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JOHN R. VON ARX  
MARION COUNTY AUDITOR

PLAT COVENANTS AND RESTRICTIONS

JUN 29 1990

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THE GLEN  
AT EAGLE CREEK NORTH

PIKE TOWNSHIP  
ASSESSOR

(8)

DULY ENTERED FOR  
TAXATION  
SUBJECT TO FINAL  
ACCEPTANCE

SECTION III

The undersigned, DAVIS DEVELOPMENT - EAGLE CREEK NORTH, INC., an Indiana corporation (the "Developer"), is the Owner of the real estate more specifically described in Exhibit "A" attached hereto (the "Real Estate"). Developer is concurrently platting and subdividing Real Estate as shown on the plat for The Glen at Eagle Creek North - Section III, which is filed of record simultaneously herewith in the office of the Recorder of Marion County, Indiana (the "Plat") and desires in such Plat to subject the Real Estate to the provisions of these Plat Covenants and Restrictions. The subdivision created by the Plat (the "Subdivision") is to be known and designated as the "The Glen at Eagle Creek North - Section III". In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to those covenants and restrictions contained in a Declaration of Covenants, Conditions and Restrictions of Eagle Creek North, dated August 14, 1989, and recorded on August 15, 1989, as Instrument No. 89-0079157, in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided (the "Declaration"), and to the rights, powers, duties and obligations of Eagle Creek North Community Association, Inc. (the "Association"), set forth in the Declaration. If there is any irreconcilable conflict between any of the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration, the covenant or restriction contained in the Declaration shall govern and control only to the extent of the irreconcilable conflict, it being the intent hereof that all that all such covenants and restrictions shall be applicable to the Real Estate to the greatest extent possible. Capitalized terms used herein shall have the same meaning as given the term in the Declaration.

RECORDED IN RECORDS  
JUN 29 1990 05

In order to provide adequate protection to all present and future Owners of Lots or Residence Units in the Subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

1. PUBLIC RIGHT OF WAY - The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.
2. UTILITY AND DRAINAGE EASEMENTS - There are areas of ground on the Plat marked "Utility Easements" and "Drainage Easements," either separately or in combination. The Utility

Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage Easements are hereby created and reserved: (i) for the use of Developer during the "Development Period" (as such term is defined in the Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association and the Department of Public Works of the City of Indianapolis for access to and maintenance, repair and replacement of the drainage system; provided, however, that the Owner of any Lot in the Subdivision subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded and will not be changed or altered. The delineation of the Utility Easement and Drainage Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this paragraph 2. No permanent structures shall be erected or maintained upon said easements. The Owners of Lots in the Subdivision shall take and hold title to the Lots subject to the Utility Easements and Drainage Easements herein created and reserved.

3. BUILDING SET - BACK AND SIDE YARD EASEMENT. Building set-back lines are established on the Plat. No building or structure shall be erected or maintained between said set-back lines and the front or rear Lot line (as the case may be) of said Lot. The set back lines may vary in depth from the minimum as designated on the Plat. The minimum front set-back shall be fifteen (15) feet from the right of way to the living area or side of a garage and twenty (20) feet to the garage opening. The minimum Lot width both at the front Lot line and at the designated setback shall be forty (40) feet, except on a cul-de-loop or cul-de-sac Lots, which shall be thirty-five (35) feet at the designated setback. In addition, no building or structure shall be erected or maintained closer to any side Lot line of any Lot than zero (0) feet. No building or structure on a Lot shall be located any closer than ten (10) feet to any other building or structure, whether or not located on an adjacent Lot. If a residential building or structure is constructed on any Lot within three (3) feet of the side Lot Line, then a Side Yard Easement shall exist on that portion of the adjoining Lot which is within six (6) feet of any part of the residential structure on the abutting Lot. Utility companies and service people shall have an easement for access over any side yard easements to the

extent reasonably necessary to service, repair or replace any utility lines or facilities located therein or on an adjoining lot where access is necessary over the side yard easement. If a residential structure is not located within three (3) feet of the Lot Line, then there shall not be any Side Yard Easement on the adjoining Lot. No structure shall be built within such Side Yard Easement. Decks, fences, patios, walkways, landscaping, public utilities, cable TV and other ground level improvements may be constructed within the Side Yard Easement. In addition, the Owner of the Lot which abuts the Side Yard Easement shall have the right to pass over any part of the Side Yard Easement which is within four (4) feet of such Owner's residential structure for the purpose of obtaining access to his or her building or structure for the purpose of painting, repairing, and maintaining such building or structure. Where two (2) or more contiguous Lots are used as a site for a single family dwelling, this side yard restriction shall apply to the combined Lots as if they were a single Lot.

