the parties.

Grantor covenants that Grantor is the owner of and has the right, title and capacity to grant the easement granted herein.

The prior deed reference required by I.C. § 32-5-2-2 for the real estate burdened by the easement herein granted is recorded in the office of the Recorder of Hamilton County, Indiana, as Instrument No.

9809809426, 9809809430, 9809809434, 9809809438 & 9809809441

Executed this _____ day of _____, 19____ by "Grantor".

Printed Name

Printed Name

Signature and Title

Signature and Title

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared STEPHEN GUTTMAN who acknowledged the execution of the foregoing Sewer Easement, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 10th day of MAY, 1998.

Notary Public

(Printed Name)

Resident of _____ County

My Commission expires: _____

This instrument prepared by _____

Return recorded instrument to Hamilton-Southeastern Utilities, Inc., 11911 Lakeside Drive, Fishers, IN 46038.

EXHIBIT E



FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

HOME OFFICE: P.O. Box 1227, BALTIMORE, MD 21203

Maintenance Bond

KNOW ALL MEN BY THESE PRESENTS, that we Poindexter Excavating, Inc.
hereinafter

called Principal, as Principal, and Fidelity and Deposit Company of Maryland
 Colonial American Casualty and Surety Company, a corporation of the State of
Maryland, Baltimore, Maryland, hereinafter called Surety, as Surety, are held and firmly bound unto
Hamilton Southeastern Utilities, Inc.

hereinafter called Obligor in the sum of Four Thousand Five Hundred Three Dollars 10/100
(\$4,503.10) DOLLARS.

lawful money of the United States of America, to be paid to the said Obligor, or its successors or assigns, to the payment
of which sum well and truly to be made, we do bind ourselves, our heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

SIGNED, sealed and dated this 26th day of March, 19 97

WHEREAS, the Principal entered into a contract with the said Obligor, dated March 26, 1997
for Wellington Place Apartment, Phase 3 (Public)
Sanitary Sewers

and,
WHEREAS, the Obligor requires that these presents be executed on or before the final completion and acceptance of
said contract and

WHEREAS, said contract was completed and accepted on the 26th day of March, 19 97

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall remedy, without
cost to the Obligor, any defects which may develop during a period of Three Years
from the date of completion and acceptance of the work performed under the contract, caused by defective or inferior
materials or workmanship, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Attest:

[Signature]

POINDEXTER EXCAVATING, INC.

By: [Signature] Principal

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

Mary E Sharp
Mary E. Sharp

By: [Signature]
William E. Frick, Jr. - Attorney-in-Fact

Exhibit F

**Costs for Preparation of Sanitary Sewer
Record Drawings**

This schedule specifies the costs, as of June 1, 1997, for preparation of sanitary sewer record drawings for projects constructed within the HSE service area. Record drawings may be prepared either by HSE or an agent of HSE. Costs are subject to change at any time without notice.

Record drawings shall be prepared in accordance with HSE's "Sanitary Sewer Completion Specifications".

1. Standard Costs

- A. Residential Subdivision - \$255.00/manhole (min. \$510.00).
- B. Commercial/Apartments - \$375.00/manhole (min. \$750.00).
- C. Lift Station - \$500.00 each.
- D. Force Mains (minimum of \$750.00):
 - i. \$1100.00/1000 feet of force main - if HSE must physically survey each fitting.
 - or
 - ii. \$600.00/1000 feet of force main - if the Subscriber's construction contractor marks the location of each fitting and HSE can survey each fitting location during one site visit.
- E. Sanitary Sewer Main/Stub (greater than 20 feet) - \$400.00 each
- F. Road Bore (greater than 20 feet) - \$400.00 each
- G. Type 2 clean-outs - \$55.00 each.
- H. Air/Vacuum Relief or Clean-out Manholes on a Force Main - \$100.00 each
- I. Reproduction Costs:
 - i. \$10.00/mylar.
 - ii. \$1.50/blueline or Xerox.
- J. Manhole Core - \$200.00 each

Note: The existing tie-in manhole will be charged as one (1) manhole. The above costs are based on collecting data on a minimum of three gravity manhole structures per site visit.

