

MARTHA A. WOMACKS  
MARION COUNTY AUDITOR

326143 MAY 25 8 DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
SUBJECT TO FINAL ACCEPTANCE OF  
FOR TRANSFER SOUTHWIND VILLAS

THIS DECLARATION, made on the 9<sup>th</sup> day of MAY, 2000, by CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership, ("Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Marion County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision.

NOW, THEREFORE, Declarant hereby declares that all the Property shall be held, sold and conveyed, subject to the following easements, restrictions, limitations, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as Southwind Villas (hereafter "Subdivision").

ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of state of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the SOUTHWIND VILLAS HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, its successors and assigns.

Section 2.3 "Board of Directors" means the Board of Directors of the Association.

Section 2.4 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

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Section 2.5 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), (2) Lake Area, as defined below, and (3) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereafter defined) as a "Block", "Common Area", "C.A.", or such other areas within the Property that are not otherwise identified on the Plat (as hereafter defined) as a lot or street. The Common Area to be conveyed to the Association at the time of conveyance of the first Lot to an Owner is described in the Plat (as hereinafter defined).

Section 2.6 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.7 "Community Network" shall mean a system of communication and internet connectivity which may include some or all of the Provider Services, and which is achieved through the Technology Infrastructure.

Section 2.8 "Declarant" means the *CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership* and its successors and assigns.

Section 2.9 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property.

Section 2.10 "Dwelling Unit" means all buildings for single family residential housing situated upon the Property. A Duplex contains two (2) Dwelling Units.

Section 2.11 "Duplex" means a residential building or structure containing two (2) attached Dwelling Units, each of which has accommodations for one single family.

Section 2.12 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.13 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner (as hereinafter defined) by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.14 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding

those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.15 "Plat" means the subdivision plat or plats of the Property, or any "as built" plats for Lots, which are recorded with the Recorder of the county in which the Property is located, as the same may be hereafter amended or supplemented pursuant to this Declaration.

Section 2.16 "Provider" shall mean and refer to the entity or entities which provides Provider Services.

Section 2.17 "Provider Services" shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.

Section 2.18 "Technology Infrastructure" shall mean and refer to technological devices, hardware, co-axial or other cable, optic fibers, software, lines, wires, mains, ducts, pipe conduits, poles, antennas, microwaves, satellite dishes and/or other wired connections and wireless connections.

### ARTICLE III

#### *Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(d) The rights of Declarant as provided in this Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association;

(h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant to erect any signs (i) advertising the sale of the property or any Lot and/or (ii) identifying the Subdivision; and

(j) The right of the Declarant to install, or cause to be installed, Technology Infrastructure in Common Areas; and

(k) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Property and for so long as Declarant may be liable under any builder's warranty.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement - The following rights and easements reserved in this Section 3.4 shall not be exercised with respect to a Lot, after the

conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section 3.4 shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property. The following rights and easements reserved in this Section 3.4 are not intended to permit, and shall not be construed to permit, (i) any Provider to enter any easement reserved in this Section 3.4, or (ii) the Association to install or authorize to be installed, in any easement reserved in this Section 3.4, any Technology Infrastructure or any other equipment, facilities, or installations of any type for the purpose of bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on a Common Area.

(a) Declarant hereby reserves unto itself, and unto any public or private utility, a general easement ("General Drainage, Utility, and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This General Drainage, Utility, and Sewer Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement identified or designated upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, an easement ("Lake Easement") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the office of the Recorder of the County in which the Property is located.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 Declarant's General Network Easement. The following rights and easements reserved and retained in this Section 3.5 shall not be exercised with respect to a Lot, after the conveyance of such Lot in a manner that (i) unreasonably and absolutely affects any Dwelling Unit or portion thereof located upon such Lot or the Owners use or enjoyment thereof or (ii) unreasonably affects the rights of ingress and egress to such Lot. The Declarant hereby forever reserves, retains, and is granted a blanket, exclusive, perpetual easement over, above, across, under, upon, along, and through the Property and all Lots, Common Areas, and streets located therein (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, removing, improving, expanding and otherwise servicing the Community Network and Technology Infrastructure, and any other equipment, facilities, and installations of any type bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on the Common Area. This General Network Easement may be conveyed, assigned, and transferred by the Declarant, in the Declarant's sole discretion, without notice or consent of the Association, the Owners, or any other person. The General Network Easement is for the exclusive benefit of the Declarant, and its successors, designees and assigns, and is an appurtenant easement which runs with the Property and all Lots, Common Areas, and streets therein. Only those Providers which receive the Declarant's explicit written permission shall be permitted within the General Network Easement. The Declarant's right under this Section 3.5 shall survive beyond the Development Period and exist in perpetuity, and this General Network Easement shall be in addition to any easement identified or designated on a plat.