4. SIGHT OBSTRUCTIONS. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

5. RESIDENTIAL UNIT SIZE. No residence constructed on a Lot in the Subdivision shall have less than eight hundred fifty (850) square feet of floor area, exclusive of garages, carports and open porches. No more than twenty-five percent (25%) of the homes within the entire subdivision shall contain less than nine hundred (900) square feet, and the average size of all homes in the entire subdivision shall be at least one thousand (1,000) square feet.

6. RESIDENTIAL UNIT USE. All lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on said Lots, and no business may be conducted on any part hereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half (2 1/2)

stories in height and permanently attached residential accessory buildings. Any garage, tool shed, storage building or any other building erected or used as an accessory building to a residence shall be attached to the structure, shall be of a permanent type of construction and shall conform to the general architecture and appearance of the residence.

7. ACCESSORY AND TEMPORARY BUILDING. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot in the Subdivision, except that used by a builder during the construction of a residential building on the property, which temporary construction structures shall be promptly removed upon completion of construction of the building.

8. TEMPORARY STRUCTURES - No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

9. NUISANCES - No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any Lot or Lots in the Subdivision. No noxious, unlawful, or otherwise offensive activity shall be carried out on any Lot in the Subdivision; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

10. VEHICLE PARKING - No camper, motor home, truck, trailer, boat or recreational vehicle of any kind may be stored on any Lot in the Subdivision in open public view. No vehicles shall be put up on blocks or jacks to accommodate car repair on a Lot except if such repairs are done in the garage. Disabled vehicles shall not be allowed to remain in open public view.

11. SIGNS - No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising the property for sale or rent, except Developer may use larger signs during the sale and development of the Subdivision.

12. MAILBOXES - All mailboxes and replacement mailboxes shall be uniform and shall conform to the standards set forth by the Architectural Review Committee.

13. GARBAGE AND REFUSE DISPOSAL - No lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage, or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon. No homeowner or

occupant of a Lot shall burn or bury out of doors, any garbage or refuse.

14. STORAGE TANKS - Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view and shall comply with all applicable underground storage laws and regulations.

15. WATER SUPPLY AND SEWAGE SYSTEMS - No private or semi-private water supply and/or sewage disposal system may be located upon any Lot in the Subdivision which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any Lot.

16. DITCHES AND SWALES - All owners shall keep unobstructed, unchanged, unaltered and in good repair, all open storm water drainage ditches and swales which may be located on their respective Lots.

17. DRIVEWAYS - Each driveway in the Subdivision shall be of concrete or asphalt material.

18. ANTENNA AND SATELLITE DISHES - No antenna in the Subdivision shall exceed five (5) feet above a roof peak. No satellite dishes shall be permitted in the Subdivision.

19. AWNINGS - No metal, fiberglass or similar type material awnings or patio covers shall be permitted in the Subdivision.

20. FENCING - All fencing used in the Subdivision on residential Lots must be wooden and shall not be higher than six (6) feet. Chain link fencing is prohibited. No fencing shall extend forward of the furthest back front corner of the residence. Fencing style, color, location and height shall be consistent with the Subdivision and shall be subject to approval by the Architectural Review Committee.

21. SWIMMING POOLS - No above-ground swimming pools shall be permitted in the Subdivision.

22. SOLAR PANELS - No solar heat panels shall be permitted on roofs of any structures in the Subdivision. All such panels shall be enclosed within fenced areas and shall be concealed from the view of neighboring Lots and the streets.

23. VIOLATION. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Developer, the Association, any person or entity having any right, title or interest in the Real Estate (or any part

hereof), or any person or entity having any right, title or interest in a Lot in the Subdivision, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief, and the recovery of costs and attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out such covenants or restrictions.

24. METROPOLITAN DEVELOPMENT COMMISSION. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions or other limitations contained herein other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of the Plat by the Plat Committee.

25. AMENDMENT. These covenants and restrictions may be amended at any time by the then Owners of at least sixty-seven percent (67%) of the Lots or Residence Units in all Subdivisions which are now or hereafter made subject to an annexed to the Declaration; provided, however, that until all of the Lots or Residence Units in such Subdivisions have been sold by Developer, any such amendment of these covenants and restrictions shall require the prior written approval of Developer. Each such amendment shall be evidenced by a written instrument, signed and acknowledged by the Owner or Owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana. No amendment which adversely affects the rights of a public utility shall be effective with respect to such public utility without the written consent thereto by such utility.

26. TERM. These plat covenants and restrictions (as the same maybe amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate, or any part hereof, and on all persons or entities claiming under them, until December 31, 2003, and thereafter they shall continue automatically unless terminated or modified by a vote of a majority of the then Owners of the Lots or Residence Units in the Subdivision, it is agreed that said covenants and restrictions

shall be amended or shall terminate in their entirety; provided, however, that no termination of said covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

27. **SEVERABILITY.** Invalidation of any of the foregoing covenants and restrictions by judgment or court shall in no way affect any of the other covenants and restrictions of the Plat, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Developer, as the Owner of the Real Estate, has hereunto caused its name to be subscribed this 27th day of June, 1990.

