

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ST. CLAIRE PLACE

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THIS DECLARATION made this 21 day of September, 1998, by Regal Realty, Inc., an Indiana Corporation (hereinafter referred to as the "Developer").

WITNESSETH:

980174741

WHEREAS, the Developer is the owner of the lands contained in the area described in Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided and part of a planned development known as "St. Claire Place" (hereinafter referred to as the "Development"), and will be more particularly described on the plats of the various sections thereof recorded and to be recorded in the office of the Recorder of Marion County, Indiana, and

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

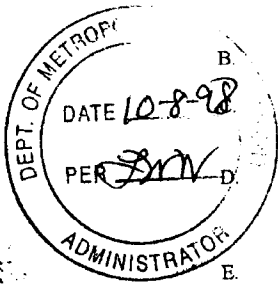
NOW, THEREFORE, The Developer hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which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

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

- A. "Committee" shall mean St. Claire Development Control Committee, composed of three members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of the Developer. The Developer may, at any time hereafter relinquish to the Association the power to appoint and remove one or more members of the Committee.
- B. "Association" shall mean St. Claire Place Property Owners' Association, Inc., a not-for-profit corporation, the membership and powers of which are more fully described in Paragraph 11 of this Declaration.
- C. "Lot" shall mean any parcel of real estate excluding "Blocks", whether residential or otherwise, described by one of the plats of the Development which is recorded in the Office of the Recorder of Marion County, Indiana.
- D. Approval, determinations, permissions, or consents required herein shall be deemed given if they are given in writing, signed with respect to the Developer or the Association, by the President or a Vice President thereof, and with respect to the Committee, by two members thereof. A single signature will be deemed acceptable as long as the Developer is in control of the committee.
- E. "Owner" shall mean a person who has or is acquiring any right, title or interest, legal or equitable, in and to a lot, but excluding those persons having such interest merely as security for the performance of an obligation.

2. **CHARACTER OF THE DEVELOPMENT.**

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



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ASSESSOR

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which may be constructed upon a residential lot under these Restrictions ever be used as a residence or dwelling house or place for human occupancy or habitation. There shall be no detached garages on any lot in the Development.

- C. **Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited.** No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties. That the foregoing is subject to the rules, regulations and ordinances of Marion County, Indiana and of its building commissioners.
- D. **Other Restrictions.** All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

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

A. **Minimum Living Space Areas.** The minimum square footage of living space of dwellings constructed on various residential lots in the Development, exclusive of porches, terraces, garages, carports, or accessory buildings shall be, out of the 41 homes built 8 would be between 1450 and 1850 square feet. The remaining 33 would be over 1850 square feet. Basements shall not be included in the computation of the minimum living area.

B. **Residential Set-Back Requirements.**

- (i) **In General.** Unless otherwise provided in these Restrictions or on the record plat, no dwelling house or above-grade structure shall be constructed or placed on any residential lot in the Development except as provided herein.
- (ii) **Definitions.** "Side line" means a lot boundary line that extends from the road on which a lot abuts to the rear line of said lot. "Rear Line" means the lot boundary line that is farthest from, and substantially parallel to, the road on which the lot abuts, except that on corner lots, it may be determined from either abutting road.
- (iii) **Front Yards.** The front building set-back lines shall be the designated number of feet from the right-of-way of the road upon which the lot abuts as set forth upon the plats of the Development.
- (iv) **Side Yards.** The side yard set-back lines shall be a minimum of 6 feet.
- (v) **Rear Yards.** The rear set-back line shall be 15 feet rear yard minimum. Set back from any subdivision boundary property lines: twenty (20) feet.

C. **Fences.** In order to preserve the natural quality and aesthetic appearance of the existing Geographic areas within the Development, any fence must be approved by the Committee as to size, location, height and composition before it may be installed. Any fencing constructed shall be a maximum of 4 ft. high, unless otherwise approved by the Committee.

(a) Fences that have been pre-approved by the Committee are:

1. Black vinyl chain link, 9-gauge 2" diamond with black vinyl framework.
2. Shadow box or spaced picket, using 2-3" spacing, may be Cape Code scalloped, dog-eared or crowned.