Section 3.6 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.7 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents in the Subdivision.

Section 3.8 Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities, private utilities and Provider(s) for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities, the Community Network and Technology Infrastructure; provided, however, that the only Providers which receive the Declarant's explicit written permission shall be permitted to be within the DU&E Easements. Purchasers of Lots in this Subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 7.2 below, shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.9 Designated Easements for Landscaping, Mounding, Screening and Signage. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected between (i) the area of any such easements

and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant.

Section 3.10 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.11 Designated Network Easement. Any strips of ground identified on a Plat as a Network Easement are hereby forever exclusively for the Declarant, and the Declarant's successors, designees and assigns, for the purpose of installing, maintaining, repairing, replacing, improving, relocating, expanding, removing or otherwise servicing the Technology Infrastructure and Community Network, and any other equipment, facilities, and installations of any type bringing Provider Services to any Lot, Dwelling Unit, and/or any improvements on the Common Areas. Notwithstanding anything in the Declaration to the contrary, no planting, hedges, walls, structures, signs, fences, or any other improvements shall be constructed, placed, or erected within such Designated Network Easement. Only those Providers which receive the Declarant's explicit written permission shall be permitted within the Designated Network Easement. The Declarant's rights under this Section 3.11 shall survive beyond the Development Period and exist in perpetuity, and may be conveyed, assigned, or transferred by the Declarant, in the Declarant's sole discretion, without notice to or consent of the Association, Owners, or any other person.

Section 3.12 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.13 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.14 Reservation of Right to Grant Easement. The Declarant hereby reserves the right, in its discretion, to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

#### ARTICLE IV

##### *Association Membership, Voting Rights, Board of Directors and Professional Management*

Section 4.1 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association.



Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B Membership shall cease and be converted to a Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (i) December 31, 2010; or
- (ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant subsequently records a plat of part of or all of the Property and, by virtue thereof, total number of votes outstanding in the Class A Membership is no longer equal to or greater than the total number of votes outstanding in the Class B Membership.

Section 4.3 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

## ARTICLE V

### *Covenant for Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Biannual Assessments payable every six (6) months; and

(b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, 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 such Owner's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Regular Biannual Assessments. The Regular Biannual Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association specified within this Declaration and for other purposes only as specifically provided herein. The Regular Biannual Assessment shall also be used to fulfill the obligations specified in Section 5.5 below, and to acquire and maintain the insurance required, under Section 6.1 below, to be acquired and maintained by the Association. As and if necessary, a portion of the Regular Biannual Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

Section 5.3 Maximum Regular Biannual Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Biannual Assessment on any Lot shall be \$330.00 per Lot every six (6) months.

(b) From and after January 1 of such year, the maximum Regular Biannual Assessment may be increased each calendar year not more than twenty percent (20%) above the maximum Regular Biannual Assessment for the previous year, without a vote of the membership.

(c) From and after January 1 of such year, the maximum Regular Biannual Assessment may be increased each calendar year by more than twenty percent (20%) above the maximum Regular Biannual Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Biannual Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Biannual Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 Reserve Fund. The Association shall establish and maintain a reserve fund by allocation and payment to such reserve fund of an amount determined annually by the Association to be sufficient to meet the periodic costs of fulfilling the Exterior Maintenance Obligations. In determining the amount the Association shall take into consideration the expected useful life of what is required to be maintained and repaired, projected increases in the cost of materials and labor, interest to be earned by such fund, and the advice of Declarant and such consultants as the Association may employ. The reserve fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Association, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Such fund shall hereafter be referred to as the "Reserve Fund".