EAGLE CREEK NORTH ASSOCIATES, L.P., DAVIS DEVELOPMENT -  
by its General Partner, EAGLE CREEK NORTH, INC.

BY:

*Charles R. Davis*  
Charles R. Davis  
Chairman of the Board

STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, a Notary Public, in and for the State of Indiana, personally appeared Charles R. Davis, the Chairman of the Board of Davis Development - Eagle Creek North, Inc. an Indiana Corporation, and acknowledged the execution of this instrument as his voluntary act and deed as such officer on behalf of such corporation for the uses and purposes hereinabove set forth.

Witness my signature and Notarial Seal this 27th day of June, 1990.

My commission expires:

12/12/92

My County of Residence is:

Marion

*Deborah L. Scarso*  
Notary Public

*Deborah L. Scarso*  
Printed Name

APPROVED  
DMD-DDS BY DSG

6-28-90

This instrument was prepared by Walter E. Wolf, Jr., Esq., KLINE-MAN, ROSE, WOLF and WALLACK, P.C., Suite 2100, 135 North Pennsylvania Str., Indianapolis, IN 46204.

EXHIBIT A

LEGAL DESCRIPTION  
(The Glen at Eagle Creek North - Section III)

A PART OF THE SOUTHWEST QUARTER OF SECTION 6 TOWNSHIP 16 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE MENTIONED QUARTER SECTION; THENCE NORTH 89°56'41" EAST ALONG THE SOUTH LINE OF SAID QUARTER SECTION 622.25 FEET; THENCE NORTH 00°03'19" WEST 45.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTH 00°03'19" WEST 137.47 FEET; THENCE NORTH 89°56'41" EAST 14.91 FEET; THENCE NORTH 00°03'19" WEST 115.00 FEET; THENCE NORTH 89°56'41" EAST 250.00 FEET; THENCE NORTH 00°03'19" WEST 216.71 FEET; THENCE NORTH 89°56'41" EAST 30.78 FEET; THENCE SOUTHEASTERLY 46.00 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 75.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 72°29'06" EAST AND A LENGTH OF 45.28 FEET; THENCE SOUTH 54°54'54" EAST 38.25 FEET; THENCE SOUTHEASTERLY 20.40 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 15.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 15°57'16" EAST AND A LENGTH OF 18.64 FEET, TO A POINT OF REVERSE CURVATURE; THENCE SOUTHWESTERLY 37.39 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 125.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 14°26'13" WEST AND A LENGTH OF 37.25 FEET; THENCE SOUTH 84°07'55" EAST 50.00 FEET; THENCE NORTHEASTERLY 31.38 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 15.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 65°48'25" EAST AND A LENGTH OF 25.96 FEET, TO A POINT OF REVERSE CURVATURE; THENCE SOUTHEASTERLY 64.27 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 125.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 68°59'04" EAST AND A LENGTH OF 63.57 FEET; THENCE SOUTH 83°42'54" EAST 43.32 FEET; THENCE SOUTHEASTERLY 21.90 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 15.00 FEET AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 41°53'06" EAST AND A LENGTH OF 20.01 FEET; THENCE SOUTH 00°03'19" EAST 294.20 FEET; THENCE SOUTH 44°56'41" WEST 35.36 FEET; THENCE SOUTH 89°56'41" WEST 150.00 FEET; THENCE SOUTH 00°03'19" EAST 20.00 FEET; THENCE SOUTH 89°56'14" WEST 380.12 FEET TO THE POINT OF BEGINNING, CONTAINING 4.06 ACRES MORE OR LESS, SUBJECT HOWEVER, TO ALL EASEMENTS AND/OR RIGHTS-OF-WAY OF LEGAL RECORD.

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CURTIS L. COONROD  
MARION COUNTY AUDITOR

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

AUG 15 1989

PIKE TOWNSHIP  
ASSESSOR

MARION COUNTY RECORDER

OF

EAGLE CREEK NORTH

SEE INDEX FOR FINAL  
ACCEPTANCE FOR TRANSFER

THIS DECLARATION is made this 14th day of August,  
1989 by DAVIS DEVELOPMENT - EAGLE CREEK NORTH, INC., an Indiana  
Corporation (the "Developer").

Recitals

1. Developer is the owner of the real estate which is described in Exhibit A attached hereto and made a part hereof (the "Eagle Creek North Real Estate").
2. Developer intends to subdivide the Eagle Creek North Real Estate into residential lots.
3. Before so subdividing the Eagle Creek North Real Estate, Developer desires to subject the Eagle Creek North Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens for the purpose of preserving and protecting the value and desirability of the Eagle Creek North Real Estate for the benefit of each Owner of any part thereof.
4. Developer further desires to create an organization to which shall be delegated and assigned the powers of maintaining and administering the common areas and certain other areas of the Eagle Creek North Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plat of the Eagle Creek North Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana and of collecting and disbursing the assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tract adjacent to the Eagle Creek North Real Estate, as more particularly described in Exhibit B attached hereto and made a part hereof, to the provisions of this Declaration. Any additional real estate shall be included and shall be a part of the Eagle Creek North Real Estate subject to this Declaration.