2. Additional Costs

- A. To be performed on a Time and Materials basis with the following rates:
 - i. Project Manager - \$81.00 per hour.
 - ii. Project Engineer - \$70.00 per hour.
 - iii. Design Technician - \$67.00 per hour.
 - iv. Surveyor - \$60.00 per hour.
 - v. Researcher - \$60.00 per hour.
- B. Additional time to revise design engineer's Site Development plan or other required documents if the documents are not in compliance with HSE's "Sanitary Sewer Completion Specifications" as specified in sections 2.01 B (3) and (4) thereof.

- C. Additional work due to changes at a later date. For example, Certificates of Correction, amended plats, additional easements, address changes, raising or lowering top of castings, platting in phases, etc.
- D. Additional site visits as requested by the Subscriber or contractor.
- E. Additional site visits necessary due to removal of lateral markers, buried structures, etc.
- F. Preparation of record drawings for structures not constructed as approved by HSE.
- G. Preparation of record drawings for structures other than manholes, such as grit traps, grease traps, etc.

EXHIBIT G

Bill of Sale - Sewer Facilities

KNOW ALL MEN BY THESE PRESENTS, that HILLS COMMUNITIES, INC., an ^{Ohio} Indiana Corporation ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby bargains, sells, transfers, assigns, and sets over unto HAMILTON SOUTHEASTERN UTILITIES, INC., an Indiana corporation ("Grantee"), its successors and assigns, all of its right, title and interest in and to the sewer mains and facilities (the "Sewer Facilities") described in the sanitary sewer record drawing plans ("Record Drawings") attached hereto as Exhibit I and made a part hereof, including, whether or not set forth in the Record Drawings:

- (a) All sewer mains, pipes and conduits, lift stations, manholes, all necessary or incidental auxiliary, or feeder, service mains, pipes and conduits and other facilities, appliances, apparatus and structures convenient or proper for the purpose of rendering sewage disposal service;
- (b) All rights and records, including without limitation accounting records, relating to the installation, construction, acquisition, operation, maintenance, repair, inspection and renewal of the Sewer Facilities; and
- (c) All rights-of-way, licenses, contracts, permits and other rights and authority held by Grantor in connection with its ownership of the Sewer Facilities;

TO HAVE AND TO HOLD the Sewer Facilities, together with all incomes, revenues, rents, issues and profits thereof hereafter accruing unto Grantee, its successors and assigns, forever.

The Grantor hereby covenants with the Grantee that the Grantor is the lawful owner of, and has good and marketable title to, the Sewer Facilities for the use to which they are devoted; that the Sewer Facilities are free from encumbrances; that Grantor has the lawful right and capacity to transfer the Sewer Facilities; and that Grantor will warrant and defend the Sewer Facilities against the lawful claims and demands of all persons claiming by, through or under Grantor. The undersigned executing this Bill of Sale on behalf of Grantor represents and certifies that the undersigned is duly authorized and fully empowered to execute and deliver this Bill of Sale and that all necessary actions for the making of such conveyance has been taken and done.

The Grantor shall, upon demand by the Grantee, reimburse the Grantee for any tax liability incurred by the Grantee resulting at any time from the transfer of the Sewer Facilities.

It is understood wherever in this instrument reference is made to either of the parties hereto, it shall be held to include the successors and assigns of such party the same as if in each and every case so expressed.

IN WITNESS WHEREOF, _____ has executed this Bill of Sale - Sewer Facilities on this ____ day of _____, 19__.

GRANTOR

By _____

(Name)

(Title)

ATTEST:

EXHIBIT H

This document is exempt from Sales Disclosure Form requirement of P.L. 63-1993 Section 2.

SEWER SERVICE AGREEMENT

This SEWER SERVICE AGREEMENT ("Agreement"), made this 14th day of May, 1998, by and between Hamilton Southeastern Utilities, Inc. ("Utility"), an Indiana Corporation and a public utility regulated by the Indiana Utility Regulatory Commission ("Commission"), and Hills Communities, Inc., an Ohio corporation with its principal place of business at 7420 Montgomery Road, Cincinnati, Ohio 45236 ("Hills") and The Muir Woods Homeowners Association, Inc., an Indiana non-profit corporation with its principal place of business at 9098 Muir Lane, Fishers, Indiana 46038 ("Association").