Section 5.6 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article 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 the total number of votes entitled to be cast (Class A and Class B votes combined) 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 (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.7 Uniform Rate of Assessment. Regular Biannual Assessments, Special Assessments for capital improvements and to recover operating deficits, and Maintenance Assessments must be fixed at a uniform rate for all Lots, except that Declarant and any individual or entity purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder") shall pay only twenty-five percent (25%) of the Regular Biannual Assessments, Special Assessments, and Maintenance Assessments so long as any Dwelling Unit constructed upon a Lot by Declarant or Builder has not been conveyed to an Owner intending to occupy or rent said Dwelling Unit as a residence or leased to an individual or entity for use as a residence.

Section 5.8 Date of Commencement of Biannual Assessments; Due Dates. The Regular Biannual Assessments provided for herein shall commence as to each Lot within a recorded Plat on the first day of the first month following the recording of such Plat. The Board of Directors shall fix any increase in the amount of the assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Biannual Assessment and written notice of any Special Assessment 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, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special 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.

Section 5.9 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and

attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.10 Subordination of the Lien to Mortgages; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

## ARTICLE VI

### *Insurance*

Section 6.1 Maintenance of Insurance. Commencing no later than the time of the first conveyance of a Lot to an owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance with respect to Lots and Dwelling Units.

- A. Master or blanket type policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Dwelling Units (including all of the fixtures installed therein as of the date thereof, and specifically including, without limiting the generality of the foregoing, interior walls, interior doors, built-in cabinets and counters and electrical and plumbing conduits, pipes and fixtures initially installed by the Declarant, and any fixtures, equipment or other property within a Dwelling Unit which is to be financed by a first mortgage, and including also common personal property, supplies, building service equipment, but not including carpeting, drapes, wall coverings, fixtures, furniture, equipment, or other furnishings or personal property supplied or installed by Owners or tenants and also not including land, foundations, excavation and other items normally excluded from coverage) and covering the interests of the Association and its directors and all Owners and their mortgagees, as their interests may appear, for full

insurable replacement cost, as determined annually by the Association. If permitted by the insurance company writing the policy, improvements and betterments not part of the Dwelling Unit as originally constructed may, at the direction and sole cost and expense of the Owner of the subject Lot, be issued under a rider to the master policy, that part of the premium allocable to such improvements and betterments being chargeable against the specific Lot to which it applies. Said policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available. The name of the insured under such policies must be set forth therein substantially as follows: "Association for the use and benefit of the individual Owners". The policies may also be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's first mortgagee. Each Owner and each such Owner's first mortgagee, if any, shall be beneficiaries of the policy with respect to each Dwelling Unit, in proportion to the insurable value of such Dwelling Units compared to the aggregate insurable value of all Dwelling Units. Evidence of insurance shall be issued to each Owner and first mortgagee upon request. Policies must provide for the recognition of any Insurance Trust Agreement.

If reasonably available, such policies shall include:

- (1) Agreed Amount Endorsement (or like endorsement);
- (2) Inflation Guard Endorsement;
- (3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril; and
- (4) Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than Fifty Thousand Dollars (\$50,000.00) per accident per location.

- (5) Miscellaneous. All such Policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against owners individually; that the insurance is not prejudiced by an act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.
- B. Worker's compensation, occupational disease and like insurance (if the Association has eligible employees);
- C. Comprehensive public liability insurance in such amounts and with such coverage as the Association shall from time to time determine, but at least:
- (1) insuring each officer and member of the Association; the managing agent and each Owner and with cross liability endorsements to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Exterior Maintenance Association; and
  - (2) in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use; provided, however, that such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence.
- D. Such other insurance as the Association may determine.
- E. All such policies must provide that they may not be canceled or substantially modified by any party without at least 10 day's prior written notice to the Association and to each holder of a first mortgage which is listed as a scheduled holder of a first mortgage in the insurance policy.

