

8826062

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR OAKBAY HARBOUR

THIS DECLARATION made this 7th day of December,
1988, by ROBERT J. WALDEN (hereinafter referred to as the
"Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of all of the lands con-
tained in the area shown on Exhibit "A", attached hereto and made
a part hereof, which lands will be subdivided and known as
"OAKBAY HARBOUR" (hereinafter referred to as the "Development"),
and will be more particularly described on the plat of Oakbay
Harbour to be recorded in the Office of the Recorder of Hamilton
County, Indiana; and

WHEREAS, the Developer is about to sell and convey the resi-
dential lots situated within the platted areas of the Development
and before doing so desires to subject and impose upon all real
estate within the platted areas of the Development mutual and
beneficial restrictions, covenants, conditions, and charges
(hereinafter referred to as the "Restrictions") under a general
plan or scheme of improvement for the benefit and complement of
the lots and lands in the Development and the future owners
thereof;

NOW, THEREFORE, the Developer hereby declares that all of the
platted lots and lands located within the Development as they
become platted are held and shall be held, conveyed, hypothecated
or encumbered, leased, rented, used, occupied and improved, sub-
ject to the following Restrictions, all of which are declared and
agreed to be in furtherance of a plan for the improvement and
sale of said lots and lands in the Development, and are
established and agreed upon for the purpose of enhancing and pro-
tecting the value, desirability and attractiveness of the
Development as a whole and of each of said lots situated therein.
All of the Restrictions shall run with the land and shall be
binding upon the Developer and upon the parties having or
acquiring any right, title or interest, legal or equitable, in
and to the real property or any part or parts thereof subject to
such Restrictions, and shall inure to the benefit of the
Developer and every one of the Developer's successors in title to
any real estate in the Development. The Developer specifically
reserves unto itself the right and privilege, prior to the
recording of the plat by the Developer of a particular lot or
tract within the Development as shown on Exhibit "A", to exclude
any real estate so shown from the Development, or to include
additional real estate.

1. DEFINITIONS. The following are the definitions of the
terms as they are used in this Declaration:

A. "Committee" shall mean the Oakbay Harbour Development
Control Committee, composed of up to three (3) members appointed
by the Developer who shall be subject to removal by the Developer
at any time with or without cause. Any vacancies from time to
time existing shall be filled by appointment of the Developer.
The Developer may, at its sole option, at any time hereafter
relinquish to the Association the power to appoint and remove one
or more members of the Committee.

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Shannon & Gresham, Recorder of Hamilton County, Indiana

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B. "Association" shall mean Oakbay Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 12 of the Declaration of Restrictions for Oakbay dated June 6, 1988, and recorded June 8, 1988, in the Office of the Recorder of Hamilton County as instrument number #210553.

C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Hamilton County, Indiana.

D. Approvals, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by one member thereof.

E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. CHARACTER OF THE DEVELOPMENT.

A. In General. Every lot in the Development, unless it is otherwise designated by the Developer, is a residential lot and shall be used exclusively for single-family residential purposes. No structures shall be erected, placed or permitted to remain upon any of said residential lots except a single-family dwelling house and such outbuildings as are usually accessory to dwelling houses.

B. Residential Use of Accessory Outbuildings Prohibited. No accessory outbuildings shall be erected on any of the residential lots prior to the erection thereon of a single-family dwelling house, and in no event shall any such accessory outbuilding which may be constructed upon a residential lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. Accessory outbuildings shall be limited to 160 square feet.

C. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. That the foregoing is subject to the rules, regulations and Ordinances of the City of Noblesville and of its building commissioners.

D. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the development, all of which are incorporated herein by reference.