WITNESSETH:

WHEREAS, Hills is the owner of or has the option to purchase certain real estate described in the attached Exhibit A, which description is incorporated herein by reference ("Real Estate");

WHEREAS, Hills has requested that Utility extend sewer mains and facilities of its sewage disposal system in Hamilton County, Indiana, in order to provide sanitary sewage disposal service to the Real Estate upon which Hills is constructing a condominium development consisting of approximately one hundred seventy-two (172) condominium units and a clubhouse facility (together, the "Development"), and Hills has submitted the Development to condominium ownership under the provisions of the Indiana Horizontal Property Law with such property being subject to the rights of the Association as set out in the Declaration of Horizontal Property Ownership for Muir Woods Horizontal Property Regime to be recorded in the Office of the Recorder of Hamilton County, Indiana;

WHEREAS, Hills and Association entered into a Special Contract for Extension of Sewer Mains and Facilities ("Special Contract"), dated May 14, 1998, relative to, among other things, the extension of Utility's sewer mains and facilities to the Real Estate, the grant of an easement(s) for such extensions, and the obligation of Hills and Association to pay monthly sewer service fees for sewer utility service provided by Utility;

WHEREAS, given the continuing obligation of Hills and Association to pay the monthly sewer service fees for all condominium units and the clubhouse facilities to be constructed on the Real Estate within the Development, Utility is desirous of providing for and securing payment of the monthly sewer service fees payable to Utility.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hills, Association and Utility, by their undersigned duly authorized agents, agree as follows:

premise **Section 1. Monthly Sewer Fees.** Hills and Association, jointly and severally, covenant and agree to unconditionally pay Utility monthly sewer service fees as reflected in Utility's tariff on file with the Commission (currently \$33.55 per equivalent dwelling unit ("EDU") per month) for each EDU connected within the Development. The parties agree and acknowledge that each condominium unit consists of 1.0 EDU. Payment of monthly sewer service fees to Utility for each EDU within the Development shall commence at the time water service is connected to the Development. Hills and Association warrant that no connections will be made to any sewer line without Utility's connection permit having been obtained. Hills's obligation to pay monthly sewer fees for all condominium units and clubhouse facilities within the Development shall continue until transfer of management of the Association occurs under the terms of the Declaration of Horizontal Property Ownership for Muir Woods Horizontal Property Regime, and the Association's obligation to pay monthly sewer fees for all condominium units and clubhouse facilities within the Development shall continue for so long as the condominium units and clubhouse facilities remain connected to the local sewer collection system within the Development (the "Sewer Facilities"). The parties acknowledge that individual residents of the Development shall not be billed by the Utility for payment of monthly sewer service fees; rather, Hills and Association shall remain solely responsible for payment of, and shall be billed monthly for, monthly sewer service fees for the Development.

Section 2. Access. The Utility's agents shall have access to the Sewer Facilities within the Development upon twenty-four (24) hour notice to the on-site manager of the Development, but nothing herein contained shall mean that Utility, during the period in which Utility does not own the local collection system within the Development, shall be required to inspect or examine, or in any way be responsible for the condition of the local collection system or other pipes or appurtenances on the Development premises.

Section 3. Security. Hills and Association, for themselves and their respective successors and assigns, hereby grant Utility a continuing lien against the Real Estate to secure the obligation of Hills and Association or their respective successors or assigns to pay monthly sewer service fees for sewer utility services provided to the Development by Utility. Utility hereby agrees that such lien shall be subordinate to and is hereby subordinated to the lien of all first mortgages.

Section 4. Payment of Indebtedness. Hills and Association shall pay when due all indebtedness secured by this Agreement, on the dates and in the amounts, respectively, as provided in the Special Contract or in this Agreement, without relief from valuation and appraisal laws, and with attorneys' fees. Interest shall accrue to the extent permitted by the Indiana Utility Regulatory Commission.

Section 5. Taxes and Assessments. Hills and Association shall pay all taxes or assessments levied or assessed against the Real Estate, or any part thereof, as and when the same become due and before penalties accrue.

Section 6. Default; Remedies of Utility. Upon default by Hills and/or Association in any payment provided for herein or in the Special Contract, or in the performance of any covenant or agreement of Hills and/or Association hereunder, or if Hills and/or Association shall abandon the Real Estate, or if a trustee or receiver shall be appointed for Hills and/or Association or for

any part of the Real Estate, except if said trustee or receiver is appointed in any bankruptcy action, then and in any such event, the entire indebtedness secured hereby shall become immediately due and payable at the option of Utility, without notice, and Utility may exercise any remedy it has at law or equity.