NOW, THEREFORE, Developer hereby declares that the Eagle Creek North Real Estate is and shall be held, transferred, sold, hypothecated, leased, rented, improved and occupied subject to the following provisions, agreements, covenants, conditions,

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MARION COUNTY RECORDER

restrictions, easements, assessments, charges and liens, which shall be run with the land and shall be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in the Eagle Creek North Real Estate, or any part thereof.

## ARTICLE I

### DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Association" means Eagle Creek North Community Association, Inc., a Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Article VI, paragraph 6.1, of this Declaration.

1.3 "Common Areas" means (i) all portions of the Eagle Creek North Real Estate (including improvements thereto) shown on any Plat of a part of the Eagle Creek North Real Estate which are not located in lots and which are not dedicated to the public and (ii) all facilities, structures, buildings, improvements, and personal property owned or leased by the Association from time to time. Common areas may be located within a public right-of-way.

1.4 "Common Expenses" means (i) expenses of and in connection with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including (without limitation) expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping not located on a private Lot unless located on a Drainage Easement or located on a Landscape Easement located on a Lot to the extent the Association deems it necessary to maintain such Landscape Easement, (ii) expenses of and in connection with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage Easements, (iii) all judgments, liens and valid claims against the Association (iv) all expenses incurred to procure liability, hazard and any other insurance with respect to the common areas, and (v) all expenses incurred in the administration of the Association.

1.5 "Concominium Unit" means any residence established under the Indiana Horizontal Property Act.

1.6 "Developer" means Davis Development - Eagle Creek North, Inc., an Indiana corporation, and any successors and assigns whom it

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designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.7 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of: (i) the date Developer no longer owns any Residence Unit within or upon the Eagle Creek North Real Estate, or (ii) the date the Developer no longer owns any lot or real estate within the Eagle Creek North Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.8 "Drainage Easement" mean those areas so designated on a Plat of any part of the Eagle Creek North Real Estate.

1.9 "Landscape Easements". The areas of ground so designated on a Plat of any part of the Eagle Creek North Real Estate marked "Landscape Easements" are hereby created and reserved: (1) for the use of Developer during the Development Period for access to and the installation and replacement of foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance, repair and replacement of foliage, landscaping, screen materials and other improvements. Except as installed by Developer or installed and maintained by the Association, no permanent structure, including, without limitation, fences, shall be erected or maintained in or upon said Landscape Easements unless first approved in writing by the Developer or the Association. The Owners of Lots in the Subdivision shall take and hold title to the Lots subject to the Landscape Easements herein created and reserved.

1.10 "Lake Easements". The areas of ground designated on a Plat of any part of the Eagle Creek North Real Estate marked "Lake Easements" are hereby created and reserved: (i) for the benefit of the Owners, subject to the rights of the Association to promulgate reasonable rules and regulations (not inconsistent with the provisions of any Plat and the Declaration) governing such use and enjoyment; (ii) for the use of Developer during the Development Period for access to and construction, management and control of retention and detention ponds or lakes and the installation, repair and replacement of improvements thereon. Except as installed by Developer or installed and maintained by the Association, no permanent structure or improvement shall be erected or maintained upon any Lake Easements. No swimming or ice skating shall be permitted in or on the lakes or ponds located in and upon the Lake Easements. The Owners of Lots in the Subdivision subject to a Lake Easement shall take and hold title to the Lots subject to the Lake Easements herein created and reserved.

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1.11 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Eagle Creek North Real Estate.

1.12 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot or Residence Unit.

1.13 "Nonaffiliated Owner" means any Owner other than Developer or any entity related to Developer.

1.14 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, Condominium Unit, or other residential unit designed for occupancy by one family, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot, Residence Unit or any Real Estate in the Eagle Creek North Real Estate.

1.15 "Plat" means a duly approved final plat of any part of the Eagle Creek North Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.16 "Residence Unit" means (i) any single family home, (ii) any Condominium Unit established under the Indiana Horizontal Property Act, or (iii) that portion of a structure designed for monthly or longer residential occupancy by one family.

1.17 "Utility Easement" means an area so designated on a Plat of any part of the Eagle Creek North Real Estate.