Section 6.2 Owner's Individual Policies. Each Owner should carry, and shall be responsible for carrying insurance not expressly required to be maintained by the Association per the terms of this Declaration including, without limitation, insurance for (i) his own benefit insuring his personal liability, and (ii) his carpeting, wall covering, fixtures, furnishings, equipment, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant, provided that all such policies must, if obtained, contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner.

Section 6.3 Additional Coverages. In addition and supplement to the foregoing powers, and not in limitation thereof, the Association shall have the authority at all times without action by the Owners to obtain and maintain all coverages and endorsements required by any first mortgagee, for the acceptance of mortgages on Dwelling Units, as such requirements are amended from time to time.

**Section 6.4 Insurance Trustee.** Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance.

Each Owner, by acceptance of a deed to his, her or its Lot hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee is hereby required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for their mortgage holders, as their interests may appear, and to apply and administer the same as follows:

- A. All insurance proceeds paid to the Association or Insurance Trustee (hereinafter sometimes referred to merely as "Trustee") shall be deposited in escrow with a title insurance company or other depository acceptable to the Trustee and a majority of first mortgagees of record.
- B. The Owner of the Dwelling Units with respect to which the insured loss occurred shall, within thirty (30) days after insurance proceeds are deposited in accordance with paragraph (A) above, enter into a firm contract with a qualified builder providing for the reconstruction or remodeling of the Dwelling Unit, to substantially the same condition as existed immediately prior to the insured loss; provided, however, that no contract shall be entered into by the Owner for an amount in excess of the insurance proceeds then held by the Trustee for said Dwelling Unit, until additional funds are deposited by the Owner sufficient to cover all construction costs as determined by the Trustee and first mortgagee. Said reconstruction or remodeling shall be commenced and completed with due diligence and in no event shall said work be completed later than one hundred eighty (180) days after said insurance proceeds are deposited in escrow as aforesaid. The Association and first mortgagees of record of the Dwelling Units affected and the Lots underlying the same shall have the right, but not the obligation, to deposit such additional funds in excess of insurance proceeds as may be required to permit construction as herein provided and any such advances shall be a lien upon the Lot or Lots subordinated, however, to the interests of first mortgagees of record.
- C. In the event the Owner fails to enter into a contract as provided in subparagraph B above, or in the event that reconstruction or remodeling is not commenced or completed as provided above, then the Trustee or the first mortgagee of record, with the consent of the Trustee, shall have the right, but not the obligation, to enter into those contracts which it deems necessary to complete said reconstruction or remodeling of the Dwelling Unit, and the Trustee or first mortgagee shall have the right to have said insurance proceeds applied in satisfaction of any obligation incurred pursuant to said contracts, without liability of any kind to the Owner, including, but not limited to, interest on said insurance proceeds. The Trustee may employ any bonded party or parties as its agents in exercising those functions

given to it in Section 6.4. The Trustee shall be empowered to pay said agent a reasonable fee for the services rendered by said agent and to collect said charge from the Owner or Owners, as the case may be, and in the same manner as that which is provided herein for the collection of an insurance premium paid by the Maintenance Association.

Section 6.5 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Associations, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 6.6 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 6.7 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 6.8 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. The same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 6.9 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid



by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 6.10 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

## ARTICLE VII

### *Use, Restrictions, and Architectural Control*

Section 7.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 7.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by the Board of Directors of the Association. After the Development Period, the Board of Directors may appoint three (3) or more representatives to an Architectural Committee. Any change in the appearance or the color of any part of the exterior of a residence shall be deemed a change thereto and shall require the approval therefor as above provided. However, there shall be no such approval of the planting of hedges, walls, fences, structures and/or other improvements prohibited under Section 3.8 above, and any such approval shall be null and void. In the event that written approval is not received as required hereunder within thirty (30) days after complete plans and specifications have been submitted, then the request for approval shall be deemed denied.

Declarant intends that the members of the Architectural Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Architectural Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Committee is raised as defense, abuse

of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Committee, could only conclude that such determination constituted an abuse of discretion.

The Architectural Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Neither the Architectural Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Architectural Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Architectural Committee, Association and/or Declarant make no 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. All parties should seek professional construction advise, engineering, and inspections on each lot prior to proposing construction.