Section 7. Non-Waiver; Remedies Cumulative. No delay by Utility in the exercise of any of its rights hereunder shall preclude the exercise thereof so long as Hills and/or Association is in default hereunder, and no failure of Utility to exercise any of its rights hereunder shall preclude the exercise thereof in the event of a subsequent default by Hills and/or Association hereunder. Utility may enforce any one or more of its rights or remedies hereunder successively or concurrently.

Section 8. Extension; Reductions and Continued Liability. Utility at its option, may extend the time for the payment of the indebtedness, or reduce the payments thereon, or accept a note or notes therefor. No such extension, reduction or note shall affect the priority of the lien herein granted or impair the security hereof in any manner whatsoever, or release, discharge or affect in any manner the liability of Hills and Association to Utility.

Section 9. General Agreement of Parties. All rights and obligations hereunder shall extend to and be binding upon the several representatives, successors and assigns of the parties to this Agreement. When applicable, use of the singular form of any word also shall mean or apply to the plural and the masculine form shall mean and apply to the feminine or the neuter. The titles of the several paragraphs of this Agreement are for convenience only and do not define, limit or construe the contents of such paragraphs. This Agreement and the covenants herein contained shall run with and be binding upon the Real Estate. The Agreement shall be governed by and construed under the laws of the State of Indiana.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Sewer Service Agreement effective as of the date first above-written.

"UTILITY"

HAMILTON SOUTHEASTERN
UTILITIES, INC.

By _____
Kendall W. Cochran, President

"HILLS"

HILLS COMMUNITIES, INC.

By _____
Stephen Guttman, President

"ASSOCIATION"

MUIR WOODS
HOMEOWNERS ASSOCIATION, INC.

By _____
John Acklen, President

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Stephen Guttman, President of Hills Communities, Inc., who acknowledged the execution of the foregoing Sewer Service Agreement for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS MY HAND and Notarial Seal this ____ day of _____, 1998

My Commission Expires:

Notary Public - Written

My County of Residence:

Notary Public - Printed
NOTARY: AFFIX SEAL

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared John Acklen, President of Muir Woods Homeowners Association, Inc., who acknowledged the execution of the foregoing Sewer Service Agreement for and on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS MY HAND and Notarial Seal this ____ day of _____, 1998.

My Commission Expires:

Notary Public - Written

My County of Residence:

Notary Public - Printed
NOTARY: AFFIX SEAL

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Kendall W. Cochran, President of Hamilton Southeastern Utilities, Inc., who acknowledged the execution of the foregoing Sewer Service Agreement for and on behalf of said company, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS MY HAND and Notarial Seal this ____ day of _____, 1998.

My Commission Expires:

Notary Public - Written

My County of Residence:

Notary Public - Printed

NOTARY: AFFIX SEAL

This instrument prepared by: Robert B. Scott, Esq., McHALE, COOK & WELCH, p.c., 1100 Chamber of Commerce Building, 320 North Meridian Street, Indianapolis, Indiana 46204.

Return recorded instrument to: HAMILTON SOUTHEASTERN UTILITIES, INC., 11911 Lakeside Drive, Fishers, Indiana 46038

EXHIBIT B

MUIR WOODS
OPERATION, MAINTENANCE, AND REPLACEMENT CONTRACT
LOCAL COLLECTION SYSTEM

This agreement made and entered into on this 14th day of May, 1998 between

HILLS COMMUNITIES, INC.

7420 MONTGOMERY ROAD

CINCINNATI, OHIO 45236

MUIR WOODS HOMEOWNERS ASSOCIATION, INC.

9098 MUIR LANE

FISHERS, INDIANA 46038

(Together, hereinafter called Owner)

and

SANITARY MANAGEMENT & ENGINEERING COMPANY, INC.

3030 NORTH POST ROAD

INDIANAPOLIS, INDIANA 46226

(Hereinafter called SAMCO)

To perform the following professional services for the operation, maintenance and replacement ("O, M, and R") of the Owner's gravity sanitary sewers, manholes, and appurtenances ("Sewers") comprising the local collection system both within and outside the Muir Woods condominium development ("Development"). This maintenance contract shall commence upon substantial completion of the Sewers, and continue in effect as long as the Owner shall own the Sewers.