## ARTICLE II

### APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any other part of the Eagle Creek North Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Residence Unit (i) 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 the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of

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this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants for himself, his heirs, personal representatives, successors and assigns, with Developer and the Owners from time to time, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

### ARTICLE III

#### PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of the recreational facilities, if any, situated upon the Common Areas;

(ii) the right of the Association to suspend the voting rights and right to use recreational facilities by an Owner for any period during which any assessment against his Residence Unit remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(iii) the right of the Association to fine any Owner or make a special assessment against any Residence Unit or Lot in the event a person permitted to use the Common Areas by the Owner of the Residence Unit violates any rules or regulations of the Association as long as such rules and regulations are applied on a reasonable and nondiscriminatory basis;

(iv) the right of the Association to make reasonable Regular Assessments for use of the Common Areas;

(v) the right of the Association (after conveyance of the Common Areas to the Association) to dedicate or transfer all or any part of the Common Areas or to grant easements to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;

(vi) the right of the Association to enforce collection of any fines or Regular or Special Assessments through the imposition of a lien pursuant to paragraph 7.7;

(viii) the rights of Developer as provided in this Declaration, and in a Plat of any part of the Eagle Creek North Real Estate;

(ix) the zoning covenants contained in the Development statement or zoning covenants for any part of the Eagle Creek North Real Estate;

(x) the terms and provisions of this Declaration;

(xi) the easements reserved elsewhere in this Declaration and in a Plat of any part of the Eagle Creek North Real Estate; and

(xii) the right of the Association to limit the use of Common Areas in a reasonable nondiscriminatory manner for the common good.

3.2 Permissive Use. Any Owner may permit his family members, guests, his tenants, or contract purchasers who reside in the Residence Unit to use his right of enjoyment of the Common Areas. Such permissive use shall be subject to the By-Laws of the Association and any reasonable nondiscriminatory rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Upon sixty (60) days notice to the Association, Developer may convey all of its right, title and interest in and to any of the Common Areas to the Association by quitclaim deed, and such Common Areas so conveyed shall then be the property of the Association.

#### ARTICLE IV

##### USE RESTRICTIONS

4.1 Lakes. There shall be no swimming in or ice skating on any lake, pond, creek or stream on the Eagle Creek North Real Estate. The Association shall promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Eagle Creek North Real Estate.

4.2 Parking Restriction. No parking of automobiles, trucks or other vehicles shall be permitted in or on the Common Areas or in or on any public right-of-way within and upon the Real Estate located adjacent to a Common Area in connection with the use of the Common Area except in designated parking areas, if any; provided, however, that nothing herein shall prevent the temporary parking of public or quasi-public vehicles or privately owned vehicles making deliveries or providing maintenance service to the Common Areas. Parking shall be prohibited at all times for any use in or on the public Right-of-way of Pin Oak Way except for public emergency

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or maintenance vehicles. To the extent permitted by applicable laws and ordinances, Developer hereby grants and reserves to the Association the right to promulgate and implement such rules and regulations as the Association deems necessary or advisable for the enforcement of the provisions of this paragraph including, but not limited to, the right to limit any Owner's right to use a Common Area for repeated or flagrant violation of such rules or regulations, for a period not to exceed sixty (60) days. The Association's right to promulgate rules and regulations governing parking shall commence at the termination of the Development Period.

4.3 USE OF COMMON AREAS The Common Areas shall not be used for commercial purposes.

4.4 REAL ESTATE OTHER THAN THE INITIAL REAL ESTATE. Multi-family residences may be constructed on any properly zoned portion of the Eagle Creek North Real Estate in which they are not otherwise prohibited and which is subjected to this Declaration at any time now or from time to time.

4.5 LOT ACCESS. All Lots shall be accessed from the interior streets of the Subdivision. No access is permitted from 56th Street.

#### ARTICLE V

#### ASSOCIATION

5.1 Membership. Each Owner, automatically upon becoming an Owner, shall be and become a member of the Association and shall remain a member of the Association so long as he or she owns the Residence Unit.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership in the following subparagraph (ii), in which event Developer shall then be a Class A member). Each Class A member shall be entitled to one (1) vote.

(ii) Class B Members. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot or Residence Unit owned by Developer. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 5.3).

5.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date which is the earlier of: (a) the date

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when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership; or (b) July 31, 1996.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Residence Unit, all such persons or entities shall be members of the Association, but the vote in respect of such Residence Unit shall be exercised as the persons or entities holding an interest in such Residence Unit determine among themselves. In no event shall more than one person exercise any Residence Unit's vote under paragraph 5.2 (in the case of Class A membership). No Resident Unit's vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

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

5.7 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon in good repair as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of all private street signs.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of the Owner of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded.

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(v) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners, the insurance coverages required under this Declaration and such other insurance as the Board of Directors deems necessary or advisable.

(vi) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(vii) Assessment and collection from the Owners of the Common Expenses.

(viii) Contracting for such services as management, snow removal, pool and recreational facilities maintenance, Common Area maintenance, security control, trash removal or other services as the Association deems necessary or advisable.

(ix) Enforcing the rules and regulations of the Association and the requirements of the Declaration and the zoning covenants.

