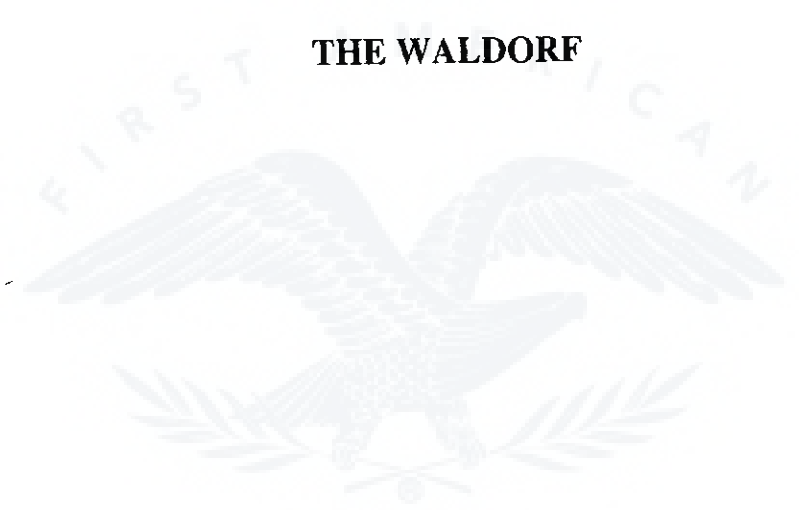


(17)

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**THE WALDORF**



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Inst # 2005-0003284

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR "THE WALDORF"**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR "THE WALDORF" (hereinafter referred to as the "Declaration") is made this 1st day of September, 2004, by H. Moore, LLC, an Indiana limited liability company (hereinafter referred to as the "Developer"), Gregory N. Larkin Joe Loughrey, Gary Reiter and \_\_\_\_\_ (on occasion, collectively referred to as the "Declarants").

WITNESSETH:

WHEREAS, the Declarants are the owners of certain real property located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and incorporated herein by reference, and the Declarants desire to subject such property to the provisions of this Declaration and to develop such property for residential use in a development to be known as "The Waldorf" (hereinafter the "Development"); and

WHEREAS, as hereinafter provided in this Declaration, the Declarants desire to provide for the reasonable use of the property in the Development in a consistent and aesthetically pleasing manner; and

NOW, THEREFORE, the Declarants hereby declare that all of the property which is described in Exhibit A, attached hereto, is hereby subjected to this Declaration and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the restrictions, covenants, and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of the property and which shall touch and concern and run with the title to the property subjected to this Declaration, and which shall be binding on all parties (including any mortgagees or lien-holders) having any right, title, or interest in the described properties or any portion thereof, and their respective tenants, occupants, invitees, heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

**DEFINITIONS.** The following words, when used in this Declaration, unless the context shall prohibit or otherwise require, shall have all the following meanings. All definitions shall be applicable to the singular and plural forms of such terms.

**Section 1.1. "Architectural Control Committee"** shall mean and refer to the committee which shall be responsible for the approval of all exterior and structural

improvements, additions, and changes within the Development as provided in Article II hereof.

**Section 1.2. "Lot"** shall mean and refer to each plot of land included in the Development identified on any recorded plat of the Development or in any other recorded instrument upon which it is intended that residences shall be constructed. A Lot may not be subdivided into separate Lots.

**Section 1.3. "Owner"** shall mean and refer to the record owner, whether one or more persons, with fee simple title to any Lot which is part of the Development, or any condominium unit which is part of the development, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

## ARTICLE II

### ARCHITECTURAL REVIEW

**Section 2.1. Introduction.** Nothing shall be erected or constructed on any Lot in the Development; which terms shall include staking, clearing, excavation, grading, and other site work; without meeting the requirements of this Article and without the approval of the Architectural Review Committee established in Section 2.2, below. By way of example only, no erection or construction of any residence shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the committee has been obtained pursuant to the terms of this Declaration. The Architectural Review Committee may establish reasonable fees to be charged by the committee on behalf of the Developer for reviewing of applications hereunder and may require such fees to be paid in full prior to review of any application.