Section 7.3 Leasing. Any Lot may be leased by its Owner.

Section 7.4 Animals. No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Indiana. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property.

Section 7.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 7.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Association Board of Directors or Architectural Review Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 7.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 7.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 7.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 7.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 7.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 7.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 7.13 Residential Use. Lots may be used only for residential purposes, private garages, and other such outbuildings as are usual and incidental to the use of a residential lot.

Section 7.14 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 7.15 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 7.16 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incidental to the Declarant's, builder's or Association's business on the Property.

Section 7.17 Sign Limitations. No sign of any kind, other than those installed by Declarant, the Association, or a Builder, may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) feet may be displayed with the purpose of advertising the Lot for sale.

Section 7.18 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the

Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

**Section 7.19 Rules and Regulations.** The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

**Section 7.20 Development and Sale Period.** Nothing contained in this Article 7 shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

**Section 7.21 Outside Use of Lots.** Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Board of Directors. Above ground swimming pools are prohibited on the Property.

**Section 7.22 Mailboxes.** All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors of the Association.

**Section 7.23 Yard Lights.** The builder on each Lot shall supply and install a yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the

Declarant during the Development Period and, thereafter, by the Board of Directors of the Association. Each such light fixture shall also have a bulb of sufficient wattage to insure uniform illumination on each Lot and shall be equipped with a photo-electric cell or similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Owner of each Lot.

Section 7.24 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- (a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- (c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- (d) No commodity can be sold from the Lot or Dwelling Unit located thereon.
- (e) No person can be employed other than a member of the immediate family residing in the Dwelling Unit;
- (f) No manufacturer or assembly operations can be conducted; and
- (g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following similar activities be conducted: child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 7.25 Fences. The Architectural Committee, prior to any installation, must approve any fencing and landscape screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Architectural Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Architectural Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Architectural Committee. Non-professionally installed fences may be inspected by the Architectural Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front line than the rear foundation line of the residence.

Fences are to be vinyl coated chain link, wrought iron, cedar, or treated pine. Further, fences are to be dog-eared, flattop shadow box style with 1" x 6" vertical boards, and are to remain unpainted. The Architectural Committee must approve all fencing materials, design, and location. Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing. The Architectural Committee will approve landscape screening materials, design, and location on an individual basis.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Architectural Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

Section 7.26 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are connected to the Dwelling Unit must be approved by the Architectural Committee.

## ARTICLE VIII

### *Maintenance, Repairs and Replacements*

Section 8.1 Maintenance by Owners. Each Owner shall furnish and be responsible for, at his or her own expense, (i) all the maintenance, repairs, decorating and replacements within his or her Dwelling Unit including, but not limited to, all internal installation of such Dwelling Unit such as refrigerators, ranges and other appliances, lighting fixtures and plumbing, and any other portion of any other utility services located within the Dwelling Unit or upon the Lot and (ii) any partitions, interior walls, ceiling and floor surfaces. Each such Owner further shall be responsible for the maintenance, repair and replacement of all windows and frames in his or her Dwelling Unit and also the doors leading into the Dwelling Unit, and any and all other maintenance, repair, cleaning and replacements of his or her Lot and Dwelling Unit unless otherwise expressly provided herein.

### Section 8.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of Signs and Landscaping. Maintenance of the entry signs, permanent subdivision identification sign, and landscaping installed by the Declarant in any Common Area, Landscape Easement, or Landscape Maintenance Easement;

(iii) Maintenance of Street Lights. The maintenance of any street lights which are installed by Declarant and which are not located upon any Lot; and,

(iv) Maintenance of Brick Surface(s). The maintenance of any brick surface installed by Declarant on any internal street or entryway.

(v) Snow Removal and Lawn Care. The Association shall provide for snow removal from paved portions of street, but excluding driveways and sidewalks. The Association shall provide for lawn cutting and fertilizing for each Lot.