(b) The finished side of the fence must always face out towards the neighbor's yard.

(c) Fence may be stained to match trim of home or left natural.

(d) Use of decorative posts is at the discretion of homeowner. The following decorative post may be used:

1. Dog-eared
2. Mill top

(e) All Fences must be properly maintained. Any damage must be promptly repaired.

(f) No fence may be added on to topside of the original installation.

(g) No six (6') foot privacy fences shall be permitted except around in-ground pools. However, such fences shall be installed no farther than twenty (20') feet beyond the outline of the pool area.

(h) No drainage can be impeded by the erection of a fence. If a lot Owner, lessee, agent or an other

JOHN R. VON ARX
MARION COUNTY AUDITOR

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DAILY REPORT OF THE AUDITOR
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FOR TRANSFER

party erects a fence in a drainage or utility or other type of easement, the Owner is at risk of having to remove or alter said improvement at Owner's expense.

ALL FENCING MUST BE PROFESSIONALLY INSTALLED.

**Privacy fences of 6 ft. height will be allowed only around in-ground swimming pools or as a privacy fence around a back patio, however, fenced area may not exceed 40 ft. x 20 ft. and must not go beyond the perimeters of the house.

- D. **Exterior Construction.** The finished exterior of every building constructed or placed on any lot in the Development shall be of material acceptable to and approved by the Development Control Committee.
1. There shall be no off site work that would damage any of the trees or the existing fence to the west of the subject property. The existing fence along the western property line shall remain without disturbance or relocation by the developer.
 2. The exterior of the homes shall be of wood or vinyl material wood based product. No aluminum siding will be permitted.
 3. Aluminum or vinyl clad windows, gutters and soffits are permitted.
 4. All homes shall have a minimum roof pitch of 5:12.
 5. All driveways must be paved with concrete from their point of connection with the abutting street or road.
 6. The homes shall have at least fifty percent (50%) of the front exterior elevation of each house constructed with masonry, excluding eaves, gables, doors, windows, and foundations in this calculation. However, in the event Ryland Homes should use its "Gilbert" or "Hamilton 2" home plans, this requirement shall not apply.
 7. All lots shall be improved with (4) feet width public sidewalks within the right-of-way.
 8. No more than eight houses shall be single story or "ranch" style homes. Said single story homes shall have a minimum of 1,450 square feet of livable space. The other homes shall have a minimum of 1,850 feet of livable space.
 9. During the construction period, the lot shall be maintained in a clean and orderly manner. Loose shingles, lumber, blocks, brick, drywall, insulation, papers and other building materials shall not be scattered about or around the building. Materials which can blow in adjacent lots shall not be left lying around. Construction trash shall be removed from the lot once per week, by either removing the trash from the lot or disposing the trash into a dumpster provided by a trash disposal service.
- E. **Heating Plants, Garages and Air Conditioning Units.** Every house in the Development must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the house. Geo-Thermal heat pumps shall be a closed loop system. Every house in the Development must have a minimum of a 2-car attached garage. No air conditioning units may be placed in the front yard of dwellings.
- F. **Diligence in Construction.** Every building whose construction or placement on any residential lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
- G. **Prohibition of Used Structures.** All structures constructed or placed on any numbered lot in the Development shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such lot.
- H. **Maintenance of Lots and Improvements.** The Owner of any lot in the Development shall at all times maintain the lot any improvements situated thereon in such a manner as to prevent the lot or improvements from becoming unsightly; and, specifically, such Owner shall:
- (i) Mow the lot at such times as may be reasonably required in order to prevent unsightly growth of

- vegetation and noxious weeds.
- (ii) Remove all debris or rubbish.
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- (iv) Cut down and remove dead trees.
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vi) Within forty-five (45) days following completion of a house on a lot, the Owner shall landscape the lot, weather permitting with a minimum of one (1) tree in the front yard with a minimum of 1 ½ inches in caliber and five (5) shrubs at least 18 inches in height. Front yards shall be sod with the side and rear yards being either sod or seed.