This Article shall not apply to the activities of the Developer with respect to the original construction of the Development, nor to construction or improvements or modifications to the Development by or on behalf of the Developer.

The Developer shall have the authority and standing to enforce in courts of competent jurisdiction decisions of the Architectural Review Committee established in Section 2.2 of this Article II. This Article may not be amended without the Developer's written consent so long as the Developer owns any Lots subject to this Declaration. In the event the Developer has to expend any attorneys' fees to enforce any of the terms and conditions of this Declaration, the defaulting Lot Owner shall be solely responsible for the Developer's reasonable attorneys' fees associated with enforcing this Declaration.

**Section 2.2. The Architectural Control Committee.** The Developer hereby establishes the Architectural Control Committee (the "ACC") which shall consist only of the Developer until one hundred percent (100%) of the Lots located in the Development have been conveyed to purchasers in the normal course of development and sale. After the sale of 100% of the Lots owned by the Developer, this Declaration shall be of no further force and effect with the exception only of Sections 2.12, 2.14, 2.15, 2.16, 2.17,

2.18, and 2.19 which shall continue in full force and effect. Prior to the sale of the last Lot owned by the Developer in the Development, Developer shall have the right and option of unilaterally amending this Declaration. From and after the sale of the Developer's last Lot in the Development, the majority of Owners (i.e., 4 out of 6 of the Owners in the Development if Lot 6 is developed with a single-family residence; or, 5 out of 8 of the Owners in the Development if Lot 6 is developed with three condominium units) shall have the right and option of amending the surviving sections of this Declaration by a majority vote; provided, however, that no amendment of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easements shall have consented thereto in writing.

The ACC shall have exclusive jurisdiction over all construction, modifications, additions, or alterations made on, or to, existing Lots and the open space, if any, appurtenant thereto. The ACC, in order to make a decision, shall require plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such improvements, additions, or alterations to be submitted to the ACC for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surrounding topography and finish grade elevation. The ACC may (but has no obligation) develop specific design guidelines which address, among other things, the design and appearance of any improvements to be constructed or maintained on any Lot. Any specific design guidelines may be modified at the ACC's sole discretion, provided specific design guidelines are consistent with the provisions of the recorded plat for "The Waldorf" subdivision ( the "Plat") and do not seek to retroactively change the specific use or improvement of a Lot which was previously approved by the ACC.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired; provided, modifications or alterations to any interior portions of a residence which are visible from outside the residence shall be subject to approval hereunder. In the event that the ACC fails to approve or to disapprove such plans or to request additional information within sixty (60) days after submission of completed plans, proposals, specifications or drawings and any additional information having been requested by the ACC, the plans shall be deemed approved but only to the extent such plans do not violate express provisions of the Declaration or the existing Plat.

**Section 2.3. No Waiver of Future Approvals.** The approval of the ACC of any proposals, plans and specifications, drawings or matters for any work done or proposed, or in connection with any other matter requiring the approval and consent of ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

**Section 2.4. Variance.** The ACC may authorize variances from compliance with any of its guidelines and procedures that it may enact from time to time. Any variance will be permitted only upon a determination by the ACC that the proposed variance will

not be detrimental to other Lots in the Development and will not be inconsistent with the purposes for which the covenants, conditions and restrictions set forth in this Declaration were established. Such variance will only be deemed effective if it is in writing. The granting of any such variance will not operate to waive any of the terms and provisions of this Declaration, except as to the particular Lot and particular provision covered by the variance. Notwithstanding the ACC's approval of a variance request, the Owner is still obligated to comply with all governmental laws and regulations affecting the use or improvement of any Lot including, but not limited to, the Plat.

**Section. 2.5. Review Fee.** Upon submission of the plans and specifications, the ACC, at its sole discretion, may charge a review fee; however, such review fees are not applicable to Lot 3 and such review fees are not to exceed the following fee schedule:

- (i) If the submitted plan is prepared by an architect duly licensed in the State of Indiana, the ACC's review fee is \$500.00;
- (ii) in all other cases, the ACC's review fee is \$1,000.00.

