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Subdivision Covenants and Restrictions

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DECLARATION OF COVENANTS, CONDITIONS, COMMITMENTS,
RESTRICTIONS, EASEMENT AND ASSESSMENTS
OF HARTMAN VILLAGE, SECTION ONE,
AND SUBSEQUENT SECTIONS THERETO
INDIANAPOLIS, INDIANA

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OF HARTMAN VILLAGE, SECTION ONE,
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THIS DECLARATION of Covenants, Conditions, Commitments, Restrictions, Easements, and Assessments, hereinafter referred to as the "Declaration" or the "Covenants," is made this 24th day of JANUARY, 1994, by East Gate Developers, Inc., an Indiana Corporation, hereinafter referred to as "Declarant" or "Developer,"

WITNESSETH:

WHEREAS, Declarant is the owner of a certain 19.66-acre parcel of real property referred to as the "Real Estate," as described in Exhibit "B" attached hereto and by reference is made a part hereof;

WHEREAS, Declarant hereby subdivides said Real Estate into a subdivision of single-family lots known and designated as HARTMAN VILLAGE, SECTION ONE, as per plat thereof recorded on the 15th day of MAY, 1994, under Instrument No. 84-19002 in the records of the Office of the Recorder of Marion County, Indiana, said plat, by reference, being made a part hereof;

WHEREAS, Declarant establishes a system of assessments and charges, hereinafter referred to as "Assessments," to provide for maintenance of the Common Property in the Development, for insurance coverage, and for mutual enforcement of the Restrictions, said Assessments to be borne by Lot Owners of the Development, hereinafter referred to as the "Owners"; and

WHEREAS, the Declarant agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Development Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by references as Exhibit "A."

NOW, THEREFORE, Declarant hereby affirms that the Real Estate described in Exhibit "B" shall hereinafter be held, subdivided, sold and conveyed subject to the following Covenants which purport to protect the value and desirability of the Development, and which shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

- A. The following are the definitions of terms used in this Declaration:
1. "Assessment" shall mean that share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of Article XVII herein.
 2. "Association" shall mean Hartman Village Homeowners' Association, Inc. or an organization of similar name, its successors and assigns, and shall be created as an Indiana not-for-profit corporation. Its membership shall consist of Owners who pay mandatory assessments for liability insurance, project sign easement maintenance, storm water retention lake maintenance,

- management fees and other expenses as determined by the Association.
3. "Builder" shall mean the contractor(s) constructing the first residence on each Lot, which may be the Developer for one or more Lots.
 4. "Committee" shall mean the Hartman Village Development Control Committee, composed of three (3) members appointed by the Developer who shall be subject to removal by the Developer at any time with or without cause as long as Developer owns one (1) lot. Developer by appointment shall fill vacancies which may occur from time to time on the Committee until such time as the subdivision is completely developed herein at which time the Association shall appoint this Committee from its membership.
 5. "Common Expenses" shall mean the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement and replacement of the Common Property as hereinafter defined, maintenance of the storm water retention lake, and any other costs or expenses incurred by the Association for the benefit of the Common Property, including the cost of insurance as required herein. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the streets, utility lines and mains, drainage systems, or other improvements constructed by Developer.
 6. "Common Property/Common Area" shall mean all real and personal property which is in the nature of common or public improvements. It is anticipated all future sections may have certain additional amenities. In Section One, common property includes landscaping, utility, and sign easements on Lots 1 and 11 for maintenance of entrance.
 7. "Dwelling Unit" shall mean a single-family residence, including attached garage, situated upon a Lot in the Development.
 8. "Lot" shall mean any residential parcel of real estate as shown on the plat of the Development which is recorded in the Office of the Recorder of Marion County, Indiana. No lot may be subsequently subdivided for development purposes, except to adjust for minor side yard infractions which may occur.
 9. "Owner" shall mean a person who acquires any right, title or interest, legal or equitable, in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation or the "Builder." A Builder shall be considered an "Owner" in the event the Builder lives in or allows someone else to live in a Dwelling Unit which is owned by the Builder.
 10. "Plat" shall mean the subdivision plat of the Development identified as the Final Plat of Hartman Village, Section One, recorded on the ~~18th~~ day of MAY, 1994, under Instrument Number 94-7901 in the Office of the Recorder of Marion County, Indiana, and any plats recorded thereafter of subsequent sections of said Hartman Village.