1. O, M, and R

The O, M, and R shall include the following:

- A. Sewers shall be cleaned at the Owner's expense on an "as needed" basis as determined by the Engineer for Hamilton Southeastern Utilities ("Engineer"). "As needed" shall be defined as complaints from customers or nearby residents concerning odors, or evidence of surcharging in manholes as witnessed by the SAMCO inspector.

Further, Sewers shall be cleaned, at the Owner's expense, a minimum of once prior to conveyance of the Sewers to Hamilton Southeastern Utilities, Inc. However, if all lots, buildings, or facilities which will be served by the Sewers are not developed or connected to the Sewers within three (3) months prior to conveyance, the minimum one cleaning above may be delayed, as determined by the Engineer, for a period of time not to exceed three (3) years. If cleaning is delayed, the Owner shall nonetheless remain responsible for the cost of the cleaning.

If cleaning of Sewers is delayed and the Sewers are conveyed to Hamilton Southeastern Utilities, Inc. prior to cleaning, the Owner shall nonetheless remain responsible for the above cleaning costs, conveyance of the Sewers notwithstanding. To secure the payment of the above costs, the Owner shall, if required by SAMCO, make a cash deposit in an amount equal to the estimated costs for the above cleaning, plus ten percent (10%).

All cleaning shall be performed by use of a jet-rodder with vactor truck. Owner shall be notified prior to any cleaning of Sewers.

Estimated Cost: \$ 110.00/hour (2 hour min) - (Approx 200 feet/hour)

- B. All sanitary Sewer manholes shall be visually inspected monthly for damage and infiltration/inflow.

Lump sum per manhole: 10 min/manhole per month (To be billed lump sum: 10 min/60 min/hr x total number of manholes within the Development X \$46.50/hour)

NOTE: When construction and final grading is completed within the Development, or the respective phase thereof, manholes shall be inspected semi-annually, rather than monthly. However, at the discretion of SAMCO, any manholes subject to damage by construction may continue to be inspected monthly regardless of whether construction and final grading is completed within the Development or the respective phase thereof.

- C. Prior to conveyance of legal title of the Sewers to Hamilton Southeastern Utilities, Inc., an inspection of the Sewers ("Final Inspection") shall be conducted by SAMCO. The Final Inspection shall be conducted within six (6) months prior to the date the Sewers are to be conveyed. The Final Inspection shall be conducted by SAMCO at the Owner's expense, and shall consist of walk-through and closed circuit television inspections of the Sewers. The purpose of the Final Inspection is to identify any defects in the Sewers which the Owner must rectify, at the Owner's expense, prior to conveyance. A Final Inspection may also consist of the following optional tests: flow monitoring, smoke, infiltration, exfiltration, vacuum, low pressure air, pumping, or pressure (for force mains) testing or any other reasonable test to determine the quality of construction of the Sewers. The Engineer shall have the sole discretion as to the necessity of

SENT BY:

3-21- 1 :12:08PM ;

K E THOMPSON

the optional tests. Generally, such a decision shall be based on the historical maintenance problems with the Sewers or findings of the walk-through and televised inspections. The Owner shall be notified of the date and time of the walk-through inspection so that the Owner or Owner's representative may attend.

SAMCO shall develop a list of identified defects which Owner shall be required to rectify before conveyance of the Sewers.

Estimated Cost: Costs will vary depending upon the size and complexity of the Sewers. A two-man crew will be required.

D. Items A, B, and C above shall be performed by SAMCO personnel between the hours of 7:00 am and 3:30 pm weekdays, and shall be billed to the Owner accordingly.

E. Emergency service and/or repairs

(1) SAMCO shall be notified of all defects, problems, complaints and questions concerning the Sewers or sanitary sewer service within the Hamilton Southeastern Utilities, Inc. service area.

(2) Emergency service and/or repair shall include, but is not limited to:

- a. Blockage and/or obstruction of Sewers
- b. Collapse of Sewers or manhole
- c. Dewatering, bypass pumping, and any other service required to maintain sanitary sewer service to all Hamilton Southeastern Utilities, Inc. customers

(3) Any of the above repairs covered by manufacturer's or contractor's warranties shall be referred to the appropriate party for repair. If any of the above repairs are of a critical nature, the Owner shall be notified by SAMCO.

2. Owner's Representative

The person indicated shall be designated as the Owner's Representative for all communication between SAMCO personnel and the Owner.