Every three (3) years the ACC may modify the ACC's review fees to reflect the ACC's increased costs.

**Section 2.6. Compliance with Guidelines.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ACC may be excluded from the Development without liability to any person, subject to the notice and hearing procedures before the ACC.

**Section 2.7. Construction of Improvements.** Residences may not be temporarily or permanently occupied until the exteriors thereof have been substantially completed. With the exception of a detached garage, no accessory building or outbuilding shall be permitted on any Lot at any time, except as may be permitted by rules and regulations promulgated by the ACC.

**Section 2.8. Responsibilities During Construction.** Owners shall take necessary action during construction activities to assure the following occurs:

- (a) Construction of a residence on a Lot must be completed within a reasonable time from the date construction is commenced based upon the size and complexity of the residence (not to exceed one (1) year from the closing on the Lot). Owner(s) recognize that failure to construct the residences on the Lots within one year of closing on the Lot will affect the Developer's efforts to market and sell the remaining Lots in the Development. As liquidated damages and not as a penalty, in the event the Owner(s) fail to substantially complete construction of the new home within one (1) year from the closing on the Lot such Owner shall be assessed by the ACC a \$150.00 penalty per day until such time as the residence is substantially completed. Notwithstanding the foregoing, the Owners of Lot 3,

Lot 4 and Lot 6 shall have thirty months from the closing on their respective Lot to substantially complete the improvements thereon.

(b) In the event the Owner and/or its agents, contractors, employees or invitees shall damage any of the improvements located on their Lot or any adjacent Lots, sidewalks, easement areas or curbs, including, but not limited to, damage to utility lines, sewer lines, water lines, signage, landscaped areas or paved areas, the responsible Owner shall be solely responsible for any costs associated with repairing and/or replacing such improvements. In the event the responsible Owner shall fail to commence with the necessary repairs and/or replacements to the damaged improvements within thirty (30) business days of written notice from the Developer, the Developer may pay for such costs and send the responsible Owner an invoice for the same. The responsible Lot Owner shall reimburse the Developer for the costs associated with such required repairs and/or replacements to the improvements (which costs shall include the Developer's standard project management fees) within thirty (30) business days of a written receipt thereof. If the responsible Lot Owner fails to reimburse the Developer for the costs set forth in the invoice within the time lines set forth herein, the Developer shall be entitled to file a lien against the responsible Owner's Lot which shall be enforceable similar to a mechanic's lien.

(c) During the construction period, the Lot, and the temporary construction staging area established in Section 2.15 of this Article II, shall be maintained in a clean and orderly manner at all times. All loose shingles, lumber, bricks, block, drywall, insulation, or other building material which can blow onto adjacent property shall not be left lying around. Construction trash shall be contained in a trash fence and shall be removed from the Lot, and the temporary construction staging area, at least once per every 60 days or contained in a dump site provided by a trash disposal service which will empty the container as needed but no less than once per every 60 days. The Developer hereby reserves an easement to come onto any Lot, and the temporary construction staging area, to remove any debris and keep any Lots in a neat and orderly condition at the sole cost of the Lot Owner should the Lot Owner fail to comply with the terms set forth herein. The Lot Owner shall be responsible for reimbursing the Developer for the costs associated with such required clean up within five (5) business days of a written receipt thereof. If the Lot Owner fails to reimburse the Developer for the costs set forth in the invoice within the time lines set forth herein, the Developer shall be entitled to file a lien against the Lot which shall be enforceable similar to a mechanic's lien.

