

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WESTMERE**

THIS DECLARATION, dated September 22 1998, is by C.P. MORGAN COMMUNITIES, L.P., an Indiana limited partnership ("Developer").

**Recitals:**

A. Developer is the purchaser and owner of all of the lands contained in the area shown on Exhibit "A", attached hereto and made a part hereof, which lands will be subdivided for development of Westmere, a single family housing development in Plainfield, Hendricks County, Indiana (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 Hendricks County, Indiana (the "Plats").

B. 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 contained herein contained and as set forth in the Plats (the "Declaration" or "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future owners thereof.

**Terms:**

NOW, THEREFORE, Developer hereby declares that all of the platted lots and lands located within the Development are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the 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 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 the Restrictions, and shall inure to the benefit of Developer's successors in title to any real estate in the Development. Developer specifically reserves unto itself the right and privilege to exclude any real estate from the Development, or to include additional real estate in the Development including real estate adjacent to the Development.

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

A. "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of paragraph 5 hereof.

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B. "Association" shall mean the Westmere Homeowners' Association, Inc., an Indiana nonprofit corporation formed or to be formed under the Indiana Nonprofit Corporation Act of 1991, as amended.

C. "Board" shall mean the Board of Directors of the Association.

D. "Committee" shall mean the Development Control Committee, composed of three (3) members of the Association appointed by the Board. The members of the Committee shall serve for one (1) year terms, but are subject to removal by the Board at any time with or without cause. Any vacancies on the Committee from time to time existing shall be filled by appointment by the Board. Notwithstanding anything herein to the contrary, Developer shall have the powers and authority of the Committee during the Development Period.

E. "Common Area(s)" shall mean those areas and all improvements located thereon set aside for recreation areas, theme structures or landscaped areas or mounds at street entrances, lights, park areas, street landscaping, the streets, if not dedicated to a governmental agency, the Lakes, as defined herein, the shoreline area of the Lakes as shown on the Plats and any other areas so designated on the Plats.

F. "Common Expenses" shall mean the actual and estimated cost to the Association of its proportionate share of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, including snow removal, and any other cost or expense incurred by the Association for the benefit of the Common Areas or for the benefit of the Association.

G. "Development Period" shall mean the period of time during which Developer owns at least one (1) Lot as defined herein.

H. "Lake" or "Lakes" shall mean and refer to the water detention pond(s) or lake(s) and common area portion of the shoreline area as shown on the Plats which serves or shall serve as part of the storm and surface water drainage system serving the Development, as such are or in the future shall be more particularly described on the Plats.

I. "Limited Common Area" may appear upon the Plats designated by block letter and further identified as a "cul-de-loop" which is created for the exclusive use and enjoyment of those particular lots having public street access therefrom. Each such owner shall have an easement for ingress and egress in common with the other adjacent owners to the public street across such area. Such cul-de-loop may further have a landscaped island as may be shown on the Plats therein adjacent to the public right-of-way and such Limited Common Area shall be owned and maintained by equal undivided interests as tenants in common of the lots abutting thereon and using the cul-de-loop as a means of ingress and egress to the public street. Such maintenance and repair shall be undertaken by a determination in writing of a majority of the lot owners having an undivided interest in the Limited Common Area, and upon the failure of any such lot owner to pay his equal contributive share for such maintenance or repair, the remaining lot owners or any one of them may advance the defaulting lot owner's contributive share upon thirty (30) days' written notice and such advancement shall constitute a lien upon the lot of the defaulting lot owner

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enforceable in the same manner and under the same terms as made and provided under the provisions of the Mechanics Lien Laws of the State of Indiana, Chapter 116 of the Acts of the 1909 Indiana General Assembly as amended to date, I.C. 32-8-3-1 et seq. Any such lien shall be subordinate to the lien of any first mortgage and any first mortgagee taking title to a lot by foreclosure or deed in lieu thereof shall take title free and clear of any such assessments for work performed prior to such mortgagee's taking title.

J. "Lot" or "Lots" shall mean any parcel(s) of real estate, whether residential or otherwise, described by one of the Plats.

K. "Member" shall mean any person or entity holding membership in the Association as provided in this Declaration.

L. "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 (1) having such interest merely as security for the performance of an obligation, and (2) who have agreed to purchase a Lot from the Developer, but have not acquired title to such Lot.