ARTICLE II
CHARACTER OF THE DEVELOPMENT

- A. **In General:** Each Lot in the Development shall be a residential lot and shall be used exclusively for single family residential purposes. No structure shall be erected, placed or permitted to remain upon any Lot except a Dwelling Unit. No business buildings may be erected on any

Lots thereof. No business may be conducted on any Lots thereof, other than those occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana.

- B. Other Restrictions: All Lots in the Development shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

ARTICLE III
RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE
OF DWELLING UNITS AND OTHER STRUCTURES

- A. Type, Size, and Nature of Construction Permitted and Approvals Required: No Dwelling Unit, greenhouse, porch, garage, swimming pool, exterior structure, fences, basketball court, tennis court or other recreational facility shall be erected, placed or altered on any Lot without the prior written approval of the Committee. Such approval shall be obtained prior to the commencement of construction and shall take into account restrictions as to the type of materials, exterior facade, design, layout, location, landscaping and finished grade elevations. Builders may be permitted to submit sets of Master Plans of typical homes to the Committee, and when approved by the Committee, these Master Plans shall not require subsequent approval unless there are changes thereto.
1. Minimum Areas: Any Dwelling Unit erected, placed or altered shall have the following minimum areas, exclusive of open porches and garages:
 - a. The minimum main floor area of a one-story Dwelling Unit shall be 1,400 square feet.
 - b. The minimum main floor area of a Dwelling Unit of more than one story shall be 800 square feet provided that the total floor area shall be at least 1,600 square feet.
 2. Attached Garages: Each Dwelling Unit shall have a minimum of a two-car attached garage. There shall be no detached garages or carports.
 3. Driveways and Off-Street Parking Spaces: There shall be a minimum of two (2) off street parking spaces in each driveway. All sidewalks and driveways shall be constructed of concrete material. A driveway shall not exceed in width the side boundaries of the garage it serves and must be a minimum width equal to the interior width of the garage it serves. No additional parking shall be permitted on a Lot other than in the existing driveway. Builders shall install driveways during original construction of the Dwelling Units.
 4. Prohibition of Relocated or Moveable Structures: No Dwelling Unit, garage, out building or other structure of any kind may be moved onto any Lot. No trailer, mobile home, tent, basement, shack, garage, motor home, barn or other structure may be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a Dwelling Unit on a Lot.

Manufactured and modular homes, as defined in Section 2.25 of the Dwelling Districts Zoning Ordinance of Marion County, Indiana, Docket No. 89-AC-2, as amended, shall not be constructed on the subject Real Estate.