(d) The Lot Owner shall be responsible for removal of dirt, mud or debris or other foreign material of any kind which may be deposited upon the road or easements from construction on the Lot. If such deposits occur, then the Lot Owner shall make provisions to remove such deposits within five (5) days of written notice or the Developer may remove such deposits. The Developer hereby reserves an easement to come onto any Lot, and on to the temporary

construction staging area, to remove any dirt, mud or debris or other foreign material of any kind at the sole cost of the Lot Owner should the Lot Owner fail to comply with the terms set forth herein. The Lot Owner shall be responsible for reimbursing the Developer for the costs associated with such required clean up within five (5) business days of a written receipt thereof. If the Lot Owner fails to reimburse the Developer for the costs set forth in the invoice within the time lines set forth herein, the Developer shall be entitled to file a lien against the Lot which shall be enforceable similar to a mechanic's lien.

(e) Intentionally Deleted.

(f) Upon completion of construction on any Lot, such Owner shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot on which such construction has been completed. If the Lot Owner shall fail to remove such construction material and debris within five (5) days of written notice from the Developer, the Developer may remove such construction debris and charge the Lot Owner for the costs thereof. The Lot Owner shall be responsible for reimbursing the Developer for the costs associated with such removal within five (5) business days of a written receipt thereof. If the Lot Owner fails to reimburse the Developer for the costs set forth in the invoice within the time lines set forth herein, the Developer shall be entitled to file a lien against the Lot which shall be enforceable similar to a mechanic's lien.

(g) The Developer shall have the right to designate, in its sole discretion, the staging areas for construction.

(h) No construction shall be commenced on any Lots in the Development before 7:30 am in the morning.

**Section 2.9. Architectural Approval.** To preserve the architectural and aesthetical appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by an Owner, other than Developer, with respect to the construction or affecting the exterior appearance of any residence, including, without limitation, the construction or installation of sidewalks, driveways, awnings, walls, fences, exterior lights, signs, garages, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the ACC as to the compliance of such plans and specification with such standards as set forth in this Declaration and as may be published by the ACC from time to time, including the harmony of external design, location, and appearance in relation to surrounding residential structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the ACC, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved". No plans will be approved which do not, in the ACC's sole

and absolute discretion, preserve the architectural and aesthetical appearance of the Development.

**Section 2.10. Approval Not a Guarantee.** No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Neither Developer nor the ACC shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article II; nor, loss or damages to any person arising out of the approval or disapproval of any plans or specifications; nor, any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations, including but not limited to the Plat; nor, any defects in construction undertaken pursuant to such plans and specifications.

**Section 2.11. Residential Restrictions.** The exterior walls of all residences must be constructed of a material approved by the ACC. Specifically, the color, materials and texture of the exterior walls of the residences constructed on any Lot must be approved in writing by the ACC. No residences in the Development shall use any vinyl siding. All residences, improvements and other structures shall be constructed in compliance with any and all applicable state, county and municipal zoning and building code restrictions and requirements.

**Section 2.12. Set Backs.** The Owners must also comply with all easement lines specified in the Plat of the Development. In addition, the Owner must comply with the easements and side set backs (not to exceed five feet) designated (i) on Exhibit B and (ii) by the ACC in its sole and absolute discretion.

**Section 2.13. Waiver by Developer.** Notwithstanding anything to the contrary set forth herein, the terms and conditions of the Declaration are solely for the benefit of the Developer and the Developer, in its sole and absolute discretion, may waive any of the terms and conditions set forth herein.

**Section 2.14. Reciprocal Walkway and Landscape Easements.** Lots 1, 2, 3, 4, 5 and 6 in the Development shall have a concrete walk in like or similar materials used to construct the pressed concrete access drive located within the Ingress Easement described in Section 2.15 of this Declaration. The reciprocal walkway and landscape easements between each of the respective Lots shall be in the areas set forth in the attached Exhibit B incorporated herein by reference (hereinafter, the "Walkway and Landscape Easements") and shall constitute a perpetual and reciprocal ingress/egress easement. As an example, but not by way of limitation, the Owners of Lots 1 and 2 shall have a reciprocal ingress/egress easement over and across the Walkway and Landscape Easements between the two respective Lots shown on Exhibit B. The Owner of each of the respective Lots shall be solely responsible for keeping the walkways located on or within the Walkway and Landscape Easements open to the adjacent Lot Owners, unobstructed and in good working order and condition. By taking deed to a Lot each