**2. Organization and Duties of Association.**

A. Organization of Association. The Association shall be organized as a nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Developer, and the Code of By-Laws of the Association. The membership of the Association shall consist of one class of voting members, with each Member having equal voting rights. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot. Notwithstanding anything herein to the contrary, during the Development Period, all actions of the Association shall require the prior written approval of the Developer.

B. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the determination of Common Expenses, and the collection of annual and special Assessments. The Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

C. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, in accordance with paragraph 10 of this Declaration.

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D. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury. The Association may, but need not, maintain in force adequate officers and directors insurance covering the officers and directors of the Association. If appropriate, the Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such improvements and property. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Developer, any property manager, their respective employees and agents, the Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more parties against other insured parties.

The Association may maintain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of one (1) years' assessment on all Lots in the Development, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

E. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

F. Transfer of Control of the Association. Developer shall transfer control of the Association (subject to its rights under Section 2.A. hereof) as soon as is practical upon the transfer of a number of Lots equal to eighty percent (80%) of the Lots in the Development; provided, however, that Developer may transfer control of the Association at an earlier date in its sole discretion.

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G. Interim Advisory Committee. Until such time as Developer shall transfer control of the Association pursuant to paragraph 2.F. hereof, there shall exist an Interim Advisory Committee (the "Committee"). The Committee shall serve as a liaison between the Owners (other than the Developer) and the Association, and advise the Association from time to time during such period. The Committee shall consist of three (3) members, each of whom must be an Owner (other than Developer, or an officer, director or employee of Developer). The members of the Committee shall serve without compensation. The Committee shall be elected for a term of one (1) year by the Owners (other than Developer) at a meeting thereof called for such purpose. The Owners (other than Developer) may remove any member of the Committee with or without cause, and elect a successor at a meeting thereof called for such purpose.

H. Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. In addition, neither the Owners nor the Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

3. Powers of Committee.

A. In General. No dwelling, building structure, fencing, exterior painting (excluding repainting in the same color) or exterior improvement of any type or kind (excluding landscaping) shall be constructed or placed on any Lot without the prior written approval of the Committee. Such approval shall be obtained only after written application requesting authorization has been made to the Committee by the Owner of the Lot. Such written application shall be in the manner and form prescribed from time to time by the Committee, and the Committee may require a set of plans and specifications for any such proposed construction or improvement. The Committee may require that such plans include plot plans showing the location of all improvements existing upon the Lot and the location of the improvements proposed to be constructed or placed upon the Lot, each properly and clearly designated. The Committee may also require that such plans and specifications 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 the Committee may require. The Committee has the authority to approve or disapprove all fences based on material, color, height and placement. Notwithstanding anything herein to the contrary, approval of the Committee will not be required for improvements, fencing or structures placed on a Lot by the Developer.

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

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

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(2) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Development in general;

(3) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners.

C. Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been received. A copy of submitted materials 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 therefor. The Committee shall further affix its signature of approval upon two (2) site plans for purposes of obtaining an Improvement Location Permit, or similar permit, from the Permits Section of the Department of Metropolitan Development, or other applicable governmental authority, if such are required.

D. Liability of Committee. Neither the Committee nor any agent or member thereof, nor Developer during the Development Period or thereafter, 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.

E. Inspection. The Committee or its designated agent may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

F. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Owner, and such Owner shall desire to use two or more of said Lots as a site for a single dwelling, 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 shall be treated as a single Lot for the purpose of determining the Assessment and for applying these Restrictions to said Lots, so long as such Lots remain improved with one single dwelling.

#### 4. Remedies.

A. In General. Any party to whose benefit these Restrictions inure, including Developer, any Owner, the Association, or any applicable governmental authority, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, but Developer or the Association shall not be liable for damages of any kind to any person for failing either to enforce or carry out any of these Restrictions.

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

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**5. Covenants for Maintenance Assessments.**

A. **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the Development and promoting the health, safety, and welfare of the Owners, users, and occupants of the Development and, in particular, for the Association's obligations relating to the improvement, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Developer) hereby covenants and agrees to pay to the Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

The Developer hereby covenants and agrees to pay to the Association during the Development Period an amount equal to the difference, if any, between the expenditures of the Association made pursuant to this Section 5.A and the aggregate amount of the annual Assessments collected by the Association.