5. Time Limits on Construction: The exterior of every Dwelling Unit, garage, or other structure permitted to be constructed or to remain on any Lot shall be completed within six (6) months from the start of construction, including the application of at least one (1) coat of paint, stain or varnish on any exterior wood surfaces. All such structures shall be completed within one (1) year.
6. Maintenance of Lots During Construction: All Lots shall be kept and maintained in a slightly and orderly manner during the period of construction of any structures on said Lots. No trash or rubbish of any kind may be permitted to accumulate unreasonably on any Lot or adjacent Lots, except in dumpsters which shall be placed on the Lots and not on the streets.
7. Basketball Goals and Similar Structures: To preserve the natural quality and aesthetic appearance of the Development, basketball goals or similar structures shall be approved by the Committee for size, location, height, composition, and color prior to installation.
8. Landscaping: All single-family structures shall have sodded front yards and landscaping which shall include a minimum of two (2) trees and four bushes or shrubs.
9. Fences: All fences, except for brick landscaped walls and a fence along the North property line of Section One which are to be built by the Developer, shall meet the following standards and must be approved by the Committee:
 - a. Fences shall be shadow box, split-rail, chain link, black iron or aluminum picket style, unless otherwise approved by the Committee.
 - b. The Committee may require fences to be painted or stained to blend with the color of the respective houses.
 - c. For non-corner lots, no fence may be installed between the street right-of-way line and the rear face of a house. For corner lots, no fence may be installed between the street right-of-way lines and the building setback lines. All corner lot fences shall meet the requirements of Article III, Section B of these covenants.
 - d. The height of shadow box fences or pool fences may not exceed six (6) feet. The height of any other type of fence may not exceed four (4) feet. All owners shall maintain their respective fences in good condition including repainting and/or restaining wood fences, removing rust and repainting metal fences, and repairing any structural defects or signs of deterioration.
 - e. Any deviation from the above requirements shall require approval from the Committee.
 - f. A six (6) foot shadow-box fence constructed by Developer along the North property line of Lots 1 through 7, inclusive, and Lots 64 through 70, inclusive, shall be owned and maintained by the Lot Owner of the respective Lot in the subdivision.
10. Utility Lines: All utility lines in the Development shall be placed underground. Utility lines shall be installed under completed streets by jacking or boring methods. Street cuts shall not be permitted.

11. Storage Tanks: Outside fuel storage tanks may not be installed above ground. Gasoline storage tanks shall not be permitted in the Development.
12. Gutters and Downspouts: All gutters and downspouts shall be painted.
13. Awnings and Patio Covers: Awnings and patio covers made of metal, fiberglass or similar type materials will not be permitted in the Development.
14. Above Ground Swimming Pools: Above ground swimming pools will not be permitted in the Development.
15. Storage Sheds: Committee approval shall be required for storage sheds or similar type structures. All "out" buildings shall be made of the same material and color of the house.
16. Satellite Dishes: Satellite dishes in excess of thirty-six inches (36") in diameter will not be permitted in the Development.
17. Security Lights: Builders shall install one (1) "dusk to dawn" security light per Dwelling Unit during original construction of the Dwelling Units. The Committee shall approve the type and location of all security lights. Each owner shall maintain and replace his security light.
18. Mail Boxes: Builders shall install Committee approved and Post Office approved curb side rural mail boxes during original construction of the Dwelling Units. Each Owner shall maintain and replace his or her mailbox.
19. Masonry Requirement: The front elevation of all homes shall be fifty percent (50%) masonry, exclusive of doors, windows, gables, and garage doors.

The side elevation of all corner lot homes (one-story as well as more than one-story) shall have a minimum masonry height of three (3) feet exclusive of doors, windows, and gables.

- B. Sight Distance at Intersections: No fence, wall, hedge or landscape 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. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height sufficient to prevent obstruction of such sight lines.
- C. Building Setback Lines: Front, side and rear building setback lines are established as shown on the recorded plat. Between said lines and the right-of-way lines of the streets and the side and rear lot lines, no structures may be erected or maintained.
- D. Damaged Structures: No dwelling unit which has been partially or totally destroyed by fire or other catastrophic event shall be allowed to remain in such state for more than thirty (30) days from the date of such occurrence.
- E. Maintenance of Lots and Improvements: The Owner of any Lot in the Development shall at all times maintain the Lot and any improvements thereon in such a manner to prevent the Lot or improvements from

becoming unsightly. Specifically, the Owner shall:

1. Establish and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height. This mowing requirement will not apply to Lots owned by the Declarant.
2. Keep Lot free of debris and rubbish;
3. Prevent conditions of any kind from evolving which in the Committee's opinion may detract from or diminish in any way the aesthetic value of the Development;
4. Remove dead trees and replace with like species; and,
5. Maintain the exterior of all improvements in a state of good repair.