(vi) Exterior Maintenance Obligations of Association. The Association shall provide for the exterior maintenance of each Dwelling Unit, but only as follows: (i) exterior paint, (ii) exterior repair, (iii) repair, replace and care for driveways, and (iv) replace and care for roofs, gutters, downspouts and exterior building surfaces (hereafter collectively "Exterior Maintenance Obligations"). Such maintenance and repair shall be subject to the by-laws, rules, and regulations of the Association. Such exterior maintenance shall not include glass surfaces, doors, doorways, windows, and window frames. Subject to the provisions in Article VI above, in the event that the need for maintenance or repair is caused through the intentional or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

(b) Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area owned by the Association (or any items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance only, repairs or replacements of or to the Common Area owned by the Association or any items deemed as Common Area for purposes of maintenance only, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

## ARTICLE IX

### *Community Network*

Section 9.1 Community Network. Declarant, in Declarant's sole and subjective discretion, may but shall not be obligated to install or cause to be installed within the Subdivision the Community Network and Technology Infrastructure. Notwithstanding the conveyance by Declarant of any Lot or Common Area, the Technology Infrastructure, whether located upon, above, under, or within a Lot, Common Area, right of way, or easement shall forever remain the property of and be owned by the Declarant or the entity to which the Declarant assigns or conveys such ownership.

Section 9.2 Provider. In the event the Declarant installs or causes to be installed in the Subdivision the Community Network and Technology Infrastructure, the Declarant shall have the sole and exclusive right to select the Provider(s) of the Provider Services. To the extent permitted by law, the Provider(s) selected by the Declarant shall be the sole and exclusive provider(s) of the Provider Services, so long as such services are generally available to the Owners for subscription. The Association may not contract with others to provide Provider Services within the Subdivision without the prior written consent of the Declarant, or Declarant's successors or assigns.

Section 9.3 Prohibition Against Further Permits, Licenses, and Easements. The Association and each Owner shall be prohibited from granting permits, licenses, and easements over any Lot, Common Area, or street within the Subdivision for any Technology Infrastructure or Provider Services, or which will impair or limit the Declarant's General Network Easement or Designated Network Easement, absent the explicit written consent of the Declarant, which consent may be granted or withheld in Declarant's sole discretion.

Section 9.4 Community Advisory Board. In the event the Community Network is installed, the Community Advisory Board ("Advisory Board") will be established by the Declarant. The initial Advisory Board will consist of three (3) persons who shall be appointed and replaced by the Declarant during the Development Period. Following the end of the Development Period, the Advisory Board shall be comprised of three (3) Owners appointed by the Board of Directors. The Advisory Board shall act only in an advisory role, and shall consult with the Declarant regarding the Community Network, Provider Services and Technology Infrastructure.

Section 9.5 Declarant's Rights. The Declarant's rights under this Article VIII shall survive beyond the Development Period and exist in perpetuity.

## ARTICLE X

### *Boundaries*

"Plans", as that term is used herein, shall mean and refer to the floor and building plans of any Duplex and the two Dwelling Units contained therein, together with any final surveys and elevation plans of the real estate and Duplexes. In the event that any horizontal or vertical boundary lines as shown on the Plans does not coincide with the actual location of the respective walls, floor, ceiling, driveway or roof of any Dwelling Unit because of inexactness of construction, settling after construction, or for any other reason, then the boundary lines of each Dwelling Unit and its respective walls, floor, ceiling, driveway or roof shall be deemed to be, and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual and existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Dwelling Unit in and to the space line outside of the boundary lines of the Dwelling Unit and its respective walls, floor, ceiling, driveway, or roof as indicated on the Plans, but within the walls, floors, ceilings, driveway or roof of the Dwelling Unit as the same may actually exist.



## ARTICLE XI

### *Party Walls*

Section 11.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Duplex and which connects two (2) or more Dwelling Units, or forms part of walls in two (2) or more Dwelling Units, shall constitute a party wall (any such wall being herein referred to as a "Party Wall") and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

Section 11.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners of Lots who make use of such Party Wall, proportionately.