B. **Liability for Assessment.** Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Developer and shall constitute a lien from and after the due date thereof in favor of the Association upon each such Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

C. **Pro-rata Share.** The Pro-rata Share of each Owner for purposes of this paragraph 5 shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Development ("Pro-rata Share"), except, as provided in Paragraph 3F herein.

D. **Basis of Annual Assessments.** The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Association.

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E. Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessment levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

F. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. At the election of the Developer, the annual Assessments of each Lot in each section of the Development shall commence on the first day of the second month following the month in which Developer first conveys ownership of any Lot in such section to an Owner. The first annual Assessment within each section of the Development shall be made for the balance of the Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

G. Duties of the Association.

(i) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(ii) The Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.



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(iii) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

H. Non-payment of Assessments: Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in paragraph ii hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(ii) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such Assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

I. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

6. 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 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

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contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Developer 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 Developer 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.

**7. Control of the Lakes and Common Areas.**

A. Control by the Board. The Board shall regulate the Lakes and Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Lakes and Common Areas.

B. Conditions. No improvements, excavation, changes in grade or other work shall be done upon the Lakes or Common Areas by any Owner, nor shall the Lakes or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Board.

**8. Restrictions, Covenants and Regulations.**

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

(a) No one other than Owners who are Members in good standing with the Association, or such an Owner's occupant, tenants, guests or invitees, may use the Lakes or the Common Areas.

(b) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Lakes or the Common Areas.

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

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

(e) The Lakes and the Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board. Without limiting the generality of the foregoing, the Lakes are and will be an integral part of the storm water drainage system serving the Development, and are intended to be used for such purpose and primarily as a visual and aesthetic amenity and not as a recreational amenity. Accordingly, no use shall be made of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system. No boating, swimming, diving, skiing, ice skating or other recreational activity shall be permitted in or on the Lakes. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into the Lakes, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. Fishing from the shoreline area of the Lakes by an Owner, his occupants, his invited guests and family, shall be permitted subject to rules determined by the Association and obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations. No Owner or other person shall take or remove any water from or out of the Lakes, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No piers, docks, retaining walls, rafts or other improvements shall be built, constructed or located on any Lot or on the Properties, except by Developer and/or the Association, which extend into, or to within twenty-five (25) feet from the shoreline of the Lakes.

B. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in subparagraph A of this paragraph 8 shall not apply to or be binding upon the Association in its management, administration, operation, maintenance, repair, replacement and upkeep of the Lakes and Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Lakes and Common Areas.

9. Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period commencing on the date this Declaration is recorded and expiring on December 31, 2017, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Changes or amendments in these covenants, conditions and restrictions may be made by Owners in accordance with paragraph 10 hereof.

10. Amendment of Declaration.

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

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

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

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

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners; provided, however, that during the Development Period, any amendment to this Declaration shall require the prior written approval of Developer. In the event any Lot is subject to a first mortgage, the mortgagee thereunder shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the mortgagee has given prior written notice of its mortgage interest to the Association.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes the applicable share of an Owner's liability for assessments, or the method of determining the same, without, in each and any of such circumstances, the unanimous approval of all Owners and all mortgagees whose mortgage interests have been made known to the Association.

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

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

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entities, (e) to annex additional real estate to the Development, or (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by, and granted by each Owner to the Developer to vote in favor of, make, or consent to any amendments described in this subparagraph B on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments. The right of the Developer to act pursuant to rights reserved or granted under this subparagraph B shall terminate upon the completion of the Development Period.

11. **HUD/VA Approval.** During the Development Period, the following actions will require the prior approval of the Department of Housing and Urban Development or the Department of Veterans Affairs: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

12. **Severability.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants, Conditions and Restrictions for Westmere to be executed as of the date written above.

C.P. MORGAN COMMUNITIES, L.P.

By: C.P. Morgan Investment Co., Inc.,  
General Partner

By:   
Mark W. Boyce, Vice President

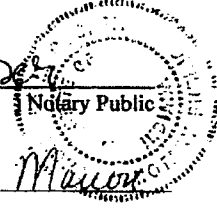
14

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Mark W. Boyce, the Vice President of C.P. Morgan Investment Co., Inc., the general partner of C.P. Morgan Communities, L.P., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for Westmere on behalf of such developer, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 28 day of September, 1998.