ARTICLE IV EASEMENTS

The strips of ground shown on the recorded plat of the Development which are marked "D. & U. E." (Drainage, Utility and Sewer Easements) are reserved for the use of public utility companies, including cable television companies and municipal agencies, but not including transportation companies, for the purpose of installing and maintaining drainage swales, ducts, poles, lines, wires, sewers, drains and appurtenances thereto. Said easements shall be perpetual from the date of this Instrument as subscribed to by the Developer, its successors and assigns. No permanent or other structures may be erected or maintained in said easements except for temporary structures, fences, driveways and walkways. The Owners of Lots in the Development shall take title to said Lots subject to the rights of said companies and agencies and the other owners of said Lots in the Development for purposes of ingress and egress and maintenance and repair in, along and through said easements so reserved.

ARTICLE V MISCELLANEOUS PROVISIONS AND PROHIBITIONS

- A. Nuisances: No noxious or offensive activities shall be conducted on any Lot in the Development, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to the Owners of other Lots in the Development. Nor shall Developer, any officer, agent, employee or contractor thereof, the Association, or any Owner be liable for any damage which may result from enforcement of the provisions of this paragraph.
- B. Signs: No signs or advertisements shall be displayed or placed on any Lot or structure in the Development without the prior written approval of the Committee, except for the sale of a Lot or residence. However, Developer and designated Builders may use for sale and advertising signs during the sale of lots and the construction of houses in the Development.
- C. Animals: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they
 1. are not kept, bred, or maintained for any commercial purpose;
 2. not become a nuisance to other Owners; and
 3. they be leashed upon leaving Owner's property.
- D. Vehicle Parking: Any motor vehicle which is inoperative and not being

used for normal transportation will not be permitted to remain on any street or lot except within a closed garage. Motor vehicles may not be parked upon grassy or landscaped areas. Unless otherwise provided by the rules and regulations of the Committee, motor homes, mobile homes, boats, campers, trailers, commercial trucks and similar vehicles may not be parked or stored upon a Lot unless within a closed garage. All passenger vehicles shall be parked in garages or in driveways. Guest vehicles may be parked on the public streets for a period not to exceed twenty-four (24) hours; however, this shall not include vehicles parked on public streets on a frequent (in excess of 24 hours per month) basis. Vehicles may not be placed on blocks or jacks for purposes of repair, except for repairs made in garages.

- E. Ditches and Swales: All Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales located on their respective Lots. Owners of all Lots in the Development shall comply at all times with the provisions of the Development Plan (Grading Plan) for this plat as approved by the Department of Public Works, City of Indianapolis, Indiana, and with the requirements of all drainage permits issued for any Lot within the Development. Any field tile or underground drain encountered during the construction of any improvements within the Development shall be perpetuated. All Lot Owners in the Development, their successors, and assigns, shall comply with the Indiana Drainage Code of 1965, and all amendments thereto.
- F. Antennas: The Committee shall approve all exposed antennas. The maximum height of exposed antennae shall not exceed five (5) feet above the roof peak.
- G. Solar Heat Panels: Solar heat panels will not be allowed in the Development.
- H. Requirement to Mow Grass in Public Rights-of-Way: All Owners shall be required to mow the grass in public rights-of-way especially between the sidewalk and the curb for their respective Lots.

ARTICLE VI
SUBMITTAL AND APPROVAL OF PLANS

- A. Submittal of Plans: No building, wall or other structure, except original construction of buildings by or on behalf of Declarant or a Builder, may be commenced, erected or maintained in the Development, nor may any exterior additions, changes, or alterations therein or thereto be made until the plans and specifications for said additions, changes or alterations are submitted to and approved in writing by the Committee for harmony of external design and location in relation to surrounding structures and topography.
- B. Approval of Plans: Approvals, determinations, permissions or consents of and for plans required herein shall be deemed granted if given in writing and signed with respect to Developer by an authorized Officer or agent thereof, or with respect to the Committee by two its authorized designees(s).