Section 11.3 Destruction by Fire or Other Casualty. If any Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners of Lots who make use of such Party Wall or by the Association, and repaired out of the proceeds of the same, any Owner of a Lot who has used the Party Wall may restore it, and if the other Owners of Lots thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners of Lots to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

Section 11.4 Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner of a Lot who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 11.5 Right to Contribution Runs with Land. The right of any Owner of a Lot for contribution from any other Owner of a Lot under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 11.6 Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Maintenance Board shall select an arbitrator for the refusing party).

## ARTICLE XI

### *Mortgages*

Section 11.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty,

liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 11.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 11.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 11.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 11.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

## ARTICLE XII

### *General Provisions*

Section 12.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions

contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 12.2 Severability and Waiver. The Declaration shall be enforceable to the fullest extent permitted at law or in equity. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 12.3 Assignment. Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant with the Recorder of the County in which the Property is located. After such assignment is recorded with the Recorder of the County in which the Property is located, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

Section 12.4 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the county within which the Property is located, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the easements, rights, or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

(c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 12.5 HUD Amendment Approval. All other provisions of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

- (a) Annexation of additional properties;
- (b) Dedication or Mortgaging of Common Area; and
- (c) Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 12.6 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

Section 12.7 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

***IN WITNESS WHEREOF, CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership, has caused this Declaration to be executed as of the date first written above.***

CROSSMANN COMMUNITIES PARTNERSHIP  
an Indiana general partnership,

BY: CROSSMANN COMMUNITIES, INC.  
an Indiana corporation, general partner

By:   
Richard H. Crosser, President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Richard H. Crosser*, as President of Crossmann Communities, Inc., an Indiana corporation, a general partner of Crossmann Communities Partnership, an Indiana general partnership, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Southwind Villas.

Witness my hand and Notarial Seal this 9th day of May, 2000.

My Commission Expires:

May 21, 2001

Residing in Hendricks County

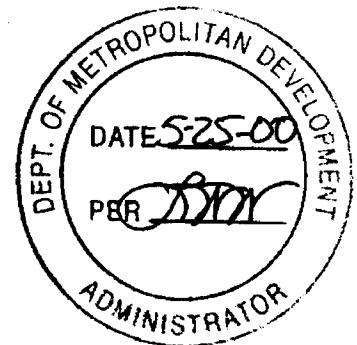
  
\_\_\_\_\_  
Notary Public

Shirley J. White  
\_\_\_\_\_  
Printed Name

Prepared By:

**Charles D. Frankenger**  
NELSON & FRANKENBERGER  
3021 East 98th Street, Suite 220  
Indianapolis, Indiana 46280  
(317) 844-0106

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APPROVED THIS 25th  
DAY OF May 18 2000  
PERRY TOWNSHIP ASSESSOR  
[Signature] DRAFTSMAN

## EXHIBIT "A"

Part of the Northeast Quarter of Section 15, Township 14 North, Range 3 East of the Second Principal Meridian, City of Indianapolis, Perry Township, Marion County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter of said Section 15; thence South 89 degrees 02 minutes 44 seconds West along the North line of said Quarter Section 924.24 feet to a point on the western right-of-way line of the former Indianapolis Southern Railroad (now Indiana Railroad) and being the center of Southport Road, said point also being the point of curvature of a curve concave easterly, the radius point of said curve being South 82 degrees 50 minutes 06 seconds East 2914.93 feet from said point; thence southerly along said curve 468.79 feet to a point on said curve, the radius point of said curve being North 87 degrees 57 minutes 03 seconds East 2914.93 feet from said point, said point also being the POINT OF BEGINNING; thence continuing southerly along said curve 438.24 feet to the point of tangency of said curve, the radius point of said curve being North 79 degrees 20 minutes 12 seconds East 2914.93 feet from said point; thence South 10 degrees 36 minutes 06 seconds East 484.18 feet; thence South 89 degrees 02 minutes 39 seconds West 822.59 feet to a point on the center of Bluff Road; the following two (2) courses are along the center of Bluff Road; (1) North 15 degrees 13 minutes 36 seconds East 346.34 feet; (2) North 15 degrees 00 minutes 43 seconds East 603.91 feet; thence North 89 degrees 02 minutes 44 seconds East 437.59 feet to the place of beginning, containing 12.965 acres, more or less.