Owner agrees and consents that no permanent improvements shall be constructed on, over and across the Walkway and Landscape Easements and each Lot Owner shall be responsible for keeping such Walkway and Landscape Easements unobstructed. No building or any structural obstruction shall be permitted or maintained within a Walkway and Landscape Easement area shown on Exhibit B; provided, however, that gates (excluding chain link gates), together with the utility meters and/or the down spouts from the residences shall be permitted. In the event a Lot Owner shall construct a permanent improvement over the Walkway and Landscape Easement, such Lot Owner shall be forced to remove the same at such Lot Owner's sole cost and expense. Notwithstanding anything to the contrary contained herein, the walkways may be secured by a gate (excluding chain link gates).

**Section 2.15. Ingress Easement.** There is an area of ground on the Plat marked "Ingress Easement". The Developer shall incur the initial cost to construct the pressed concrete access drive to be located within the Ingress Easement; provided; however, notwithstanding the foregoing, the Owner of Lot 5 agrees to pay the Developer up to \$5,000 for the concrete access drive if the Project is completed with 6 Lots, \$4,300 for the concrete access drive if the Project is completed with 7 Lots and \$3,750 for the concrete access drive if the Project is completed with 8 Lots. The Owner of Lot 5 agrees to make the payment to the Developer, in accordance with the terms set forth herein, within ten (10) business days of receipt of invoices setting forth in reasonable detail the actual and direct construction costs (excluding any management fees, design costs etc.) associated with the concrete access drive. The Developer hereby declares, creates and grants a non-exclusive easement in favor of each owner of Lots 1 through 6 for the use and enjoyment of the Ingress Easement for the purpose of (i) vehicular and pedestrian ingress and egress to and from Lots 1 through 6 and (ii) establishing a temporary construction staging area. Each of the Owners within the Development shall each be responsible for the costs associated with maintaining the Ingress Easement in compliance with the following schedule:

- (i) If Lot 6 is developed with a single-family residence, each Owner of Lots 1 through 6 shall each be responsible for 16.67% of the costs associated with maintaining the Ingress Easement; or,
- (ii) If Lot 6 is developed with three condominium units, each of the Owners of Lots 1 through 5 shall each be responsible for 12.5% of the costs associated with maintaining the Ingress Easement. Similarly, each of the Owner(s) of the three condominium units located on Lot 6 shall each be responsible for 12.5%, per unit, of the costs associated with maintaining the Ingress Easement.

Accordingly, home owners and condominium unit owners, if any, in the Development shall each pay an equal share of the common area maintenance fees for that area of the Plat marked as the Ingress Easement.

**Section 2.16. Utility and Sewer Easements.** There are areas of ground on the Plat marked "utility easements" and "sewer easements" either separately or in combination.

The utility easements are hereby created and reserved for the use of all public utility companies for access to and installation, maintenance, repair, removal or replacement, of poles, mains, ducts, drains, lines, wires, cable and other equipment and facilities for the furnishing of utility services, including cable television services. The sewer easements are hereby created and reserved for use of the Department of Public Works for access to and installation, maintenance, repair, removal, or replacement of an underground storm and sanitary sewer system. The delineation of the utility and sewer easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily, to the extent reasonable necessary, for the exercise of the rights granted to it by this Section. The owner of any Lot in the Plat, including any builder, shall be required to keep his/her Lot free from obstructions so that storm water will be unimpeded and will not be changed or altered (i) in violation of the requirements of all drainage permits for the Plat, (ii) without a permit from the Department of Public Works, and (iii) without prior written approval from the Developer. The Owner of any Lot in the Development shall be responsible for all fees associated with any utility hook-ups.