ARTICLE VII
RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS
HAVING ONE OWNER

Whenever two or more contiguous Lots in the Development are owned by the same Owner, and said Owner proposes to use two or more of said Lots as a

site for one (1) Dwelling Unit, said Owner shall apply in writing to the Committee for permission to use said Lots for this purpose. If permission is granted, the Lots constituting the site for said Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions while the Lots remain improved with one (1) Dwelling Unit. No two-family dwellings shall be permitted in the Development.

ARTICLE VIII REMEDIES

- A. Available Remedies: In the event of a violation, or threatened violation, of any of the Covenants herein recited, Declarant, the Owners and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Covenants contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with the Covenants contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.
- B. Government Enforcement: The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any Covenants contained in this Declaration other than those Covenants which 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, 88-20-3, as amended, or any conditions attached to approval of the plat of Hartman Village Subdivision, Section One, by the Plat Committee, and any subsequent sections approved thereafter.
- C. 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 some of these Covenants shall be held to be a waiver by that party (or any estoppel of that party to assert) of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Covenants.

ARTICLE IX EFFECT OF BECOMING AN OWNER

The Owner of any Lot subject to the Covenants, by the 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 said Lot, shall accept said deed and execute said contract subject to all Covenants and Agreements contained herein. By acceptance of said deed or the execution of said contract, the Owner acknowledges the rights and powers of Interested Parties with respect to the Covenants, and also, for themselves, their heirs, personal representatives, successors and assigns. Said Owner shall covenant and agree with and consent to Developer and with and to the Owners and subsequent Owners of each of the Lots affected by the Covenants to keep, observe, comply with and perform said Covenants and Agreements.

ARTICLE X TITLES

The underlined titles of the various Articles and Sections of these Covenants are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Covenants.

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 the neuter.

ARTICLE XI
DURATION AND AMENDMENT

- A. Duration of Declaration: This Declaration shall be effective for an initial term of twenty (20) years from the date of its recordation by the Recorder of Marion County, Indiana, and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners' vote pursuant to Article XVII, Section K. to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.
- B. Amendment of Declaration: As long as Developer is a Class B member, it hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or any agency guaranteeing, insuring, or approving mortgages, or to change or modify Covenants for amendments to the Plat or Article III Restrictions which would apply to future construction within the Development.

Upon the conversion of Class B membership to Class A membership as provided in Article XV, Section B.2, the Covenants may be amended upon the approval of 75% of the Lot Owners.

ARTICLE XII
SEVERABILITY

The within Covenants shall run with the land and shall be binding on all parties claiming under them. Invalidation or unenforceability of any of the Covenants by Judgment or Court Order shall in no way affect the validity or enforceability of any of the other provisions which shall remain in full force and effect.

ARTICLE XIII
DEDICATION OF STREET RIGHTS-OF-WAY

All street rights-of-way shown on the plat and not heretofore dedicated to the public are hereby dedicated to the public.

ARTICLE XIV
HOMEOWNERS' ASSOCIATION

The Association shall be an Indiana not-for-profit corporation and shall operate in accordance with Articles XV through XVIII of this Declaration.

ARTICLE XV
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- A. Membership: Every Owner of a Lot shall be a member of the Association.

Membership shall be appurtenant to and may not be separated from the ownership of any Lot. In addition, the Association, and/or its members therein, may be members in any one or more umbrella or joint homeowners' associations, if any, composed of associations and/or members from surrounding areas or, if organized by the Builders or Lot Owners of a community.

B. Classes of Membership: The Association shall have two (2) classes of voting members:

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

2. Class B: The Class B member(s) shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the members of the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

b. on December 1, 1998.

C. Board of Directors: The members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Developer and shall manage the affairs of the Association until Developer transfers control of the Association to the Owners as required herein.

D. Responsibility 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 determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Covenants contained in this Declaration. 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 the Declaration or for any failure to take any action called for by the 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. The Association shall procure and maintain casualty insurance, liability insurance and such other insurance as it deems necessary or advisable. The Association by its Board of Directors may contract for management services and such other services as the Association deems necessary or advisable.