5.8 Powers of the Association. The Association may adopt, amend, or rescind, reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any Regular or Special Assessments or other charges against any Residence Unit or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director of the Association shall receive compensation for his services as such director except to the extent expressly authorized by a majority vote of the Owners. A majority vote shall be a majority of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

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5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives (collectively, the "Indemnitee"), made or threatened to be made a party to any action, suit, or proceeding by reason of the fact that he is or was a director or officer of the Association, against all costs and expenses, including attorneys' fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except (unless otherwise specifically provided herein) in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is liable for gross negligence or willful misconduct in the performance of his duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, unless it shall be found by a majority vote of the Owners that such director or officer was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by the managing agent of the Association (if any) or any officer or employee of the Association, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or willful misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification as provided in this paragraph 5.10.

5.11 Bond. The Board of Directors of the Association may provide surety bonds and may require the managing agent of the Association (if any), the treasurer of the Association, and such other officers as the Board of Directors deems necessary, to provide surety bonds, indemnifying the Association 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 of Directors. The expense of any such bonds shall be a Common Expense.

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ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established the Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee at any time upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of the Architectural Review Committee. The Architectural Review Committee shall approve the external design, appearance and location of residences, buildings, structures or other improvements placed on any Lot, and the installation and removal of trees, bushes, shrubbery and other landscaping on any Lot, in such a manner as to preserve and enhance the value and desirability of the Eagle Creek North Real Estate for the benefit of each Owner and to maintain a harmonious relationship among structures and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, fence, wall, patio or improvement of any type or kind shall be erected, constructed, placed or altered on any Lot and no change shall be made in the exterior color of any Residence Unit or accessory building located on any Lot without the prior written approval of the Architectural Review Committee or of the Developer at any time during the Development Period. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, 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 and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which

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the Architectural Review Committee may require. All plans and drawings submitted to the Architectural Review Committee shall be drawn to a scale of 1" equals 10', or to such other scale as the Architectural Review Committee may require. When required by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect. Plot plans submitted for the Improvement Location Permit shall bear the stamp or signature of the Architectural Review Committee acknowledging the approval thereof.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to grant permission to repaint, changing part or all of the exterior color of the Residence Unit, construct, place or make the requested improvement or alteration (the "Requested Change"), when:

(a) The plans, specifications, drawings or other material submitted are inadequate or incomplete, or show the Requested Change to be in violation of any restrictions in this Declaration or in a Plat of any part of the Eagle Creek North Real Estate;

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

(c) The Requested Change, or any part thereof, would, in the opinion of the Architectural Review Committee, be contrary to the interests, welfare or rights of any other Owner.

(iii) Rules and Regulations. The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of items to it. Such rules and regulations may set forth additional requirements to those set forth in this Declaration or a Plat of any part of the Eagle Creek North Real Estate, as long as the same are not inconsistent with this Declaration or such Plat(s).

6.3 Duties of the Architectural Review Committee. If the Architectural Review Committee does not approve proposed repainting, construction or improvements within thirty (30) days after information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

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6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association nor any agent of any of the foregoing, 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 or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its representative may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with the approved Requested Change, or not approved, to be stopped.

#### ARTICLE VII

##### ASSESSMENTS

7.1 Purpose of Assessments. The purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following purposes: (i) to promote the health, safety and welfare of the residents occupying the Eagle Creek North Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas and any Landscape Easement, Drainage Easement or Lake Easement and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessment against each Residence Unit at any amount not in excess of the Maximum Regular Assessment as follows:

(i) Until December 31, 1990, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Three Hundred Forty-Two and 00/100 Dollars (\$342.00).

(ii) From and after January 1, 1991, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than fifteen percent (15%) above the Regular Assessment for the previous calendar year without a vote of

the members of the Association as provided in the following subparagraph (iii).

(iii) From and after January 1, 1991, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast vote: in person or by proxy at a meeting of the members of the Association duly called for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs, or to recover any deficits (whether from operations or any other loss) which the Association may from time to time incur but only with the assent of two-thirds (2/3) of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called for such purpose.

7.4 No Assessment against Developer during the Development Period. The Developer or any related entity shall not be assessed any portion of the Regular or Special Assessment during the Development Period.

7.5 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the earlier of the following dates:

(i) the first day of the first calendar month following the first conveyance of such Residence Unit to a Nonaffiliated Owner who is not a Builder; or

(ii) the first day of the sixth month following the conveyance of such lot to a Builder other than Developer.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be

sent to each Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors of the Association. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

#### 7.6 Failure of Owner to Pay Assessments.

(j) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the Common Expenses and toward any other expense lawfully agreed upon, by nonuse of the Common Areas or abandonment of the Residence Unit or Lot, belonging to him. If any Owner shall fail, refuse or neglect to make any payment of any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Residence Unit or Lot may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any assessment (or a periodic installment of an assessment, if applicable) when due, the Board of Directors of the Association may in its discretion accelerate the entire balance of any 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 assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Residence Unit or Lot, 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.