**Section 2.17. Release of Claims.** Whenever the approval of the ACC is required or permitted under this Declaration, neither the Developer, nor the ACC, nor any individual member of the ACC, shall be liable for damages (in connection with any such request for approval) to any Owner, or other holder of an interest affected by this Declaration, by reason of mistaken judgment, negligence, or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval or failure to grant any requested approval. The intent of this provision is to discharge and/or exculpate the Developer, the ACC and the individual members of the ACC from any personal liability for damages on account of any dispute concerning any request for approval under this Declaration. The limitations contained in this Section are intended to prevent any party from making claims against the Developer, the ACC or the constituent members of the ACC for damages, but are not intended to limit any other remedies which might otherwise be available to any prospective claimant under the Declaration. In this regard, if any party believing themselves to be aggrieved by any action or inaction taken by the Developer, the ACC or any individual member of the ACC in connection with any requests for any approval under this Declaration (herein referred to as a "Claimant") who, as a result, pursues a claim for damages against the Developer, the ACC or any one or more of the individual members of the ACC, then such Claimant shall be obligated to pay and reimburse the Developer, the ACC and/or those individual members of the ACC which have been made a party to the claim, their reasonable attorney's fees and costs incurred in connection with that claim, and the enforcement of the provisions of this Section, regardless of whether or not the Claimant prevails and/or is awarded all or substantially all of any relief sought in connection with any such claim, if such claim by the Claimant includes a claim for damages. Neither the Developer, ACC nor any individual member of the ACC shall have any obligation for the payment of any attorney's fees or other costs to any such Claimant, regardless of whether or not such Claimant prevails on all or any part of any such claim.

**Section 2.18. On-Going Maintenance Obligations.** Each Lot Owner shall be responsible for maintaining and keeping his Lot, and all other structural improvements located on his Lot, in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The obligation to maintain a Lot shall exist, whether or not a dwelling unit exists on such Lot, and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a dwelling unit existed thereon.

If any Owner shall fail to maintain and keep his Lot, dwelling unit and other structural improvements located on his Lot in a good, clean and sanitary condition as determined by the Developer, the Developer may perform any work necessary to do so and charge the Owner thereof for such cost (which cost includes but are not limited to the Developer's management fees), which cost shall be immediately due, and shall be secured by the Developer's lien on the Owner's Lot.

Each of the Owners of Lots 1 through 6 shall be responsible for the maintenance of the storm water quality best management practice [the "BMP(s)"] required by the drainage permit for this Plat, subject to all fees and other city requirements, in compliance with the following schedule:

- (i) If Lot 6 is developed with a single-family residence, each Owner of Lots 1 through 6 shall each be responsible for 16.67% of the costs associated with maintaining the BMP(s); or,
- (ii) If Lot 6 is developed with three condominium units, each of the Owners of Lots 1 through 5 shall each be responsible for 12.5% of the costs associated with maintaining the BMP(s). Similarly, each of the Owner(s) of the three condominium units located on Lot 6 shall each be responsible for 12.5%, per unit, of the costs associated with maintaining the BMP(s).

Accordingly, home owners and condominium unit owners, if any, in the Development shall each pay an equal share of the maintenance costs for the BMP(s).

So long as the Developer owns any Lots in the Development, each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Developer, its agents and employees, the right, in the form of a permanent easement, to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

Upon such date that the Developer has sold the last of its Lots in the Development, the remaining Owners in the Development may, by majority vote, elect to hire a third party management firm to maintain any and all of the easement areas located in the Development, as shown on Exhibit B

**Section 2.19. Right of Enforcement.** After such time as the Developer sells the last of its Lot(s) in the Development, the right to enforce the provisions of this Declaration and the Plat by injunction, together with the right to cause the removal, by due process of law, of any structure or part thereof erected or maintained in violation thereof, is reserved to the several Owners of the several Lots in the Plat and to their heirs, successors and assigns from and after the date that the Developer has sold his last Lot in the Development.

**Section 2.20. Lot 5.** Notwithstanding anything to the contrary set forth herein, Lot 5 shall not be subject to any of the terms and conditions of this Declaration other than those sections which expressly survive the sale of the Developer's last Lot in the Development (i.e., Sections 2.12, 2.14, 2.15, 2.16, 2.17, 2.18, and 2.19). As such, Developer shall have no architectural approval rights with respect to Lot 5 of the Development.

