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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

SPRUCE KNOLL

PROPERTY OWNERSHIP *

JOHN S. YON ARX
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OF

Spruce Knoll
Property Ownership

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Exhibit "A" Real Estate comprising Spruce Knoll

APPROVED 4/3/1996
WASHINGTON TOWNSHIP ASSESSOR
BY: John Bonds Real Estate Deputy

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DECLARATION OF COVENANTS AND RESTRICTIONS OF
SPRUCE KNOLL PROPERTY OWNERSHIP

THIS DECLARATION made this 27th day of March,
1996, by Spruce Knoll Development L.L.C., an Indiana limited
liability company ("Declarant")

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to
certain real estate located in Marion County, Indiana, more
particularly described in the attached Exhibit A, which is
incorporated herein by reference (hereinafter referred to as the
"Tract" or "Spruce Knoll").

B. Declarant by execution of this Declaration assures that
all properties which are conveyed which are a part of the Tract
shall be conveyed subject to the terms and conditions of this
Declaration, which shall run with the Tract and be binding upon
all parties having any right, title or interest in the Tract, or
any part thereof, their heirs, successors and assigns, and shall
inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as
follows:

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

(a) "Anticipated Lot" means any plot of ground designated as a Lot on the Conditional Final Plat for which a Final Plat has not been recorded and upon which one (1) Dwelling Unit is to be constructed.

(b) "Applicable Date" means the date determined pursuant to Paragraph 11 of this Declaration.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.

(e) "Building" means any one of the separated structures which has one Dwelling Unit or two or more attached Dwelling Units.

(f) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.

(g) "Common Area" means the ground designated as such upon the recorded Final Plat of any part or block of Spruce Knoll.

(h) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area, and all sums lawfully assessed against the Members of the Corporation.

(i) "Conditional Final Plat" means the survey of the Tract dividing it into Blocks A-K prepared by Paul I. Cripe, Inc. certified by Dennis K. Singer, a registered land surveyor, under date of December 12, 1995 and recorded as Instrument Number 96-59542, in the Office of the Recorder of Marion County, Indiana, which Conditional Final Plat is incorporated herein by reference.

(j) "Corporation" means Spruce Knoll Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 11 of this Declaration.

(k) "Declarant" shall mean and refer to Spruce Knoll Development L.L.C., an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(l) "Dwelling Unit" means one of the living units located upon a Lot.

(m) "Final Plat" means the final "as built" plat of any part of or block of the Tract as such may be recorded in the Office of the Recorder of Marion County, Indiana, designating Lots and Common Area.

(n) "Lot" means any plot of ground designated as such upon the recorded Final Plat of any block in Spruce Knoll and upon which one (1) Dwelling Unit is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(o) "Member" means a member of the Corporation.

(p) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(r) "Spruce Knoll" means the name by which the Tract, which is the subject of this Declaration and which the Corporation manages, shall be known, and consists of Blocks A, B, C, D, E, F, G, H, I, J and K in the Conditional Final Plat.

(s) "Tract" means the real estate described in Paragraph A above.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Spruce Knoll. When the final plats of Blocks A-K have been recorded, Spruce Knoll will consist of a maximum of fifty (50) lots numbered one through fifty inclusive, together with the Common Area as designated on the Final Plat of each block. The Common Area and the size of the Lots will be as designated on the Final Plat of each block. The legal description for each Lot in Spruce Knoll shall be as follows:

Lot _____ in Block _____ of Spruce Knoll, a subdivision in Marion County, Indiana, as per plat thereof, recorded as Instrument No. _____ in the Office of the Recorder of Marion County, Indiana.

4. Lots and Easements. The boundaries of each Lot in Spruce Knoll shall be as shown on the Final Plat of the Block in which the Lot is located; provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

5. Common Area. Common Area includes all the area designated as such on the recorded Final Plat or Plats of Spruce Knoll, including but not limited to the lakes, yards, gardens,

driveways, sidewalks, parking areas, and recreational areas, if any, but excluding all Lots and dedicated streets.

6. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, upon approval by a written instrument signed by two thirds of all Class A Members, two thirds of all Class B Members and by two thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 12.

(c) The Common Area on any recorded Final Plat in Spruce Knoll shall be conveyed to or owned by the Corporation at the time of conveyance of the first Lot in Spruce Knoll.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and

the rules or regulations promulgated by the Corporation, his right of enjoyment and use of the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on any Lot.

8. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in and under any other Dwelling Units or in the Common Area and serving his Dwelling Unit.

9. Driveways and Sidewalks. The Owner of a Lot shall have an easement to and an exclusive right to use the driveways and sidewalks exclusively serving such Owner's Lot and a non-exclusive right to use the sidewalks and driveways serving more than one Lot, whether or not such sidewalks or driveways are part of the Lot or located in the Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

9(a). Patios. The Owner of a Lot shall have an easement to and the exclusive right to use the patios exclusively serving such Owner's Lot and located adjacent thereto whether or not

such patio is part of the Lot or located in the Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

In the event that the Corporation decides to liquidate, dissolve or transfer all the Common Area to any public agency, the Corporation shall, prior to such action, convey to the Owner of each Lot the driveways and sidewalks which are designated for such Lot under the terms of Paragraph 9 and the patios which are designated for such Lot under the terms of this Paragraph 9(a).

10. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the streets and Common Area in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Final Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement (i) the electrical and telephone utilities and cable companies are expressly permitted to erect and maintain the necessary

equipment on the Tract and to affix and maintain electrical, telephone and cable wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units and (ii) the space under all Buildings is designated a utility easement through which water, sewer, gas or any other utility (including cable T.V.) may be installed and maintained. In the event any utility or cable company furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

11. Corporation; Membership; Voting; Functions

(a) Membership in Corporation. Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot

merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot and Anticipated Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the resident agent of the Corporation, (ii) thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or (iii) March 1, 2001.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration; to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area and to perform such other functions as may be designated for it to perform under this Declaration.

12. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 12.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Thomas E. Mullen, Sr., Steven C. Striebeck and Stephen D. Zimmerman (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in

any other provisions of this Declaration, the Articles or the By-Laws, (i) the Initial Board shall hold office until the Applicable Date, and (ii) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the

same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 12, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of

Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 12 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 12. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall

find, in its discretion, reasonable and customary; provided, however, any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection, surveillance and replacement of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
- (ii) procuring of utilities in connection with the Lots and Dwelling Units, removal of garbage and waste and snow removal from the Common Area;
- (iii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area, and such exterior portions of the Dwelling Units as designated in this Declaration;
- (iv) surfacing, paving and maintaining any driveways and any off-street parking spaces constituting a part of the Common Area;
- (v) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (vi) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;

(ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area; and

(xi) furnishing upon request of any mortgagee, insurer or guarantor of first mortgage, an audited financial statement for the immediately preceding fiscal year.

(g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(i) to employ a Managing Agent to assist the Board in performing its duties;

(ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(iii) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) to open and maintain a bank account or accounts in the name of the Corporation;

(vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Tract and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

(viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Spruce Knoll; and

(ix) to enter the Dwelling Unit of any Owner in case of any emergency whether the Owner is present at the time or not, and in the case of non-emergency repairs, to enter the Dwelling Unit provided the request is

made in advance and is at a time reasonably convenient to the Owner.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and

responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence of misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any

action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(1) Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without

compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation.

13. Initial Management. The Board of Directors has entered or will hereafter enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such affiliate of Declarant as appropriate) will provide supervision, management and maintenance of the Common Area, and to the extent the same is not otherwise the responsibility of Owners of individual Dwelling Units, the maintenance of Dwelling Units and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years. Such management agreement is or will be subject to termination by Declarant (or its affiliate as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations.

Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or its affiliate as appropriate) is in effect, Declarant (or to its affiliate as appropriate) shall have and Declarant hereby reserves to itself (or to its affiliate as

appropriate), the exclusive right to manage the Tract and perform all the functions of the Corporation.

14. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract as a whole or on the Tract and additional property, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract and additional property or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Tract and additional property or part thereof assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract and additional property or part thereof assessed as a whole based upon the ratio that the square footage of his improved Lot bears to the total square footage of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

15. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

16. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expense.

In addition to maintenance upon the Common Area, the Corporation shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include glass surfaces, screens and screen doors, door and window fixtures and other hardware, patios, and such other items as the Board of Directors may so designate (unless specifically designated in this Declaration as the Corporation's obligation) so long as such items of exception shall apply to all units equally. However, the Corporation shall be responsible for staining or painting of the exteriors of exterior doors and it shall also be responsible for painting or staining the outside or exterior surfaces of patio fences, if any. Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed by the Corporation, including the interiors of patio

areas and patio fences. The Corporation shall be responsible for repairing and maintaining any patio fences other than painting or staining the interior unless the Board of Directors shall otherwise provide.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any Lot or the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, 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. If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

17. Architectural Control

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors and if the Board of Directors so determines, may be the Board of Directors.