Name: GLENN F. BREHM

Address: 7420 MONTGOMERY ROAD



SENT BY:

3-21- 1 :12:10PM ;

K E THOMPSON+

CINCINNATI, OH 45236

Phone: O (513) 984-0300
 H (513) 674-5575
 Mobile: (513) 284-6732
 Pager: () _____

3. Compensation

SAMCO shall be compensated by Owner for the professional services described above in accordance with the following schedule:

A. Current Service Engineer rates:

| | <u>7:00 am - 3:30 pm</u> <u>Except Sundays</u> <u>and Holidays</u> | <u>Other Hours</u> <u>Except Sundays</u> <u>and Holidays</u> | <u>Sundays</u> <u>and Holidays</u> |
|------------|--|--|---------------------------------------|
| 1 man crew | \$ 46.50/hour | \$ 70.00/hour | \$ 93.25/hour |
| 2 man crew | \$ 70.00/hour | \$105.00/hour | \$ 140.00/hour |

Note: We have a one hour minimum charge and then we charge based on 15 minute increments.

B. Parts, equipment, fuel and other items required for the O, M, and R and emergency service of the Sewers shall be billed at the cost to SAMCO plus ten (10) percent.

4. Suspension of Work

If any work covered by this agreement shall be suspended or abandoned, the Owner shall reimburse SAMCO for the services rendered to date of written notification.

Should the progress of any project be halted at any time for sixty (60) days or more by the Owner, SAMCO may exercise the right to negotiate a project restart fee, not to exceed 10% of the amount previously billed prior to initiating any work.

5. Automatic Escalator

After January 1, 1999, all fees described within this contract are subject to an increase of up to 6% at the discretion of SAMCO and may further be increased by 6% annually thereafter.

6. Reimbursable Expenses

Reimbursable expenses are payable in addition to the indicated fee structure and include the expenditures made by SAMCO directly attributable to the O, M, and R of the Sewers. The following expenses are reimbursable:

- A. Outside services required for the O, M, and R of the Sewers
- B. Fees paid and expenses incurred in the application or permit process
- C. Express delivery services requested by the Owner or an agent
- D. Other direct costs attributable to the O, M, and R of the Sewers

7. Invoicing

Billings for services rendered will be performed on a monthly basis. If payment is not received within sixty (60) days of the date of invoice, SAMCO reserves the right to cease all services on the Sewers without being liable to the Owner or any third parties for any damages caused by the cessation of work.

8. Late Penalties

It is the Owner's responsibility to raise any questions about the billings immediately upon receipt. All invoices not paid within thirty (30) days will be subject to a charge of 1-1/2% per month (18% per year) on any unpaid balance.

9. Successors

The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit of not only the parties hereto, but to their respective personal representatives, heirs (if applicable), successors and assigns.

Owner hereby agrees to pay SAMCO for the above stated professional services within 30 days of the date of the invoice and also agrees to pay for any lien costs, court costs, or lawyer fees involved in or arising out of collecting any unpaid or past due balances. Owner further agrees to accept responsibility and liability for any

failures in the Sewers and assumes all responsibility and liability for any damages which may result from Sewer backups, flooding or leaks. SAMCO may not be held liable except in the case of gross negligence.

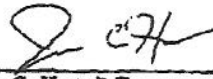
"OWNER"

"SAMCO"


HILLS COMMUNITIES, INC.

SANITARY MANAGEMENT &
ENGINEERING COMPANY, INC.

By: 
Stephen Guttman, President

By: 
James C. Hart, P.E.
Director of Environmental Engineering

MUIR WOODS
HOMEOWNERS ASSOCIATION, INC.

By: 
John Acklen, President

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Instrument
200300013831

400
③
200 none

**SECOND AMENDMENT TO CODE OF BY-LAWS OF
MUIR WOODS HORIZONTAL PROPERTY REGIME AND OF
MUIR WOODS HOMEOWNERS ASSOCIATION, INC.**

This Second Amendment is made this 28 day of January, 2003 by Hills Communities, Inc., an Ohio corporation ("Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. On September 29, 1999, Declarant filed of record in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 9957249, a Declaration of Horizontal Property Regime for Muir Woods Horizontal Property Regime (the "Declaration").

B. The Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc. ("By-Laws") was adopted and made a part of the Declaration and recorded with the Declaration.

C. On April 23, 2001, Declarant recorded a First Amendment to the Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc., ("Amendment") in the Office of the Recorder of Hamilton County, Indiana, as Instrument No. 200100021799.