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

- A). **Special Provisions During Construction.** It is the responsibility of the Owner of any homesite to maintain a clean and safe construction site, placing such condition in the contractual agreement with a building contractor. Upon completion of the foundation, a stone driveway area shall be created to minimize mud and debris carryover to the subdivision and adjacent streets. In addition, the builder must place a temporary boundary (such as a silt fence) on each side of the stone drive, to ensure that subcontractors do NOT drive on and track mud from the lot. Likewise, in order to ensure the continued operation of the underground street drains contractors MUST BE REQUIRED BY THE OWNER to clear streets of any excess mud or dirt that is tracked by construction vehicles on a daily basis. Loose trash shall NOT be allowed to carry over to adjacent homesites. If the construction site is not maintained in conformity with this paragraph, the Maintenance Association reserves the right to perform such cleanup functions that it deems necessary to protect the interests of the other lot owners and WILL INVOICE THE OWNER accordingly similar to the provisions of paragraph 20 (including the established of liens on the property if necessary).

4. **PROVISIONS RESPECTING DISPOSAL OF SANITARY WASTE.**

- A. **Nuisance.** No outside toilets shall be permitted on any lot in the Development (except during a period of construction and then only with the consent of the Committee). By purchase of a lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by the Developer, the Association or Marion County, Indiana in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorney's fees, shall become a charge or lien upon the lot, and may be collected in any manner provided by law or in equity for collection of a liquidated debt.

Neither the Developer, not the Association, not any officer, agent, employee or contractor thereof, shall be liable for any damage which may result from enforcement of the restrictions.

- B. **Construction of Sewage Lines.** All sanitary sewage lines on the residential building lots shall be designed and constructed in accordance with the provisions and requirements of the Town of Lawrence, ordinances of Marion County, Indiana, if any, and the Marion County Board of Health.

No storm water (subsurface or surface) shall be discharged into sanitary sewers.

5. **COACH LIGHTS REQUIRED ON EACH LOT IN THE DEVELOPMENT.** No lot within the Development shall have a post lamp of any kind. Each home within the Development shall have coach lights mounted on each side of the overhead garage door. All coach lights must operate on a photo cell. The design and type of the coach light shall be subject to the approval of the Committee which will require, for the purpose of uniformity and appearance, that such coach light

be purchased from the Developer or its designee. The location of said yard light shall be two feet (2') behind the right of way and five feet (5') from the driveway. It shall be Owner's responsibility to keep the yard light in operation at all times. (The pole and light must be uniform and replaced with like pole and light).