E. Transfer of Control of Association: Developer shall transfer control of the Association to the Owners no later than the earlier of:

1. four (4) months after three-fourths (3/4) of the Lots in the Development have been conveyed to Owners; or

2. five (5) years after the first Lot is conveyed to an Owner in the Development.

ARTICLE XVI
INSURANCE

- A. Public Liability Insurance for Common Property: The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Common Property, if any, as the Board of Directors shall deem appropriate.
- B. Comprehensive Public Liability Insurance: The Association also shall maintain in force comprehensive public liability insurance and such other liability insurance, with such coverages and limits, as the Board of Directors shall deem appropriate. All such 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, the Board of Directors, the Developer, any Managing Agent, their respective employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defense based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies shall name the Association, for the use and benefit of the Owners, as the insured; shall provide that the coverage thereunder is primary even if an Owner has other insurance covering the same loss; shall show the Association or insurance trustee, in trust for each Owner and Mortgagee, as the party to which proceeds shall be payable; shall contain a standard mortgage clause and shall name Mortgagee as Mortgagee; and shall prohibit any cancellation or substantial modification to coverage without at least thirty (30) days prior written notice to the Association and to the Mortgagee. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors and any managing agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.
- C. Professional Management Firm Insurance: A professional management firm shall provide insurance coverage to the same extent as the Association would be required to provide if it were managing its own operation and shall submit evidence of such coverage to the Association.
- D. Owner's Responsibility for Loss: Each Owner shall be solely responsible for loss of or damage to the improvements and his personal property located on his Lot, however caused. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

ARTICLE XVII
COVENANT FOR ASSESSMENTS

- A. Purpose of Assessments: The Assessments levied by the Association shall be used exclusively for the purpose of improving, repairing, replacing and maintaining project sign structures and appurtenances thereto located on Lots 1 and 11; maintaining the landscaping for said project sign, including utilities and maintenance for sprinkler system and entrance street light; maintaining storm water retention lake; providing insurance coverage therefor; and any other expenses related to the Association.
1. Each owner covenants and agrees to pay the Association:
 - a. A Pro Rata Share (as hereinafter defined) of the annual Assessments established and determined from time to time as hereinafter provided.

- b. A Pro Rata Share (as hereinafter defined) of any special Assessments established and determined from time to time, as hereinafter provided.
- B. Pro Rata Share: The pro rata share for each Owner for purposes of this paragraph shall be the percentage obtained by the fraction of one over the total number of lots (1/Total no. of Lots) within the Association.
- C. Liability for Assessments: The Assessment on each Lot, together with any interest thereon and any costs for collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs for collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each 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. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgage whose mortgage was recorded prior to the date such Assessment first became due and payable. 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.
- D. Basis of Annual Assessments: The Board of Directors of the Association shall establish an annual budget during the beginning of each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Common Property. A copy of this budget shall be delivered to each Owner of the Association.
- E. Basis of Special Assessments: Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. A special Assessment shall be imposed only with the approval of sixty-six percent (66%) of the Owners, and shall be due and payable on the date(s) determined by such Owners, or if not so determined, then as may be determined by the Board of Directors.
- F. Fiscal Year; Date of Commencement of Assessments; Due Date: The fiscal year of the Association shall be the calendar year and may be changed from time to time by action of the Association. The annual Assessments on each Lot in the Development shall commence no sooner than on the first day of the first month following the month in which Declarant first conveys ownership of any Lot to an Owner; provided, that if any Lot is first occupied for residential purposes prior to being conveyed by Declarant, full Assessments shall be payable with respect to such Lot commencing on the first day of the first month following the date of such occupancy. The Declarant shall have the right, but not the obligation, to make up any deficit in the budget for the Common Expenses for any year in which Declarant controls the Association, subject to its right to be reimbursed therefor as provided herein.