3. RESTRICTIONS CONCERNING SIZE, PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES.

A. Minimum Living Space Areas. The minimum square footage of living space of dwellings constructed on various residential

lots in the Development, exclusive of porches, terraces, garages, carports, basements, or accessory buildings shall be 2,200 square feet for a single-floor residence and 2,500 square feet for a two-story or multi-story residence, with the ground floor having a minimum of 1,300 square feet. Basements shall not be included in the computation of the minimum living area except for that portion of a walkout basement which is to be finished as a living area.

B. Residential Set-Back Requirements.

(i) In General. Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.

(ii) Definitions. "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.

(iii) Front Yards. The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.

(iv) Side Yards. The side yard set-back lines shall not be less than nine (9) feet from either side line of the lot and the total of both side yards shall be not less than twenty percent (20%) of the entire width of the lot.

(v) Rear Yards. The rear set-back line shall be at least twenty (20) feet from the rear line.

C. Fences and Trees. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. A lot must have at least two (2) trees growing upon it in the front yard by the time the house is completed.

D. Exterior Construction. The finished exterior of every building constructed or placed on any lot in the Development shall be of material other than tar paper, rollbrick siding or any other similar material. All driveways must be paved with asphalt or concrete from their point of connection with the abutting street or road.

E. Heating Plants and Garages. Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Geo-Thermal heat pumps shall be a closed loop system, except for Lot #9 which may have an open loop system. Every house in the Development must have a garage.

F. Diligence in Construction. Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

G. Prohibition of Used Structure. All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.

H. Maintenance of Lots and Improvements. The owner of any lot in the Development shall at all times maintain the lot and any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such owner shall:

- (i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of vegetation and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within sixty (60) days following completion of a house on a lot, the owner shall landscape the lot, weather permitting.

I. Association's Right to Perform Certain Maintenance. In the event the owner of any lot in the Development shall fail to maintain his lot and any improvement situated thereon in accordance with the provisions of these Restrictions, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost therefor to the Association shall be added to and become a part of the annual charge to which said lot is subject and may be collected in any manner in which such annual charge may be collected. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

4. PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.

A. Nuisance. No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to enter any storm drain or Horse Reservoir. By purchase of a lot, each owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Indianapolis Water Company, the Developer, or the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by laws or in equity for collection of a liquidated debt.

Neither the Developer, nor the Association, nor the Indianapolis Water Company, nor any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of this paragraph.

B. Construction of Sewage Lines. All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Hamilton County Board of Health. Storm water (subsurface or surface) shall be discharged into sanitary sewers. Copies of all permits, plans and designs relating to the construction of a sanitary sewer service line shall be submitted in duplicate to the Committee at the time of the submission of all other plans or documents required for the obtaining from said Committee of a permit to build.

5. INDIVIDUAL YARD LIGHTS REQUIRED ON EACH LOT IN THE DEVELOPMENT.

At the time that the owner of the lot in the Development completes the construction of a home on his lot, he shall install or cause to have installed a dusk-to-dawn light in the front yard of his lot. The design, type and location of the yard light shall be subject to the approval of the Committee which may require, for the purpose of uniformity and appearance, that said yard light be purchased from the Developer or its designee.

6. MAILBOXES.

Owners of a lot in the Development shall install or cause to have installed a mailbox which shall be in accordance with the design, type and location of a mailbox approved by the Committee. The Committee may require, for the purpose of uniformity and appearance, that the mailbox be purchased from the Developer or its designee.

7. GENERAL PROHIBITIONS.

A. In General. No noxious or offensive activities shall be carried on on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Development.

B. Signs. No signs or advertisements shall be displayed or placed on any lot or structures in the Development without the prior written approval of the Committee except for real estate sales signs.

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

D. Vehicle Parking. No campers, trailers, boats, or similar vehicles shall be parked on any street or lot in the Development. No boat or truck, one (1) ton or larger in size, shall be parked for overnight or longer storage on any lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other lots in the Development, or the users of any street in the Development.

E. Garbage and Other Refuse. No owner of a lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such owner accumulate or permit the accumulation out-of-doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.