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

(c) Conditions. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board. Notwithstanding the foregoing, Declarant shall not be subject to the control or procedures of the Architectural Review Board, provided that the exterior design and appearance of all new Dwelling Units constructed on the Tract shall remain consistent with the general character of the Dwelling Units previously constructed.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it

may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

(e) Maintenance of Architectural Control. The Corporation may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

18. Party Walls

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract and which connects two Dwelling Units shall constitute 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.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

(c) 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 who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance

provided for herein, an Owner 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.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 18, each party shall choose one arbitrator, and such arbitrators shall choose one additional 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 Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

19. Assessments

(a) Annual Accounting. Annually, within sixty (60) days after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared

by either the Managing Agent or a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners represented in person or by proxy at such meeting; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The

annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget

approved by the Owners as herein provided for the next fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the next fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot; provided, however, the assessment against any Lot owned by Declarant that is not occupied and has never been occupied for residential purposes shall be twenty-five percent (25%) of the Regular Assessment. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be

equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

(i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next

payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the applicable fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any

statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 21 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of 2/3rds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of paragraph 12(b) of this Declaration, the Board of Directors shall have the full right,

power and authority to make special assessments which, upon resolution of the Board and approval as provided herein, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made likewise from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is constructing Dwelling Units within the Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting

or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 19.

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent or Managing Agent") in accordance with the provisions of Paragraph 13 of this Declaration. So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Management Agent shall guarantee that until the earlier of (1) the termination of said management agreement, or (2) January 1, 1997, the monthly Regular Assessment shall not exceed \$95.00 (the "Guaranteed Charge"). After January 1, 1997 (assuming that said management agreement has not been terminated), and so long thereafter as said management agreement remains in effect and Management Agent continues to perform such functions, Management Agent guarantees that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge (\$95.00) plus an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items - all cities) published by the United States government over such index as existed in the

month of December, 1995. The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percentage of the Guaranteed Charge as the percentage increase in said Consumer Price Index provided such percentage increase in any one year shall never exceed ten percent (10%). Such adjustments to the Guaranteed Charge shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such monthly charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Management Agent shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund.

Eleven percent (11%) of the Regular Assessment shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas and of those portions of the Dwelling Units which are the obligation of the Corporation

to maintain, that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and if required, applied to the replacement of Common Areas or those portions of Dwelling Units obligated to be repaired and replaced by the Corporation. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date. For each Lot Declarant owns (which is not and has never been occupied for residential purposes) Declarant shall pay to Management Agent twenty-five percent (25%) of the Regular Assessment. Such payment by Declarant for Lots within a particular Final Plat shall not commence until the first Lot in such area

subject to the Final Plat is conveyed by Declarant to a new Owner.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 13 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire

balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessments the Owner and an occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate then being charged by Bank One of Indianapolis to its

largest and best corporate customers (or if said bank is no longer in existence then such rate charged by another national bank in Marion County, Indiana selected by the Board of Directors).

(g) Subordination of Assessment Lien to Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular

Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

20. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 19 hereof

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard

insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be entitled to immediate reimbursement by the Corporation.

(d) Notice of Condemnation or Casualty Loss.

Mortgagees shall be timely notified of any condemnation loss or casualty loss which affects a material portion of Spruce Knoll or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

21. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Dwelling Units and the Common Area in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units and Common Area. If the Board of Directors can obtain such coverage for reasonable

amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Common Area directly damaged by

any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall be solely responsible for loss or damage to the contents of his Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere on the Tract. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to

purchase such additional insurance at his own expense as he may deem necessary.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000.00 for bodily injury, including death of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organization of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. 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 each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any

subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of the Common Area. In the event of condemnation of all or any part of the Common Area, the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owner or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in

violation of the Indiana Nonprofit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

(f) Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

22. Casualty and Restoration.

(a) Restoration of Dwelling Units.

(1) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose.

(2) If the insurance proceeds, if any, received by the Corporation 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 Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling Unit bears to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

(3) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(4) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

(5) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair of the Dwelling Units is more than Sixty Thousand Dollars (\$60,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be

required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

(ii) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exist, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.

(iii) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

(b) Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

23. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.