(ii) Notwithstanding anything contained in this paragraph 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot, to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior

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Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. Each Owner (other than the Developer during the Development Period or a Builder during the period ending on the date defined in paragraph 7.5) of a Residence Unit or Lot by acceptance for itself and related entities 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 for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Residence Unit or Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Residence Unit or Lot, in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the Owner of the Residence Unit at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Residence Unit) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Residence Unit, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Residence Unit or Lot. Such statement shall be binding upon the Association as of the date of such statement.

#### ARTICLE VIII

##### INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of the improvements owned by the Association. If the Association can obtain such coverage for a reasonable amount, it shall also obtain "all risk coverage". The Association shall also insure any other property, whether real or

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personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if possible, contain provisions that (i) the insurer waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, and all Owners and their respective agents and guests and (ii) waives any defense based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain 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 in any event with a minimum combined limit of One Million Dollars (\$1,000,000) per occurrence. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Eagle Creek North Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain 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, officers' and directors' liability insurance.

8.4 Miscellaneous. The premium for the insurance described above shall be paid by the Association as part of the Common Expenses

## ARTICLE IX

### MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot free of weeds and

trash and otherwise neat and attractive in appearance, including, without limitation, the proper maintenance of the exterior of any structures on such lot. If the Owner of any lot fails to do so in a manner satisfactory to the Association, the Association, after approval by a majority vote of the Board of Directors, shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said lot and to repair, maintain and restore the lot and the exterior of the improvements erected thereon. The cost of such exterior maintenance shall be and constitute a Special Assessment against such lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. 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.

The maintenance of any part of the Eagle Creek North Real Estate which is subjected to the Indiana Horizontal Property Act shall be provided for by a separate association of Condominium Unit Owners.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association is required to maintain hereunder, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds or against such Owners who benefit by the Special Assessment if less than all benefit. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas 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 to the Common Areas, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a Special Assessment against such Owner and his Residence Unit and/or Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

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ARTICLE X

MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults of the Owner of a Residence Unit or Lot, in the performance of the Owner's obligations under this Declaration or any other applicable documents, which defaults have not been cured within sixty (60) days.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or other charges that are in default and that have or may become charges against the Common Areas; or, (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Area upon lapse of a policy, then the Mortgagee on any Lot or Residence Unit may make the payment on behalf of the Association. The Mortgagee(s) making the payment on behalf of the Association shall be due immediate reimbursement from the Association. The Association shall execute an agreement to make the immediate reimbursement to all Mortgagees of Residence Units.

ARTICLE XI

AMENDMENT

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association 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 a least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by paragraph 11.1(iv) at a meeting of the members of the Association 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 sixty-seven percent (67%) in the aggregate of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit, within and upon the Eagle Creek North Real Estate. In the event any Residence 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 of the Association in accordance with the provisions of the foregoing paragraph 10.2.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 501.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d) without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 10.2.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees

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whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

11.2 By Developer. Developer hereby reserves the right so long as Developer, or any entity related to Developer, owns any lot or Residence Unit, within and upon the Eagle Creek North Real Estate, to make any amendments as may be necessary to this Declaration or deemed necessary or appropriate by Developer, without the approval of any other person or entity; in order to bring Developer or this Declaration into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions, or to comply with the 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, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Developer shall not be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, nor which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to the Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

## ARTICLE XII

### GENERAL PROVISIONS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Eagle Creek North Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, or zoning covenants shall be grounds for an action by Developer, the Association, any Owner, and all persons

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or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Eagle Creek North Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Eagle Creek North Real Estate, or any part thereof, and on all persons claiming under them, until December 31, 2003, and thereafter shall continue automatically until terminated or modified by a vote of the majority of all Owners at any time thereafter. Provided, however, no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

12.5 Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. 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.

12.6 Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

12.7 Annexation. At any time within seven (7) years from the date of recordation of this Declaration, additional land within the tract described in the attached Exhibit B may be annexed by Developer to the Eagle Creek North Real Estate (and from and after such annexation shall be deemed a part thereof for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Marion County, Indiana, of a supplemental declaration by Developer; and such action shall require no approvals or action of the Owners. Subject to the provisions of paragraph 12.8 hereof, additional residential property may also be annexed to the Eagle Creek North Real Estate with the consent of two-thirds (2/3) of each class of members of the Association by the recording by the President or Vice President and Secretary of the Association of a declaration applicable to the annexed real estate which incorporates therein the terms of this Declaration, as the same may be amended from time to time.

12.8 Government Financing Entities' Approval. If there is Class B membership in the Association and if there is financing provided for any of the Eagle Creek North Real Estate by the Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, and any of these entities requires that their consent be obtained prior to amending this Declaration or dedicating the Common Areas subject to this Declaration, then while there is Class B Membership the Developer and the Association must obtain the consent of such entity. If none of the Eagle Creek North Real Estate is financed by the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the Developer, while there is Class B Membership, or the Association may amend this Declaration or dedicate any Common Areas without obtaining the consent of the above referenced entities.