F. Fuel Storage Tanks and Trash Receptacles. Every tank for the storage of fuel that is installed outside any building in the Development shall be buried below the surface of the ground. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.

G. Model Homes. No owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.

H. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.

I. Ditches and Swales. It shall be the duty of the owner of every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the City of Noblesville, Indiana, and of the appropriate zoning bodies.

J. Docks and Piers. No pier, dock or other structure may be constructed in such a manner that any portion thereof extends more than twenty-five (25) feet from the shore into Morse Reservoir and in no event shall any pier, dock or other structure be erected that does not conform to the specifications established by the Committee.

K. Beaches. No beach may be constructed on Morse Reservoir unless the plans and specifications for the beach are submitted to and approved by the Committee and the Indianapolis Water Company, if required. Beaches shall be constructed of sand only. No spoil materials shall be placed or allowed to collect in Morse Reservoir which result from beach construction.

L. Seawalls. It shall be the responsibility of Purchasers of waterfront lots in the Development who desire to construct seawalls on their lots to obtain any and all permits, consents, licenses, and approvals which may be required by any federal and/or state governmental agency, department, commission, or body.

M. Utility Services. No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the City of Noblesville where the streets are public and by the property owners where there are private drives.

N. Wells and Septic Tanks. No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development, without the approval of the Committee and the Indianapolis Water Company.

O. Prohibition of Antennas. No radio, cable and television antennas and/or dishes shall be permitted within the Development.

if exposed to view from Oak Harbour Circle.

9. OAKBAY HARBOUR DEVELOPMENT CONTROL COMMITTEE.

A. Statement of Purposes and Powers. The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) Generally. No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner of the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by three (3) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require. There shall also be submitted, where applicable, the permits or reports required under Paragraph 3 of these Restrictions.

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

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

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

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

(iii) Power to Grant Variances. The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.

B. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of

disapproval, it shall specify the reason or reasons.

C. Liability of Committee. Neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

D. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

E. Continuation of Committee. When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER. Whenever two or more contiguous lots in the Development shall be owned by the same person, and such owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the Committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house.

10. USE OF THE RESERVOIR.

A. All operation of boats upon Horse Reservoir is pursuant to a license that shall be exercised in accordance with the limitations made by the joint committee of the Developer and the Indianapolis Water Company made according to the procedures set out in the License Agreement recorded in Book 121, Instrument No. 4863, in the Office of the Recorder of Hamilton County, Indiana. If legally permissible, this Committee shall have the power to assess fines for the violation of any limitations on boat traffic on Horse Reservoir in accordance with the schedule of fines promulgated by it, and which shall become a charge upon the lot owned by the person against whom the fine is assessed.

B. Any fine so assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full, and shall also be a personal obligation of the owner or owners of that lot. Such charge shall bear interest at the rate of ten percent (10%) per annum until paid in full. If, in the opinion of the Developer, such charge has remained due and payable for an unreasonably long period of time, the Developer may institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Developer in collecting the same. Every owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are

valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Developer all fines that shall be made pursuant to this Paragraph 8 of the Restrictions.

11. OWNERSHIP, USE AND ENJOYMENT OF COMMONS. "Commons" and "Common Areas" shall mean those areas set aside for conveyance to the owners, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution of recording of the plats nor the doing of any other act by the Developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

12. OAKBAY HARBOUR PROPERTY OWNERS' ASSOCIATION, INC.

A. In General. There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Oakbay Property Owners' Association, Inc.", which is referred to as the "Association". Every owner of a residential lot in the Development shall be a member of the Association and shall be subject to all the requirements and limitations imposed in these Restrictions on other owners of residential lots within the Development and within Oakbay and on members of the Association, including those provisions with respect to the payment of an annual charge.

B. Board of Directors. The members shall elect a Board of Directors of the Association as proscribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.

C. Professional Management. No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

D. Responsibilities of the Association.

(i) The Association shall maintain the landscaping in and along Carrigan Road and the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.