Michelle M. Cooper  
(MICHELLE M. COOPER



My Commission Expires: 6/17/01

My County of Residence is: Mason

9900001301  
Filed for Record in  
HENDRICKS COUNTY IN  
THERESA D LYNCH  
On 01-14-1999 At 02:01 pm.  
COVENANTS 37.00  
Vol. 100 Pg. 958 - 971

This Instrument was prepared by Lewis E. Willis, Jr., Attorney at Law.

X:G11VA11141.sb

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## PLAT COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTMERE

The undersigned, C.P. Morgan Communities L.P., by C.P. Morgan Investment Co., Inc., General Partner, by Mark W. Boyce, Vice President as Owner of the within described real estate, do hereby lay off, plat and subdivide the same into lots and streets in accordance with the within plat. The within plat shall be known and designated as Westmere, a subdivision in the Town of Plainfield, Hendricks County, Indiana.

### **Public Streets:**

The streets and public rights-of-way shown hereon, subject to construction standards and acceptance, are hereby dedicated to the public use, to be owned and maintained by the governmental body having jurisdiction.

### **Residential Uses:**

All lots in this subdivision shall be used solely for residential purposes. No business buildings shall be erected on said lots, and no business may be conducted on any part hereof other than the home occupations permitted in the Zoning Ordinance of Town of Plainfield, Indiana.

### **Building Location:**

No building or structure shall be located on any lot nearer to the front lot line or nearer to the side street lot line (corner lots) than the minimum building setback lines as shown on the within plat.

### **Drainage, Utility and Sewer Easements:**

There are strips of ground as shown on the within plat marked "DU&SE" (drainage utility and sewer easement) which are reserved for the nonexclusive use of public utility companies, including cable television companies but not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, wires, sewers and drainage, subject at all times to the proper authorities and to the easements herein reserved. No permanent or other structures shall be erected or maintained on said strips except for fences, patios, decks, driveways and walkways. The owners of such lots in this addition, however, shall take their title subject to the nonexclusive rights of the public utilities and other owners of said lots in this addition to said easements herein granted for ingress and egress in, along and through the strips so reserved.

### **Drainage Easements:**

There are areas of ground on the plat marked "drainage easements". 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 of covenants, conditions and restrictions, 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 nonexclusive use of the Association (as defined in the declaration), the Department of Public Works or any other applicable governmental authority for access to and maintenance, repair and replacement of such drainage system and common areas; provided, however, the owner of any lot in the subdivision subject to a drainage easement shall be required to keep the portion of said drainage

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easement on his lot free from obstructions so that the surface water drainage will be unimpeded. The delineation of the drainage easement areas on the plat shall not be deemed a limitation on the right of any entity for whose use of 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 by this paragraph. No permanent or other structures shall be erected or maintained on said drainage easements except for fences, patios, decks, driveways and walkways. The owners of such lots in this subdivision, however, shall take their title subject to the nonexclusive rights of the Department of Public Works and other owners of said lots in this addition to said easements herein granted for ingress and egress in, along and through the strips so reserved.

**Developer's Right to Perform Certain Maintenance:**

In the event that any owner of a lot shall fail to maintain his lot and any improvements situated thereon in accordance with these restrictions, Developer shall have the right, but not obligation, by and through its agents and 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 improvement situated thereon, if any, conform to the requirements of these restrictions. The cost thereof shall be an expense of the lot owners and the Developer may seek collection of costs in any reasonable manner including placing a lien against said real estate for the expense thereof. Neither the Developer, nor any of its agents, employees or contractors shall be liable for any damage, which may result from any maintenance work performed hereunder. Upon completion of the development period, the Association shall succeed to the rights of the Developer.

**Common Area:**

There are areas of ground on the plat marked "Common Area". The common areas are hereby created and reserved:

- I. For the common visual and aesthetic enjoyment of the owners; and
- II. For the use by the Developer during the development period for the installation of retention and detention ponds or lakes, entryways, trails, playgrounds, community gardens and nature parklands; and
- III. For the use as retention and detention ponds or lakes, entryways, trails, playgrounds, community gardens and nature parklands; and
- IV. For the ownership and use of the Association for the management and control of retention and detention ponds or lakes, entryways, trails, playgrounds, community gardens and nature parklands, and the installation, maintenance and repair of improvements thereto.

**Sight Distance at Intersections:**

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and twelve (12) 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 forty (40) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight line limitations shall apply to any lot within ten (10) feet of the intersections of a street right-of-way line with the



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edge of the driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersection unless the foliage is maintained at sufficient height to prevent obstruction of the sight line.