### XIII

#### DEVELOPER'S RIGHTS

13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all the Eagle Creek North Real Estate (subject to the limitations hereinafter provided in this paragraph 13.1) for the use of Developer during the Development Period. Notwithstanding the foregoing, the area of the access license created by this paragraph 13.1 shall be limited to that part of the Eagle Creek North Real Estate which is not in, on, under,

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over, across or through a building or other improvement or the foundation of a building or other improvement located on the Eagle Creek North Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

13.2 Signs. Developer shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat limitations with respect to signs during the Development Period

13.3 Architectural and Other Changes. The Developer or any entity related to the Developer shall have the right to change any aspect of any building or landscaping on the Eagle Creek North Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period. The Developer's right to make changes without approval of the Architectural Review Committee shall extend to any construction, installation, painting or repainting of any residence, building, structure, or other improvement on the Eagle Creek North Real Estate or the installation or removal of any trees, shrubs or other landscaping on the Eagle Creek North Real Estate at any time during the Development Period. At any time during the Development Period, the Developer shall have the right to review and approve construction plans of any other Builder for construction of any improvement on any part of the Eagle Creek North Real Estate.

13.4 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Eagle Creek North Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Eagle Creek North Real Estate owned by Developer or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Eagle Creek North Real Estate and the sale of lots and the construction of residences Thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

EAGLE CREEK NORTH ASSOCIATES L.P., an  
Indiana limited partnership  
By: DAVIS DEVELOPMENT - EAGLE CREEK  
NORTH, INC., its general partner

By:   
Dean S. Siegler, President



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public, in and for the State of Indiana, personally appeared Dean S. Ziegler, President of Davis Development - Eagle Creek North, Inc., an Indiana corporation acting as General Partner of Eagle Creek North Associates L.P., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions or Eagle Creek North.

WITNESS my hand and Notarial Seal this 14th day of August, 1989.

Deborah L. Spence  
Signature

Deborah L. Spence  
Printed NOTARY PUBLIC

My Commission Expires: 12/13/1992

County of Residence: Marion

This instrument was prepared by Robert A. Rose, KLINEMAN, ROSE, WOLF and WALLACK, P.C., 135 N. Pennsylvania Street, Suite 2100, Indianapolis, IN 46204 (317) 264-5000

EXHIBIT "A"  
LAND DESCRIPTION

A PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH,  
RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA,  
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVE MENTIONED QUARTER  
SECTION; THENCE NORTH  $00^{\circ}11'37''$  EAST ALONG THE WEST LINE OF SAID  
QUARTER SECTION, 918.47 FEET; THENCE NORTH  $89^{\circ}55'41''$  EAST, 1866.71  
FEET TO THE EAST LINE OF SAID QUARTER SECTION; THENCE SOUTH  $00^{\circ}05'50''$   
EAST ALONG SAID EAST LINE, 919.01 FEET TO THE SOUTHEAST CORNER OF SAID  
QUARTER SECTION; THENCE SOUTH  $89^{\circ}56'41''$  WEST ALONG THE SOUTH LINE OF  
SAID QUARTER SECTION, 1871.38 FEET TO THE POINT OF BEGINNING AND  
CONTAINING 39.42 ACRES, MORE OR LESS, SUBJECT HOWEVER TO ALL EASEMENTS  
AND/OR RIGHTS-OF-WAY OF LEGAL RECORD.

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EXHIBIT "B"  
LAND DESCRIPTION

A PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH,  
RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY,  
INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE MENTIONED QUARTER SECTION; THENCE NORTH  $00^{\circ}11'37''$  EAST ALONG THE WEST LINE OF SAID QUARTER SECTION, 1418.48 (1418.20 FEET DEED) FEET TO THE SOUTHWEST CORNER OF BRIARWOODS APARTMENTS II AS RECORDED IN INSTRUMENT NUMBER 76-15162 IN THE OFFICE OF THE RECORDER OF MARION COUNTY, INDIANA, SAID POINT BEING SOUTH  $00^{\circ}11'37''$  WEST, 1242.99 FEET FROM THE NORTHWEST CORNER OF SAID QUARTER SECTION AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH  $89^{\circ}55'41''$  EAST ALONG THE SOUTH LINE OF BRIARWOODS APARTMENTS II, SAID LINE BEING PARALLEL WITH THE NORTH LINE OF SAID QUARTER SECTION, 1864.18 FEET (1864.00 FEET DEED) TO THE EAST LINE OF SAID QUARTER SECTION; THENCE SOUTH  $00^{\circ}05'50''$  EAST ALONG SAID EAST LINE, 486.86 FEET; THENCE SOUTH  $89^{\circ}55'41''$  WEST, 1866.71 FEET; THENCE NORTH  $00^{\circ}11'37''$  EAST, 500.01 FEET TO THE POINT OF BEGINNING CONTAINING 21.41 ACRES MORE OR LESS.

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