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

7. **GENERAL PROHIBITIONS.**

- A. **In General.** No noxious or offensive activities shall be carried on on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot in the Development.
- B. **Signs.** No signs or advertisements shall be displayed or placed on any lot structures in the Development without the prior written approval of the Committee except for real estate sales signs. Any such real estate sign shall not be larger than 3' x 3' and of the same size and style of signs customarily used by the residential real estate professionals in Marion County, Indiana. No electric or neon signs will be permitted.
- C. **Animals.** No animals shall be kept or maintained on any lot in the Development except the usual household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance.
- D. **Vehicle Parking.** No campers, trailers, boats, or similar vehicles shall be parked on any street or lot in the Development. No boat or truck, one (1) ton or larger in size, shall be parked for overnight or longer storage on any lot in the Development, unless the same shall be parked in such a manner that it is not visible to the occupants of other lots in the Development, or the users of any street in the Development. No vehicles of any kind which do not possess a license tag shall be permitted on any street or lot within the Development. This prohibition applies to all public and private streets, roadways, and right-of-ways.
- E. **Garbage and Other Refuse.** No Owner of a lot in the Development shall burn or permit the burning out of doors of garage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his lot except as may be permitted in Subparagraph F below. All houses built in the Development shall be equipped with a garbage disposal unit.
- F. **Fuel Storage Tanks and Trash Receptacles.** There shall be no storage of fuel of any sort outside of any residence and no underground storage tanks shall be allowed. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.
- G. **Model Homes.** No Owner of any lot in the Development shall build or permit the building upon said lot of any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Developer.
- H. **Temporary Structures.** No temporary structure of any kind, such as a house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.
- I. **Ditches and Swales.** It shall be the duty of the Owner on every lot in the Development on which any part of any storm drainage ditch or swale is situated, to keep such portion thereof as may be situated upon the lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. It shall be the responsibility of the Owner of a lot to ensure that any contractor hired on his behalf shall in no way alter or cause the obstruction of the surface or subsurface drainage system. It is a requirement of the subdivision to tie crawl space and basement sump pumps into the subsurface drain pipe provided by the Developer.
- J. **Utility Services.** No utility services shall be installed, constructed, repaired, replaced and/or removed under finished streets except by jacking, drilling or boring and shall require the approval of the Town of Lawrence which has jurisdiction.
- K. **Wells and Septic Tanks.** No water wells shall be drilled on any of the lots nor shall any septic tanks be installed on any of the lots in the Development, without the approval of the Committee.
- L. **Prohibition of Antennas.** No exposed radio, cable and television antennas shall be permitted within the Development, unless in the opinion of St. Claire Place Architectural Control Committee technological advances have reached the degree where said antennas are hidden from view or are aesthetically screened. Under no circumstances shall a satellite dish which is larger than 24 inches in diameter be installed or permitted on any lot. Additionally, no satellite dish shall be installed without the prior written approval of St. Claire Place Architectural Control Committee. All permitted satellite dishes shall be aesthetically concealed, by landscaping or otherwise, from view on all sides by other Owners in the neighborhood, and shall be installed so as not to constitute a nuisance or offensive effect on other Owners in the neighborhood.

- M. **Swimming Pools.** All swimming pools will be below ground, properly fenced and landscaped. Approval for same must be first obtained from the Committee.
- N. **Basketball Courts.** Basketball courts must have black poles with white fiberglass or translucent fiberglass or glass backboards.
- O. **Play Equipment.** Play equipment must be kept in the back yards only, and must be maintained in good repair, including painting when necessary. No such play equipment may exceed six (6) feet in height without approval from the Committee.
- P. **Yard Lights.** All yard lights, flag poles, etc. shall require architectural Committee approval.
- Q. **Street Numbers.** Homes shall be uniformly displayed on address markers on all houses.
- R. **Clothes Drying Area.** No portion of any lot or Common Area shall be used as a drying or hanging area for laundry of any kind.
- S. **Mini Barns.** No mini-barns of any type shall be permitted within the Development.

8. **ST. CLAIRE PLACE DEVELOPMENT CONTROL COMMITTEE.**

- A. **Statement of Purposes and Powers.** The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these Restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.
 - (i) **Generally.** No dwelling, building structural or improvement of any type or kind shall be constructed or placed on any lot in the Development without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the committee by the lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any other materials or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of $\frac{1}{4}'' = 1'$ and all plot plans shall be drawn to scale of $1'' = 30'$, or to such other scale as the Committee shall require.
 - (ii) **Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:
 - (a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these Restrictions;
 - (b) The design, color scheme or building material of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures;
 - (c) The proposed improvement, or any part hereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of other Owners.
 - (iii) **Power to Grant Variances.** The Committee may allow reasonable variances or adjustments of these Restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these Restrictions and no variance or adjustment shall be granted which is materially detrimental or injurious to other lots in the Development.
 - (iv) **Power to Publish Architectural Guidelines.** The Committee shall have the power to publish Architectural Guidelines which shall be binding upon every Owner in the development. Furthermore, the Committee is empowered to amend said Guidelines from time to time by publication of Amended Guidelines. Printing and distribution of Architectural Guidelines, as amended from time to time, shall constitute publication.
- B. **Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.
- C. **Liability of Committee.** Neither the Committee nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

- D. **Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.
- E. **Continuation of Committee.** When the Developer notifies the Association of discontinuance of his Architectural Control Committee, then the Directors of the Association, or their designees, shall continue the functions of the Committee with like powers.