(ii) The Association shall maintain and repair the Common Areas shown on the plat(s) of Oakbay, including improvements thereon.

(iii) The Association shall maintain the landscaping and any signage in and on the islands located in the right-of-way at the entrance of Oak Bay Drive and shall keep such areas in a neat, clean and presentable condition at all times.

(iv) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance (including Directors' and officers' insurance) and such other insurance as it deems necessary or advisable.

(v) The Association may contract for such service as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

13. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements operated or maintained by the Association, and the landscape assessments on the development and other purposes as specifically provided herein.

C. Special Assessments for Capital Improvements and Operating Deficits. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

D. Notice and Quorum for Any Action Authorized Under Sections C and D. Written notice of any meeting called for the purpose of taking any action authorized under Section C or D shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the

preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

E. Date of Commencement of Annual Assessments: Due Dates.

The annual assessment provided for herein shall commence for each lot on the date of conveyance to the owner by deed or on the date the owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

F. Effect of Non-Payment of Assessments: Remedies of the Association. Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the owner or owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorneys' fees, incurred by the Association in collecting the same. Every interest in such lot, whether as an owner or otherwise is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

G. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the

Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

H. Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (i) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

14. REMEDIES.

A. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any of these Restrictions.

B. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

15. EFFECT OF BECOMING AN OWNER.

The owners of any lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of the Developer, Committee and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with the Developer, Committee and the Association and to and with the owners and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

16. TITLES.

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

2026/06/24

17. DURATION.

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2008, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those persons who are then the owners of a majority of the numbered lots in the Development.

18. SEVERABILITY.

Every one of the Restrictions is hereby declared to be independent of and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions.

Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

SS20062

IN TESTIMONY WHEREOF, witness the signature of the Declarant
this 7th day of December, 1988.

Robert J. Walden
Robert J. Walden

"DECLARANT"

STATE OF INDIANA, COUNTY OF HAMILTON, ss:

Before me, a Notary Public in and for said County and State,
personally appeared ROBERT J. WALDEN, Declarant/Developer herein,
and acknowledged the execution of the foregoing instrument this
7th day of December, 1988.

Douglas B. Floyd Notary Public
Douglas B. Floyd (Printed)
Resident of Hamilton County, Indiana.

My Commission expires:

3-06-90

Notary Public in and for Hamilton County, Indiana
12-7 1988

This instrument prepared by: Douglas B. Floyd, Attorney at Law
198 South 9th Street, P. O. Box 2
Noblesville, Indiana 46060

2576062

EXHIBIT A

Part of the North Half of Section 14, Township 19 North, of Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 14; thence South 89 degrees 46 minutes 22 seconds East along the South line thereof 838.00 feet; thence North 00 degrees 22 minutes 38 seconds East 1116.95 feet; thence South 88 degrees 51 minutes 12 seconds East 570.39 feet; thence South 78 degrees 29 minutes 08 seconds East 87.39 feet; thence South 89 degrees 22 minutes 56 seconds East 181.35 feet; thence South 00 degrees 37 minutes 04 seconds West 25.00 feet; thence North 89 degrees 11 minutes 10 seconds East 400.18 feet; thence North 74 degrees 41 minutes 37 seconds East 46.51 feet; thence North 52 degrees 40 minutes 06 seconds East 180.00 feet; thence North 11 degrees 34 minutes 38 seconds East 109.21 feet; thence South 09 degrees 13 minutes 32 seconds East 190.00 feet; thence North 00 degrees 46 minutes 26 seconds East 13.00 feet; thence South 89 degrees 13 minutes 32 seconds East 200.77 feet to the Point of Beginning on the West line of a tract conveyed to Robert J. Maldon in a deed recorded as Instrument No. 83-6827 in Deed Record 337, pages 282 and 283 in the Office of the Recorder of Hamilton County, Indiana (the next five courses lie along and encompass said Maldon deed); thence North 00 degrees 46 minutes 26 seconds East 400 feet, more or less to the shoreline of Morse Reservoir, as said shoreline would have been established on December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence Easterly and Southerly along the meander of said shoreline to an Easterly corner of the said Maldon deed; thence along said Easterly line South 10 degrees 47 minutes 09 seconds East 128.34 feet, more or less to the Southeastly corner of said Maldon deed; thence South 89 degrees 22 minutes 39 seconds West 692.87 feet to the Southwest corner of said Maldon deed; thence North 00 degrees 46 minutes 26 seconds East 31.12 feet to the Place of Beginning, containing 5.7 Acres, more or less.