The first annual Assessment shall be made for the balance of the fiscal year of the Association in which such Assessment is made and, with respect to particular Lots, shall become due and payable on the date of initial transfer of title to a Lot to the Owner thereof. 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 Board of Directors may, from time to time by resolution, authorize the payment of such Assessments in monthly, quarterly, or semi-annual installments.

G. Duties of the Association:

1. Books and Records: The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, 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. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be delivered to the Owners or their designated representatives. Notices of the amounts of special Assessments shall be sent as promptly as practical and, in any event, not less than thirty (30) days prior to the due date of such Assessment or any instalment thereof. In the event such notice is 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 delivery of such notice.
2. Certificate of Assessments: Upon request the Association shall promptly furnish to any Owner, prospective purchaser, title insurance company, or Mortgagee, 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 any Lot in which the requesting party has a legitimate interest. For any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
3. Request for Notice from Mortgagee: The Association shall notify any Mortgagee from which it has received a request for notice:
 - a. of any default in the performance of any obligation under this Declaration by any Owner which is not remedied within sixty (60) days;
 - b. of any condemnation or casualty loss that affects either a material portion of the Development of the Lot securing its mortgage;
 - c. of any lapse, cancellation, or material modification of any insurance policy required to be maintained by the Association; and
 - d. of any proposed action which requires the consent of the Mortgagee or a specified percentage thereof, as set forth in the Declaration.

H. Association Remedies for Non-Payment of Assessments:

1. Lien for Non-Payment of Assessment: 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 said Lot; provided however, that the lien of the Assessment provided for herein shall be subordinate to the lien of any first mortgage.

2. Initiation of Action by Association for Non-Payment of Assessments: If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all cost of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of Prime Rate, as set by Bank One of Indianapolis, Indiana, ("Prime Rate") plus three percent (3%) per annum and the Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against 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 judgement 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 year, except that so long as the Declarant controls the Association, Declarant may, at its sole discretion, make up such deficit; provided, however, that Declarant shall be reimbursed by the Association for such funded deficits, together with interest at Prime Rate plus three percent (3%) per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to Owners.
- J. Initial Assessments: During the first year in which the date when the Declaration is recorded, the annual Assessment per Lot shall not exceed forty dollars (\$40.00) for Class A members, payable annually. This amount shall not indicate amounts of future annual Assessments. Future Assessments shall be based on an annual budget and shall be for a full year. Regular Assessments may be increased up to 15% each year without a vote of the membership; provided that proper notice is given to the Owners, not less than thirty (30) days in advance of the meeting to approve the annual budget. The Declarant, at its sole discretion may advance to the Association any of the first year deficit and may be reimbursed by subsequent assessments.
- K. Notice and Quorum for any Action to Increase Assessments in Excess of 15% and Any Amendment to the Declaration: Written notice of any meeting called for the purpose of increasing the regular or special Assessments of the Association shall be sent to all Owners not less than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty-six percent (66%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum shall be thirty percent (30%) of all the votes. Once a Quorum is present, a majority of the lots represented must approve the assessment or amendment.
- L. Subordination of the Lien to Mortgages: The Lien of the assessments provided for herein shall be subordinated to the lien of any first

mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. If and to the extent this Paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail.

ARTICLE XVIII
ANNEXATION

- A. Annexation of Other Areas: Additional land outside of the 50 lots may be annexed to the Property with the consent of FHA eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged units and with the consent of two-thirds (2/3) of each class of members.
- B. Effective Date for Assessments and Voting Rights: The regular assessment provided for in the Declaration shall commence for each Lot within the annexed area on the first day of the first month following the conveyance of the Lot to the Owner by the Builder. Voting rights of the Owners of the Lots within the annexed property shall be effective upon the same date, except the Declarant shall have the voting rights provided for in Article XV, Section B.
- C. Improvements: All improvements intended for future sections shall be substantially completed prior to annexation. Any future improvements shall be consistent with the initial improvements within the Real Estate in terms of quality of construction and shall be approved by the appropriate governmental agencies.
- D. Equality of Rights: All Lot Owners within an annexed area shall have the same rights, liabilities and obligations as all Owners within the Real Estate, subject to the rights, liabilities and obligations specifically set forth as to the Declarant or a Builder in other sections of this Declaration.
- E. Annexation Documents: Annexation shall be by written document including, but not necessarily limited to, the following information:
1. A description of the property to be annexed;
 2. The identity of the Declarant;
 3. The effective date of annexation;
 4. A description of the Common Area to be owned by the Association, if any;
 5. A cross-reference to this Declaration, as amended; and
 6. Any other information which the Declarant may deem necessary to identify the annexed area.

