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D. Easement for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage removal personnel, and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Common Property to perform their duties.

## X. MISCELLANEOUS

A. Term. This Declaration shall bind and run with the land for a term of 30 years from and after the date that this Declaration is filed for recording with the appropriate governmental office and thereafter shall automatically renew forever for successive periods of 10 years each, unless earlier terminated by a majority of the Owners.

B. Enforcement; Waiver. This Declaration may be enforced by any proceeding at law or in equity by the Developer, any Owner, the Association, the Design Review Board, and their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant or restriction, to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees). Failure of Developer, the Association or any Owner to enforce any provision of this Declaration or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement of this Declaration or the Rules. The Owners of any Lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restrictions and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer, the Association, the Board of Directors, Design Review Board and other such authorized Committees, with respect to these Restrictions and other rules authorized to be promulgated herein, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer, the Association, the Board of Directors, Design Review Board and other

such authorized Committees, 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.

C. Amendments by Developer. Until the Turnover Date, Developer may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants, conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, Developer may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) necessary to conform to the requirements of United States Federal Housing Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner thereof has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. Such amendment to this Declaration shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Developer, to reflect and address the different character or intended development of any such additional property.

D. Amendment by Owners. Except as provided above or otherwise in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

1. 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.
2. 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.
3. 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.

4. Adoption. Any proposed amendment to this Declaration must be approved during the first twenty (20) years by a vote of the Owners to which not less than seventy-five percent (75%) of the votes of the Corporation are allocated and thereafter by sixty-seven percent (67%) of such Owners. The instrument of amendment must be signed by such Owners and recorded. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

5. Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

E. Developer's Rights to Complete Development. Developer shall have the right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter Improvements on any property owned by Developer; (c) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Developer or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Developer shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of Developer or require Developer to obtain approval to: (i) excavate, cut, fill or grade any property owned by Developer or to construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (iii) require Developer to seek or obtain the approval of the Association or the Design Review Board for any such activity or Improvement on any Common Property or any property owned by Developer. Nothing in this Section shall limit or impair the reserved rights of Developer as elsewhere provided in this Declaration.

F. Developer's Rights to Replat Developer's Property. Developer reserves the right, at any time and from time to time, to amend, alter or replat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Developer shall be the subject of any such amendment, alteration or replatting. Each Owner and Member and the Association, for themselves and their successors and assigns, hereby consents to and approves any such amendment, alteration or replatting and shall be deemed to have joined in the same.

G. Mortgagee Rights. A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

- (a) any proposed amendment of this Declaration;
- (b) any proposed termination of the Association; and
- (c) any default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in 60 days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

H. Indemnification. The Association shall indemnify every officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The officers and trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The officers and trustees of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any officer or trustee, or former officer or trustee, may be entitled.

I. Severability. If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law of the State, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

J. Captions. The caption of each Article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.

K. Notices. Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.



# EXHIBIT 'A'

## *LAND DESCRIPTION BERKSHIRE - SECTION ONE A-Rev.*

A parcel of land lying within the Northwest Quarter of Section 16, Township 15 North, Range 2 East, Second Principal Meridian, Wayne Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of Section 16, Township 15 North, Range 2 East, Second Principal Meridian, Wayne Township, Marion County, Indiana; thence South 88 degrees 40 minutes 19 seconds West (basis of bearing is Indiana State Plane Coordinate system - East Zone NAD83) a distance of 17.10 feet on the North line of said Northwest Quarter to the Northeast corner of the real estate described in Deed Volume 1971, page 351 in the Office of the Recorder, Marion County; thence South 00 degrees 04 minutes 42 seconds East 649.48 feet on the East line of the real estate described in said Deed Volume 1971, page 351 to the POINT OF BEGINNING; thence continuing South 00 degrees 04 minutes 42 seconds East 1392.52 feet on the East line of the real estate described in said Deed Volume 1971, page 351 to the North line of the real estate described in Instrument #95-12353 in said Recorder's office; thence South 88 degrees 40 minutes 19 seconds West 113.51 feet on the North line of the real estate described in said Instrument #95-12353; thence North 80 degrees 06 minutes 02 seconds West 740.35 feet; thence North 42 degrees 11 minutes 18 seconds East 182.93 feet; thence North 24 degrees 28 minutes 13 seconds West 176.56 feet to the point of curvature of a non-tangent curve, concave Northwesterly, said curve having a radius of 125.00 feet; thence Northeasterly 26.12 feet on the arc of said curve to the left, said curve subtended by a chord bearing North 59 degrees 32 minutes 38 seconds East 26.07 feet to the point of tangency thereof; thence North 53 degrees 33 minutes 30 seconds East 18.21 feet; thence North 36 degrees 26 minutes 30 seconds West 120.00 feet; thence North 53 degrees 33 minutes 30 seconds East 553.83 feet; thence North 22 degrees 27 minutes 28 seconds East 57.28 feet; thence North 00 degrees 04 minutes 42 seconds West 229.00 feet, parallel with the East line of the real estate described in said Deed Volume 1971, page 351; thence North 89 degrees 55 minutes 18 seconds East 53.56 feet; thence North 00 degrees 04 minutes 42 seconds West 185.00 feet, parallel with the East line of the real estate described in said Deed Volume 1971, page 351; thence North 89 degrees 55 minutes 18 seconds East 41.36 feet; thence North 76 degrees 28 minutes 39 seconds East 235.08 feet; thence North 89 degrees 55 minutes 18 seconds East 35.00 feet to the POINT OF BEGINNING, containing 17.17 acres, more or less.

Dated October 4, 1999

Subject to the right-of-way for Bridgeport Road.

Subject to all legal easements and rights-of-way.