9. **RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.**

Whenever two or more contiguous lots in the Development shall be owned by the same person, and such Owner shall desire to use two or more of said lots as a site for a single-dwelling house, he shall apply in writing to the committee for permission to so use said lots. If permission for such a use shall be granted, the lots constituting the site for such single-dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single-dwelling house. Also, this use shall constitute one lot for purposes of billing and voting by the homeowner's association.

10. **OWNERSHIP, USE AND ENJOYMENT OF COMMONS.**

- A. "Commons" and "Common Area" shall mean those areas set aside for conveyance to the Association, as shown on the plat. Any commons depicted on the recorded plats of the Development shall remain private, and neither the Developer's execution or recording of the plats nor the doing of any other act by the developer is, or is intended to be, or shall be construed as, a dedication to the public of the commons.

A license upon such terms and conditions as the Developer, and the successors, assigns or licensees of the Developer, shall from time to time grant, for the use and enjoyment of the commons, is granted to the persons who are from time to time members of the Association. Ownership of any commons shall be conveyed in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record, and such other conditions as the Developer may at the time of such conveyance deem appropriate. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such commons to the Association.

11. **ST. CLAIRE PLACE PROPERTY OWNERS' ASSOCIATION, INC.**

- A. **In General.**

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

- B. **Classes of Membership.** The association shall have two classes of voting membership:

- Class A.** Class A members shall be all Owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

- Class B.** The Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) On the date the Developer sells the last lot which it owns in the Development, and the Developer no longer owns any lots or land in the Development; or
- (b) On January 1, 2010.

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

- D. **Professional Management.** No contract or agreement for professional management of the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either

party with or without cause without any termination fee by written notice of ninety (90) days or less.

E. **Responsibilities of the Association.**

- (i) The Association shall maintain the entrance landscaping, signage, perimeter fencing and the landscape easements shown on the plat(s) and shall keep such areas in a neat, clean and presentable condition at all times.
- (ii) The Association shall maintain and repair the Common Areas shown on the plat(s) including improvements thereon.
- (iii) The Association shall maintain the water retention areas/blocks shown on the plat(s) as part of the overall drainage system to serve the development.
- (iv) The Association shall procure and maintain casualty insurance for the Common Areas, liability insurance and such other insurance as it deems necessary or advisable. The Association shall be required to use reasonable efforts to secure insurance policies that will provide the following:
 - (1) A waiver of subrogation by the insurer as to any claims against the Association, the Associations' Board of Directors and the Developer;
 - (2) A statement that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or nonrenewable.
 - (3) All liability insurance shall not exclude coverage for claims made by Owners/members and shall also name the Developer as and additional insured.
- (v) The Association may contract such service as management, snow removal, security control, trash removal, street repair and such other services as the Association deems necessary or advisable.
- (vi) The Association shall mow the landscape easements on the perimeter of the property and the common areas including the park. Individual homeowners who abut the lakes shall maintain to the water's edge.
- (vii) The Association shall contract with Indianapolis Power & Light for the erection and maintenance at all times of the street lights within the Development.

12. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

- A. **Creation of the Lien and Personal Obligation of Assessment.** Each Owner of any lot in the subdivision, except the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of \$320.00 per lot per year which minimum may be amended or raised or lowered by the Board of Directors; and (2) special assessments for capital improvements and operating deficits; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No charge or assessment shall ever be levied by the Association against the Developer. At Developer's discretion a builder would not be mandated to participate in the Property Owners' Association on any lot it purchases unless said lot is held by builder for a period of six (6) months or longer.
- B. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and improvements, operated or maintained by the Association, and the landscape easements on the Development and other purposes as specifically provided herein.
- C. **Special Assessments for Capital Improvements and Operating Deficits.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
- D. **Notice and Quorum for Any Action Authorized under Section C.** Written notice of any meeting called for the purpose of taking any action authorized under Section C for Special Assessments shall be sent to all members not less than thirty (30) days not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2)

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

- E. **Date of Commencement of Annual Assessments: Due Dates.** The annual assessment provided for herein shall commence for each lot on the date of conveyance to the Owner by deed or on the date the Owner signs a land contract to purchase a lot. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of annual assessments and such other assessment notice as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.
- F. **Effect of Non-Payment of Assessments: Remedies of the Association.** Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full and shall also be a personal obligation of the Owner or Owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of twelve percent (12%) per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction. The Owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay any expense or costs, including attorney's fees, incurred by the Association in collecting the same. Every Owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said lot at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an Owner of a lot in the Development is hereby notified that by the act of acquiring, making such purchase or acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to this subparagraph of the Restrictions.