This Instrument Recorded 12-7 1960
Sharon K. Greer, Recorder Hamilton County, IN

882462

INSTR. # 89 29011

MORTGAGE 8929011

This instrument is dated 12/22/89

THIS MORTGAGE is made this 22nd day of December 1989, between the Mortgagor, David R. Bush, Mary Lee Bush, Steven J. Huras & Patricia Ruffen (herein "Borrower"), and the Mortgagee, UNION STATE BANK, a corporation organized and existing under the laws of INDIANA, whose address is 21 JEFFERSON SQUARE, CARMEL, INDIANA 46032 (herein "Lender")

WHEREAS, Borrower is indebted to Lender in the principal sum of Two Hundred Fifty Thousand Dollars and no/100 Dollars, which indebtedness is evidenced by Borrower's note dated December 22, 1989 (herein "Note"), providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on January 1, 2010

To SECURE to Lender (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances"), Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Hamilton State of Indiana:

See Attached Legal Description

RECEIVED FOR RECORD DEC 26 12 16 PM '89 MARION K. CHERRY RECORDER HAMILTON CO., IN

which has the address of 400 West Jackson Street Cicero Indiana 46034 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are herein referred to as the "Property".

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, covenants or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

tion to entry of a judgment enforcing this Mortgage if (a) Borrower pays Lender all sums which would be then due under this Mortgage, the Note and notes securing Future Advances if any, had no acceleration occurred, (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage, (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage and in enforcing Lender's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Reits; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the Reits of the Property, provided that Borrower shall place in acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such Reits as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender shall be entitled, to the extent provided by applicable law, to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

21. Future Advances. Upon request of Borrower, Lender, at Lender's option prior to release of this Mortgage, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of the Mortgage, exceed the original amount of the Note plus LNT.

22. Waiver of Valuation and Appraisalment. Borrower hereby waives all right of valuation and appraisalment.

In WITNESS WHEREOF, Borrower has executed this Mortgage

Steven L. Bures (Seal) David R. Bush (Seal)
Steven L. Bures - Borrower Mary Egan Bush (Seal)
Patricia Bures (Seal)
Patricia Bures - Borrower Hamilton County IN

On this 22nd day of December, 2009, before me the undersigned a Notary Public in and for said County personally appeared David R. Bush, Mary Egan Bush, Steven L. Bures & Patricia Bures and acknowledged the execution of the foregoing Instrument

Witness my hand and official seal

My Commission expires: 11/12/10

This instrument was prepared by [Signature]
Notary Public, State of Indiana
Official Seal

This mortgage is given to secure the performance by the Mortgagor of the covenants, agreements and conditions contained herein, and the payment of a certain obligation evidenced by a promissory note of even date herewith in the principal sum of \$250,000.00 executed by the Mortgagor and payable to the order of the Mortgagee (herein called the "Note") and any renewals thereof or any additional note or notes that may be hereafter executed and delivered evidencing the amount of any future advances made by the Mortgagee. Such Note is due and payable on or before January 1, 2013 and contains provisions respecting, among other things the automatic renewal of this Note for successive periods of 3 years each, for a term not to extend beyond January 1, 2016 ("Mortgage Term"), the Mortgagee's ability (a) to adjust the rate upon such renewal and (b) in the event of an increase in the interest rate, to extend the mortgagation period of such loan for up to one third (1/3) of the Mortgage Term. Reference is hereby made to such Note as fully as if set out here at length and incorporated herein.