D. Declarant is executing this Second Amendment pursuant to Article VII of the By-Laws and Paragraph 18(g)(iii) of the Declaration.

E. Declarant desires to amend the By-Laws to comply with the requirements of the Department of Housing and Urban Development ("HUD").

NOW THEREFORE, the By-Laws are amended to read as follows:

1. Section 3.02 of the By-Laws is amended to read as follows:

Initial Board of Directors. The Initial Board of Directors shall be Gregg Hothem, Kevin Junker, and Todd Tarbutton (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws or the Declaration or the Act or elsewhere (a) the Initial Board shall hold office until the earlier of (1) August 31, 2009, (2) the date Declarant files for record in the Office of the Recorder of Hamilton County, Indiana an instrument waiving or releasing its reserved right as set forth in paragraph 21 of the Declaration to expand or further expand Muir Woods, (3) at such earlier date as Declarant may determine (such date when the Initial Board shall no longer

200300013831
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
02-07-2003 03:33 pm.
AMEND DECL 14.00

hold office being herein referred to as the "Applicable Date") and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Condominium Unit, or by acquisition of any interest in a Condominium Unit by any type of juridic acts, inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these By-Laws, the Act, or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

2. All capitalized terms not defined herein shall be defined in the By-Laws and Declaration as applicable. To the extent not amended by this Second Amendment, all other terms, provisions and conditions of the By-Laws remain the same.

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

HILLS COMMUNITIES, INC.

By: 
Ian Guttman, Vice-President

STATE OF OHIO)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared Ian Guttman, by me known to be the Vice-President of Hills Communities, Inc., an Ohio corporation, who acknowledged the execution of the foregoing "Second Amendment to Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc." on behalf of said corporation.

WITNESS my hand and Seal this 28 day of January, 2003.



WENDY S. BASSMAN
Notary Public - State of Ohio
My Commission Expires
June 19, 2005

Wendy S. Bassman
Notary Public

Wendy S. Bassman
(Printed Signature)

My Commission Expires:
June 19, 2005

My County of Residence:
Hamilton County, Ohio

This instrument prepared by and after recording return to Tammy K. Haney, BOSE, MCKINNEY & EVANS LLP, 600 East 96th St., Suite 500, Indianapolis, IN 46240.

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REVIEWED BY HAMILTON
COUNTY AUDITOR'S OFFICE

7 day of December 2004

200400082135
Filed for Record in
HAMILTON COUNTY, INDIANA
JENNIFER J HAYDEN
12-07-2004 At 08:39 am.
AMENDMENT 14.00

**THIRD AMENDMENT TO CODE OF BY-LAWS OF
MUIR WOODS HORIZONTAL PROPERTY REGIME AND
OF MUIR WOODS HOMEOWNERS ASSOCIATION, INC.**

1400
③ 200 none

This Third Amendment is made this 2nd day of DECEMBER, 2004 by Hills Communities, Inc., an Ohio corporation ("Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. On September 29, 1999, Declarant filed of record in the Office of the Recorder of Hamilton County, Indiana as Instrument No. 9957249, a Declaration of Horizontal Property Regime for Muir Woods Horizontal Property Regime (the "Declaration").

B. The Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc. ("By-Laws") was adopted and made a part of the Declaration and recorded with the Declaration.