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

- G. **Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.
- H. **Suspension of Privileges of Membership.** Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the services to be provided by the Association together with the right to use the facilities of the Association, of any member or associate member (I) for any period during which any of the Association's charges or any fines assessed under these Restrictions owed by the member or associate member remains unpaid, (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association. Written notice of said suspension shall be sent to any property Owner whose voting rights or privileges of membership are to be suspended.
13. **REMEDIES.**
- A. **In General.** The Association or any party to whose benefit these Restrictions inure, included the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.
- B. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available

remedy with respect to a violation of anyone or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, reoccurrence or continuation of such violation or violations of these Restrictions.

14. **EFFECT OF BECOMING AN OWNER.**

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

15. **TITLES.**

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

16. **DURATION.**

The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2080, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by a two-thirds majority vote of those persons who are then the Owners of the numbered lots in the Development. Prior to January 1, 2080, amendment to these Restrictions may be accomplished by a two thirds majority vote of the members of both Class A and Class B members. Such amendment shall not be valid unless recorded in the Office of Recorder of Marion County, Indiana.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and sale of lots shall continue, it shall be impermissible for any person or entity to record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Development without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer. This paragraph may not be amended without the express written consent of the Developer; provided, however, the rights contained in this paragraph shall terminate upon the earlier of (a) ten (10) years from the date this Declaration is recorded, or (b) upon recording by Developer of a written statement that all sales activity has ceased.

17. **SEVERABILITY.**

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

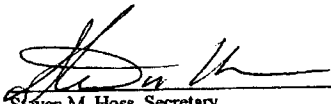
Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality or running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

In Testimony Whereof, witness the signature of the Developer, this 21 day of SEPTEMBER, 1998.

REGAL REALTY, INC.

By: Tracie Hoss
Tracie Hoss

ATTEST:

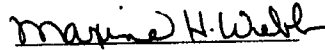

Steven M. Hoss, Secretary



STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said county and state, personally appeared Tracie Hoss and Steven M. Hoss, the President and Secretary, respectively, of REGAL REALTY, INC., and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions, for and on behalf of that Corporation.

Witness my hand and seal this 21st day of September, 1998.


Signature

MAXINE H. WEBB
Printed NOTARY PUBLIC

My Commission Expires: 12/12/99

County of Residence: Hamilton

This Instrument Prepared by Michael J. Hebenstreit, Attorney at Law
KROGER, GARDIS & REGAS, 111 Monument Circle, Suite 900
Indianapolis, IN 46204
[317] 692.9000 Fax: [317] 264.6832

Exhibit "A"

Legal

Part of the Southwest Quarter of Section 33, Township 17 North, Range 5 East, more particularly described as follows:

Beginning at the Northwest corner of said Quarter Section; thence North 89 degrees 01 minutes 03 seconds East along the North line of said Quarter Section 804.45 feet by measurement (804.25 by deed) to the centerline of Sunnyside Road as now located and established; thence South 00 degrees 59 minutes 07 seconds East along said centerline 639.54 feet; thence South 88 degrees 45 minutes 53 seconds West along an existing fence line 320.87 feet; thence South 00 degrees 59 minutes 07 seconds East, parallel with the centerline of said Sunnyside Road 277.58 feet to a point on the centerline of East 63rd Street as now located and established; thence South 89 degrees 00 minutes 26 seconds West along the centerline of said East 63rd Street 500.65 feet to a point on the West line of said Quarter Section; thence North 00 degrees 04 minutes 45 seconds East along said West line 918.79 feet by measurement (919.50 feet by deed) to the POINT OF BEGINNING, containing 15.094 acres.

METES/25863