(b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any

part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or basketball goals, hoops or backboards or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his pet. The tethering of pets in any area does not

constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Tract within ten (10) days after written notice from the Board to the respective Owner to do so.

(f) All equipment, service yards or storage piles shall be kept from view of neighboring homes and streets. Firewood shall be stored on rear deck patios or in garages. All rubbish, trash, garbage or recyclable materials shall be stored in closed sanitary containers in an Owner's garage, shall be regularly removed from the premises, and shall not be allowed to accumulate on any part of the Tract. Each Owner shall return garbage and/or recycling containers to its garage in a timely manner after garbage and/or recycling collection. Clotheslines are not allowed in the patio areas or in any Common Area. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

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

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

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

(j) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, mini bikes or mopeds shall be permitted, parked or stored anywhere within the Tract except as otherwise specifically

permitted by the Board. No repair work shall be done on the Tract on any vehicles, including passenger automobiles.

(k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with express permission from the Board.

(l) Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(m) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration shall be a default under the lease.

(n) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

(o) No Owner shall remove the window grills or "muttons" from any of the windows of any Dwelling Units.

(p) In addition to the items designated in this Declaration, the development of the Tract and the use of the Tract shall be subject to the terms and provisions of certain Commitments, as amended ("Amended Commitments") filed in connection with the

rezoning of the property and recorded in the Office of the Recorder of Marion County, Indiana as Instrument No. 1994-0077828 and to the extent any provisions of this Declaration are inconsistent with such Amended Commitments, such Amended Commitments shall govern.

(q) Each Owner shall install window coverings of off-white or white material in all garage windows. All such coverings shall be approved by the Architectural Review Board prior to installation. After approval and installation, the window coverings shall be kept closed in order to block a view from the street to the interior of the garage.

(r) No outside television or radio aerial or antennae, satellite dish or other device for the reception or transmission of radio or television or other electronic signals shall be erected or maintained on any Lot or upon the exterior of any Dwelling Unit, Building or Common Area without the prior written approval of the Architectural Review Board. In approving an application, the Architectural Review Board will consider, among other criteria, whether (i) the installation is for the personal use of the Owner or resident; (ii) the device will be visible from the front of the Dwelling Unit; and, (iii) the satellite dish is two (2) feet or less in diameter. In approving such applications, the

Architectural Review Board shall have the power to require such specific forms of placement of the device as it deems appropriate in order to effectuate the intent of this Paragraph that the antennae not be visible from the front of the Dwelling Units and in order to render the installation as inoffensive as possible to other Owners and residents. All installations must comply with local zoning requirements and building codes, if applicable.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Tract (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by

Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract at any time.

24. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 21 with respect to casualty insurance to be maintained by the

Corporation, or (3) the provisions of Paragraph 22 of this Declaration with respect to reconstruction or repair of the Common Area or Dwelling Units in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 17 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 19 of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Additional Special Amendments.

No amendment to this Declaration shall be adopted which imposes a right of first refusal or similar restriction or which changes (1) the method of voting, or (2) the responsibility for maintenance, repair and replacement of the Common Area and Dwelling Units, or (3) rights to use the Common Area, or (4) annexation of property to Spruce Knoll, or (5) the boundaries of any Dwelling Unit, or (6) the leasing of Dwelling Units, or (7) termination of the applicability of this Declaration, or (8) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of Owners for the first twenty (20) years after the recording of this Declaration and thereafter at least seventy-five percent (75%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty-one percent (51%) of the Dwelling Units subject to Mortgages.

(vii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(viii) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

(b) Amendments by Declarant Only.

Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical,

typographical or other errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 24 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 24 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Tract.

(c) Amendment Prior to the Application Date.

Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

25. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be

subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

26. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of

insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

27. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

28. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

29. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

30. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and

convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

31. The Plat. The Conditional Plat of Spruce Knoll is incorporated into this Declaration by reference and has been filed in the office of the Recorder of Marion County, Indiana, as of the 4th day of May, 1996, as Instrument No.

96-59542

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

SPRUCE KNOLL DEVELOPMENT L.L.C.

By: Spruce Knoll Corporation

By: James A. Bell
James A. Bell, Managing Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared James A. Bell, by me known and by me known to be the Managing Member of Spruce Knoll Corporation, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of Spruce Knoll Property Ownership" on behalf of said Corporation.