2/2/09

PARCEL 1: Part of Lots five (5) and eight (8) in Block number five (5) of the Jones and Dean Addition, a part of the Original Plat to the Town of Cicero, more particularly described as follows: Beginning at the Southeast corner of the said Lot Eight (8), thence South 89 degrees 58 minutes 03 seconds West along the South line of the said Lot eight (8) and five (5), being the North right-of-way line of the original Jackson Street (a 66 foot wide right-of-way), a distance of 148.50 feet to the Southwest corner of the said Lot five (5); thence North 01 degree 49 minutes 10 seconds East along the west line of the said Lot five (5), being parallel with the West right-of-way of Main Street, a distance of 77.00 feet; thence North 89 degrees 58 minutes 03 seconds East parallel with the North right-of-way line of the original Jackson Street, a distance of 148.50 feet to the East line of the said Lot eight (8), being the West right-of-way line of Main Street; thence South 01 degree 49 minutes 10 seconds West along the East line of the said Lot eight (8), being the West right-of-way line of Main Street, a distance of 77.00 feet to the place of beginning.

PARCEL 2: All of lot four (4) and part of Lots one (1), two (2) and three (3) in Block number five (5), and part of lot one (1) in block number six (6) in the original Town of Cicero, also part of VanBuren Street and part of the first alley North of Jackson Street lying West of the West line of the first alley West of Main Street, as vacated by the Town Board of Cicero June 20, 1956, and on file in the Town Clerks Office, Hamilton County, Indiana, more particularly described as follows: Beginning at a concrete monument marking the Southeast corner of the said lot three (3); thence south 01 degree 49 minutes 10 seconds West along the West line of a 16.5 foot alley and the East line of the said lot four (4) 148.51 feet to a concrete monument marking the Southeast corner of the said lot four (4); thence continue South 01 degree 49 minutes 10 seconds West 33.02 feet to the center line of the Original Jackson Street, a 66 foot wide right of way; thence South 89 degrees 58 minutes 03 seconds West along the said center line 93.05 feet to a point on a line which crosses the center line of the East approach road to the Cicero Creek Bridge, as now exists, perpendicularly at a point which lies 1000 feet East of the East end of the concrete handrails of the said bridge; thence North 00 degrees 21 minutes 46 seconds East along said perpendicular line 35.30 feet to a point on a line which is parallel with and 40 feet North of the said center line of the East approach road as now exists, said point lies within lot one (1) of the said block number five (5) on a curve having a radius of 11419.16 feet, the radius point of which bears North 00 degrees 21 minutes 46 seconds East; thence westerly along said curve and parallel line (passing through lot one (1) of block number five (5) across VanBuren Street and into lot one (1) of the said block number six (6) 151.50 feet to a point which bears South 01 degree 07 minutes 13 seconds West from the said radius point; thence North 01 degree 07 minutes 13 seconds East 5.0 feet to the shore line of Horse Reservoir, as said shore line would have been established December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.00 feet above mean sea level); thence Northeastly along the meandering shore line to a point (within vacated VanBuren Street) which bears North 82 degrees 00 minutes 00 seconds West from a point on the South line of the said lot three (3) which lies South 89 degrees 58 minutes 03 seconds West 34.15 feet from the Southeast corner thereof; thence South 82 degrees 00 minutes 00 seconds East (crossing the said lot two (2) and into the said lot three (3) 159.7 feet to the said point on the South line of lot three (3); thence North 89 degrees 58 minutes 03 seconds East along the South line of the said lot three (3) 34.15 feet to the place of beginning, containing 0.90 acres, more or less.

12-26-

277441