C. The Declarant has recorded the following documents in the office of the Recorder of Hamilton County, Indiana: Declaration of Horizontal Property Ownership for Muir Woods Horizontal Property Regime recorded on September 29, 1999, as Instrument No. 9957249, as amended by a Supplemental Declaration recorded on February 18, 2000, as Instrument No. 200000007664; a Supplemental Declaration recorded May 19, 2000, as Instrument No. 200000024331; a Supplemental Declaration recorded on December 15, 2000, as Instrument No. 200000062121; a Supplemental Declaration recorded on January 25, 2001, as Instrument No. 200100003850; a Supplemental Declaration recorded on March 2, 2001 as instrument No. 200100010481; a First Amendment to Declaration recorded on April 23, 2001 as Instrument No. 200100021800; a First Amendment to Code of By-Laws recorded on April 23, 2001, as Instrument No. 200100021799; a Supplemental Declaration recorded on June 7, 2001, as Instrument No. 200100033765; a Supplemental Declaration recorded on August 16, 2001, as Instrument No. 200100051686; a Supplemental Declaration recorded on January 16, 2002, as Instrument No. 200200005364; a Supplemental Declaration recorded on January 16, 2002 as Instrument No. 200200005366; a Supplemental Declaration recorded on March 19, 2002, as Instrument No. 200200021575, a Supplemental Declaration recorded on October 4, 2002, as Instrument No. 200200073399, a Supplemental Declaration recorded on 200200096063, a Second Amendment to Code of By-Laws recorded on February 7, 2003 as Instrument No. 200300013831, a Supplemental Declaration recorded on June 19, 2003, as Instrument No. 200300058989, a Supplemental Declaration recorded on September 23, 2003 as Instrument No. 200300098632, a Supplemental Declaration recorded on November 14, 2003 as Instrument No. 200300117429, a Supplemental Declaration recorded on February 24, 2004 as Instrument No. 200400011290, a Supplemental Declaration recorded on April 29, 2004 as Instrument No. 200400028047, a Supplemental Declaration recorded on June 8, 2004 as Instrument No. 200400039390, a Supplemental Declaration recorded on July 2, 2004 as Instrument No. 200400045893, a Supplemental Declaration recorded on August 19, 2004 as Instrument No.

200400058445, and a Supplemental Declaration recorded on November 10, 2004 as Instrument No. 200400076683 (collectively the "Declaration"). Attached to the Declaration is the Code of By-Laws of Muir Woods Horizontal Property Regime. The Declaration, all Supplemental Declarations and By-Laws are incorporated herein by reference and all of the terms and definitions as described therein are hereby adopted and shall have the same meaning in this Supplemental Declaration.

E. Declarant is executing this Third Amendment pursuant to Article VII of the By-Laws and Paragraph 18(g)(iii) of the Declaration.

NOW THEREFORE, the By-Laws are amended to read as follows:

1. Section 5.06 of the By-Laws is amended to read as follows:

The purpose of this section is to provide for the maintenance and upkeep of Muir Woods and for the payment of the Common Expenses during the period prior to the Applicable Date. Accordingly, and notwithstanding any other provision contained in the Declaration, these By-Laws, the Act or otherwise, prior to the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established solely by the Initial Board.

Payment of the Regular Assessments prior to the Applicable Date with respect to each Condominium Unit (including those owned by Declarant) shall commence on the date of the conveyance of the first Condominium Unit to a new Owner. In addition, at the initial closing of each Condominium Unit, the purchaser or new Owner is required to pay a sum equal to the full Regular Assessment applicable to such Condominium Unit for two months as his initial contribution to the working capital of the Corporation. Such amounts shall be used by the Corporation for Common Expenses. This amount is not an advance payment of Regular Assessments and will not be held in any trust or reserve account. Additionally, at each closing, the purchaser of a Condominium Unit shall pay his pro rata share of the Regular Assessment due in the month of closing. Thereafter, payment of the Regular Assessment shall be made on the first day of each calendar month.

Ten percent (10%) of the Regular Assessment paid prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by the Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and, if required, applied to the replacement of the Property. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

It is understood that Declarant shall be obligated to pay that portion of the Regular Assessment applicable to an unoccupied Condominium Unit for those Condominium Units which Declarant owns and which are in those portions of Muir Woods which from time to time have been submitted by Declarant to the Declaration.

2. All capitalized terms not defined herein shall be defined in the By-Laws and Declaration as applicable. To the extent not amended by this Third Amendment, all other terms, provisions and conditions of the By-Laws remain the same.

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

HILLS COMMUNITIES, INC.

By: [Signature]
Printed: STEVEN J RANSHAW
Title: DIVISION MANAGER, HILLS COMMUNITIES

INDIANA
STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Steven J Ranshaw, by me known to be the Division Manager of Hills Communities, Inc., an Ohio corporation, who acknowledged the execution of the foregoing "Third Amendment to Code of By-Laws of Muir Woods Horizontal Property Regime and of Muir Woods Homeowners Association, Inc." on behalf of said corporation.

WITNESS my hand and Seal this 2nd day of December, 2004.

Carol Ann Smith
Notary Public - Signature
Carol Ann Smith
Notary Public - Printed



My Commission Expires: 10-9-08
My County of Residence: Hamilton

This instrument prepared by, and after recording return to: Tammy K. Haney, Esquire, Bose McKinney & Evans LLP, 600 East 96th Street, Suite 500, Indianapolis, Indiana 46240.