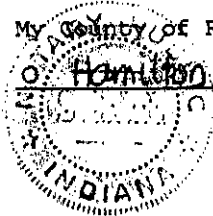
WITNESS my hand and Notarial Seal this 27th day of March, 1996.

My Commission Expires:

4-1-00

Holly J. Lee
Notary Public

My County of Residence:



HOLLY J. LEE
(Printed Signature)

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CONSENT OF MORTGAGEE

The undersigned, National City Bank, Indiana f/k/a First Federal Savings Bank of Kokomo, being the holder of an existing mortgage on the Tract, as defined in the above and foregoing Declaration of Covenants and Restrictions of Spruce Knoll Property Ownership ("Declaration"), which mortgage is dated September 29, 1994, and recorded in the office of the Recorder of Marion County, Indiana, as Instrument No. 95-0006406, hereby consents to the recording of the Declaration and the submission of the Tract to the provisions of the Declaration and the exhibits attached thereto and documents incorporated therein; provided, however, except to the extent that the mortgage is modified by this Consent, such mortgage shall remain in full force and effect unaltered and enforceable in accordance with its terms.

Executed this 28th day of December, 1995.

NATIONAL CITY BANK, INDIANA

BY: *Jack E. Milner, Jr.*
PRINTED: Jack E. Milner, Jr.
TITLE: Assistant Vice President

STATE OF INDIANA
SS:
COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared Jack E. Milner, Jr., by me known to be the Asst. Vice President of National City Bank, Indiana, who acknowledged the execution of the above and foregoing Consent for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 28th day of December, 1995.

My Commission Expires: October 14, 1998
Lorrie M. Robinson
Notary Lorrie M. Robinson, A
Resident of Howard County, Indiana

This instrument was prepared by Phillip A. Nicely, Attorney at Law

APPROVED 4-3-1996
Richard K. Bryant
WASHINGTON TOWNSHIP ASSESSOR
Real Estate Dept.

EXHIBIT A

SPRUCE KNOLL BOUNDARY DESCRIPTION

Part of the Southeast Quarter of Section 4, Township 16 North, Range 4 East in Marion County, Indiana, described as follows:

Beginning at the Northwest corner of the Southeast Quarter of Section 4, Township 16 North, Range 4 East; thence North 90 degrees 00 minutes 00 seconds East (assumed bearing) on and along the north line thereof 673.49 feet; thence South 00 degrees 14 minutes 00 seconds East 332.42 feet to the True Point of Beginning of this description as an angle point in the west of line of Lot 592 in "Devonshire - Fourth Section", as per plat thereof, recorded in Plat Book 31, Page 307, in the Office of the Marion County Recorder (said point also being on the Easterly right-of-way line of State Highway 37 as located by I.S.H.C. plans for Project F-824(4) dated 1954, on a curve, 11,359.16 feet North 57 degrees 45 minutes 06 seconds West of the radius point thereof); thence South 00 degrees 14 minutes 00 seconds East on and along the west line of said "Devonshire - Fourth Section" and its prolongation southerly 917.97 feet to the intersection of said line with the East line of a senior deed from Jacob Spahr to John Negley, recorded August 5, 1852 in Land Record "CC" page 87 in said Recorder's Office; thence along the East line of said Negley deed, South 00 degrees 23 minutes 24 seconds West 293.55 feet to the centerline of Kessler Boulevard as now located by plans for Kessler Boulevard (east end) Part B of Section 4 dated April 25, 1929; thence South 89 degrees 45 minutes 15 seconds West on and along said centerline 394.69 feet to the point of curvature to the right, the radius point of which bears North 00 degrees 14 minutes 45 seconds West 716.20 feet from said point; thence Northwesterly on and along said curve 203.62 feet to a point that bears South 16 degrees 02 minutes 37 seconds West 716.20 feet from said radius point; thence North 16 degrees 02 minutes 37 seconds East 50.00 feet to the existing north right-of-way line as located by said Kessler Boulevard plans and the east right-of-way line of State Road 37 as located by said I.S.H.C. plans for Project F-824(4); thence North 14 degrees 53 minutes 30 seconds West on and along said east right-of-way line 137.32 feet; thence North 31 degrees 30 minutes 38 seconds East on and along said right-of-way 860.10 feet to the point of curvature of a curve to the right, the radius point of which bears South 59 degrees 21 minutes 20 seconds East 11,359.16 feet; thence Northeasterly on and along said curve 317.98 feet to the Beginning Point; containing 9.956 acres, more or less.