EXHIBIT "A"

Resolution No. 75-R-69, 1985:

OPEN OCCUPANCY AND EQUAL OPPORTUNITY COMMITMENT

- (a.) The owner commits that he shall not discriminate against any person on the basis of race, color, religion, ancestry, national origin, handicap or sex in the sale, rental, lease or sublease, including negotiations for the sale rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
 - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
 - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b.) The owner commits that in the development, sale, rental or other disposition of the real estate or any portion thereof, neither he nor any person engaged by him to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment employed or to be employed in the development, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, color, religion, ancestry, national origin, handicap or sex.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
 - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
 - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
 - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;

provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;

2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

EXHIBIT "B"

A Part of the East Half of the Northeast Quarter of Section 34, Township 18 North, Range 5 East of the Second Principal Meridian in Warren Township, Marion County, Indiana, being more particularly described as follows:

Commencing at a railroad spike found marking the Northwest corner of said Half Quarter Section; thence South 00 degrees 00 minutes 00 seconds East (bearing based on the plat of Warren Lakes, Section One, as recorded as Instrument Number 91-0061998 in the Office of the Recorder of Marion County, Indiana) 330.00 feet along the West line of said Half Quarter Section to the Point of Beginning; thence continuing South 00 degrees 00 minutes 00 seconds East, 544.50 feet along said West line; thence North 89 degrees 58 minutes 53 seconds East, 440.00 feet parallel with the North line of said Half Quarter Section; thence South 00 degrees 00 minutes 00 seconds East, 448.50 feet parallel with the West line of said Half Quarter Section; thence North 89 degrees 58 minutes 53 seconds East 886.53 feet parallel with the North line of said Half Quarter Section to the East line of said Quarter Section; thence North 00 degrees 03 minutes 53 seconds East, 519.56 feet along said East line; thence North 89 degrees 56 minutes 07 seconds West, 150.00 feet; thence North 74 degrees 01 minute 50 seconds West, 51.99 feet; thence North 89 degrees 56 minutes 07 seconds West, 243.24 feet; thence North 00 degrees 01 minute 07 seconds West, 94.88 feet; thence South 89 degrees 58 minutes 53 seconds West, 75.00 feet; thence North 35 degrees 24 minutes 30 seconds West, 129.50 feet; thence North 00 degrees 01 minute 07 seconds West, 118.04 feet to a non-tangent point on a curve having a central angle of 09 degrees 44 minutes 49 seconds, the radius point of said curve bears South 02 degrees 46 minutes 18 seconds West, 329.30 feet; thence along said curve 56.02 feet to a non-tangent point, the radius point of said curve bears South 12 degrees 31 minutes 07 seconds East, 329.30 feet; thence North 12 degrees 31 minutes 07 seconds West, 50.00 feet; thence South 77 degrees 28 minutes 53 seconds West 69.57 feet; thence North 00 degrees 01 minute 07 seconds West 174.05 feet; thence South 89 degrees 58 minutes 53 seconds West, 140.13 feet parallel with the North line of said Half Quarter Section; thence South 16 degrees 55 minutes 45 seconds West, 66.25 feet; thence South 89 degrees 58 minutes 53 seconds West, 440.00 feet to the Beginning Point of this description, containing 19.66 acres, more or less. Subject to all legal easements, rights-of-way, and restrictions of record.