IN WITNESS WHEREOF, the Developer has executed this Declaration this 4th day of October, 2004.

H. MOORE, LLC, an Indiana limited liability company

By: [Signature]  
Printed: Leif Hintenberger  
Managing Member

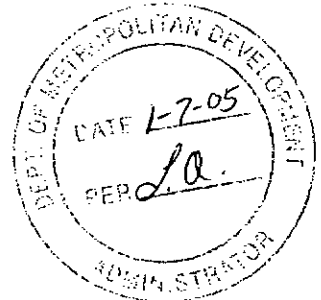
**INSTRUMENT TYPE AND BY CENTER TOWNSHIP ASSESSED**

STATE OF INDIANA )  
COUNTY OF MARION ) SS:

Before me, a Notary Public in and for the State of Indiana, on this 4th day of October, 2004, appeared Leif Hintenberger, by me known to be the managing member of the Developer and who did execute this Declaration as his free and voluntary will for and on behalf of the Developer.

Given under my hand and official seal this 4th day of October, 2004.

Ernest R. Clark  
Notary Public  
**ERNEST R. CLARK**  
Printed  
County of Residence: MARION  
My Commission Expires: 12-06-2006



IN WITNESS WHEREOF, the Declarant has executed this Declaration this 1 day of September, 2004.

By: *Gregory N. Larkin*

Printed: GREGORY N. LARKIN

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the State of Indiana, on this 1<sup>st</sup> day of September, 2004, appeared GREGORY N. LARKIN who did execute this Declaration as his free and voluntary will.

Given under my hand and official seal this 1<sup>st</sup> day of September, 2004.

*Brian Robinson*  
Notary Public

Printed BRIAN ROBINSON

County of Residence: MARION

My Commission Expires: JULY 13, 2011

IN WITNESS WHEREOF, the Declarant has executed this Declaration this \_\_\_\_\_ day of October, 2004.

By: Gary J. Reiter

By: Ann M. Reiter

Printed: Gary J. Reiter

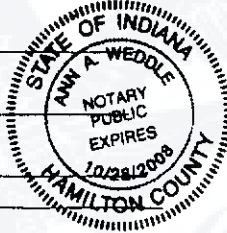
Printed: Ann M. Reiter

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for the State of Indiana, on this \_\_\_\_\_ day of October, 2004, appeared Gary Reiter and Ann Reiter, husband and wife, who did execute this Declaration as their free and voluntary will.

Given under my hand and official seal this 4th day of October, 2004.

Ann A. Weddle  
Notary Public



Printed \_\_\_\_\_  
County of Residence: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 3<sup>rd</sup> day of October, 2004.

By: F. Joseph Loughrey  
Printed: F. JOSEPH LOUGHREY

STATE OF INDIANA )  
COUNTY OF Bartholomew ) SS:

Before me, a Notary Public in and for the State of Indiana, on this 3<sup>rd</sup> day of October, 2004, appeared F. Joseph Loughrey who did execute this Declaration as his free and voluntary will.

Given under my hand and official seal this 3<sup>rd</sup> day of October, 2004.

Colleen Sue Lowry  
Notary Public  
Colleen Sue Lowry  
Printed  
County of Residence: Bartholomew  
My Commission Expires: December 10, 2011



This instrument prepared by and after recording return to:

J. Taggart Birge, Esq.  
Bose, McKinney & Evans LLP  
600 E. 96<sup>TH</sup> Street Suite 500  
Indianapolis, IN 46240

**Exhibit "A"**

Lots 1, 2, 3, 4, 5 and 6 in the Waldorf secondary plat, a replat of Lot 21, 22, and 23 of the JOHN WOOD'S SUBDIVISION of Out Lots 1, 40, 41 and 42 of the donation lands in the City of Indianapolis, as per plat thereof recorded March 28, 2002 as Instrument Number 2002-0059081 in the office of the Recorder of Marion County, Indiana.





EXHIBIT B