**Medians and Entry Walls:**

There are landscaped medians and/or islands located within the subdivision within the public right-of-way of the streets. These landscaped areas shall be maintained by the Association and are not the responsibility of the Town of Plainfield, Indiana. There are entry walls located at the entry of the subdivision. These entry walls shall be maintained by the Association and are not the responsibility of the Town of Plainfield, Indiana.

**Driveways:**

All driveways will be paved by the builder at the time of the original construction. Maintenance of the driveways thereafter, including resurfacing or repaving, shall conform with and be uniform to the surface provided at the time of original construction.

**Sidewalks:**

Each residence constructed on a lot shall have a continuous sidewalk from the driveway to the front porch.

**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 the Developer may use larger signs during the sale and development of this subdivision.

**Mailboxes:**

The mailboxes that may be initially installed by the Developer may include a newspaper holder/box. No additional newspaper boxes or attachments may be added to the mailbox structure.

**Animals:**

No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in this subdivision. No noxious, unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

**Motor Vehicles and Trailers:**

All motor vehicles belonging to members of a household shall have permanent parking spaces in garages or driveways and no disabled vehicle shall be openly stored on any residential lot. Only passenger cars, station wagons or small trucks (pickups, vans of a size not larger than may be parked within the garage) shall be regularly parking on or adjacent to a lot. Also, no boat, trailer, camper or motor home of any kind (including, but not in limitation thereof, house trailers, camper trailers or boat trailers) shall be kept or parked upon said lot except within a garage or other approved structure.

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**Trash and Waste:**

No lot shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste. All 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 trash, rubbish, garbage or other waste shall be regularly removed from a lot and shall not be allowed to accumulate thereon.

**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.

**Water and Sewage:**

No private or semi-private water supply and/or sewage disposal system (septic tanks, absorption fields or any other method of sewage disposal) shall be located or constructed on any lot or lots in the subdivision.

**Antennas:**

No antenna in this subdivision shall exceed five (5) feet above a roof peak.

**Satellite Dishes:**

No satellite dishes shall be installed or permitted in this subdivision except those with a diameter of one (1) meter or less. No satellite dish shall be erected without the prior written approval of the Development Control Committee.

**Gutters and Downspouts:**

All gutters and downspouts in this subdivision shall be painted or of a colored material other than gray galvanized.

**Awnings:**

No metal, fiberglass or similar type material awnings or patio covers shall be permitted in this subdivision.

**Swimming Pools:**

No above ground swimming pools shall be permitted in this subdivision.

**Solar Heat Panels:**

No solar heat panels shall be permitted on roofs of any structures in this subdivision. All such panels will be enclosed within fenced areas and shall be concealed from the view of neighboring lots and the streets.

**Detached Storage Sheds and Mini-Barns:**

No detached storage sheds or mini-barns shall be installed or permitted in this subdivision.

**Modular Homes:**

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Modular homes shall not be permitted in this subdivision.

**Street Access:**

All lots shall be accessed from the interior streets of this subdivision. There shall be no direct driveway access to County Roads 900 East and 200 South.

**Drainage Swales:**

Drainage swales (ditches) along dedicated roadways and within the right-of-way or on dedicated easements are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the Department of Public Works. Property owners must maintain these swales as sodded grassways or other non-eroding surfaces. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Department of Public Works. Culverts must be protected especially at the ends by head walls or metal end sections, and, if damaged enough to retard the water flow, must be replaced. Any property owner altering, changing or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by registered mail, after which time, if no action is taken, the Department of Public Works or Association may cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for immediate payment.

**Fencing:**

No fence shall be higher than six (6) feet. No fencing shall extend forward at a point, which is ten (10) feet behind the front corner of the residence. All fencing shall be constructed of wood, vinyl, or vinyl coated chainlink. All chainlink fencing shall have a black or brown finish. No fences, except those fences installed initially by the Developer, shall be erected without the prior written consent of the Development Control Committee.

**Enforcement:**

Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Developer, Association, any person or entity have any right, title or interest in the real estate (or any part thereof) 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 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 or any kind to any person for failing to enforce or carry out such covenants and restrictions.

The Plainfield Plan Commission, its successors and assigns, shall not have right, power or authority to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Plainfield Plan Commission; provided further that nothing herein shall be constructed to prevent the Plainfield Plan Commission from enforcing any provisions of the

