

ground by the individual utility supplier; (ii) each driveway in the Subdivision will be of concrete material; (iii) no additional parking will be permitted on a Lot or Block other than in the existing driveway(s); (iv) all garage doors in the Subdivision will be of a hardboard, metal or wood material; (v) whenever possible, all utility meters and HVAC units in the Subdivision will be located in places unseen or screened from the fronts of the dwellings; (vi) no outside fuel storage tanks will be permitted and no gasoline storage will be permitted above or below ground in the Subdivision; (vii) all windows in the Subdivision will be factory or on the job painted, no raw aluminum windows will be permitted and all windows will have an approved thermal break; (viii) all gutters and downspouts in the Subdivision will be factory painted; (ix) all roofing in the Subdivision will be of a consistent color scheme and a shingle-type material acceptable to Committee; (x) all roof pitches will be acceptable to Committee; (xi) no metal, fiberglass or similar type material awnings or patio covers will be permitted in the Subdivision; (xii) no swimming pools will be permitted in the Subdivision; and (xiii) modular-type construction is not permitted in the Subdivision, provided, however, that prefabricated home components such as walls and roof trusses will not be considered modular-type construction.

G. Common Area. No structure or other improvement shall be erected on any part of the Common Area by anyone other than Declarant without Committee's prior written approval.

H. Damaged Structures. No improvement that has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from time of such destruction.

I. Prohibition of Used Structures and Modular Homes. All structures constructed or placed on any Lot or Block shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any Lot or Block, nor shall modular constructed structures be placed on any Lot or Block.

J. Maintenance of Lots, Blocks and Improvements. The Owner of any Lot or Block shall at all times maintain such Lot or Block, and any improvements situated thereon, in such a manner as to prevent the same from becoming unsightly and, specifically, such Owner shall:

- (i) Mow and care for the lawn at such times as may reasonably be required in order to prevent unsightly growth of vegetation and weeds;
- (ii) Remove all debris or rubbish;
- (iii) Prevent existence of any other condition that reasonably tends to detract from or diminish aesthetic appearance of the Subdivision;
- (iv) Cut down and remove dead trees; and
- (v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

6. **MISCELLANEOUS PROVISIONS AND PROHIBITIONS.**

A. **Nuisances.** No outside toilets shall be permitted on any Lot or Block (except during a period of construction thereon, and then only with Committee's prior written consent), and no sanitary or other waste shall be permitted to enter the storm drainage system. No discharge from any floor drain, gutter or sump pump shall be permitted to enter the storm drainage system. By purchase of a Unit, each Owner agrees that any violation of this paragraph constitutes a nuisance that may be abated by Declarant, Association or any other Owner in any manner provided at law or in equity. No noxious or offensive activities shall be carried on in the Subdivision, nor shall anything be done in the Subdivision that shall become or be an unreasonable annoyance or nuisance to any Owner. Neither Declarant, any member, agent, employee or contractor thereof, Association nor any Owner shall be liable for any damage that may result from enforcement or nonenforcement of the provisions of this paragraph.

B. **Construction of Sewage Lines.** All sanitary sewage lines in the Subdivision shall be designed and constructed in accordance with all applicable City of Indianapolis requirements. Copies of all permits, plans and designs relating to construction of sanitary sewer service facilities shall be submitted in duplicate to Committee at the time of submission of all other plans or documents required for obtaining Committee's permission to proceed as provided in paragraph 7.

C. **Animals.** No animals shall be kept or maintained in the Subdivision except usual household pets in types and numbers established by Board, and, in such case, such household pets shall be kept reasonably quiet, controlled and on a leash whenever outside, so as not to become a nuisance. Each Owner shall be responsible for removing its pets' waste materials.

D. **Vehicle Parking.** All campers, trailers, recreational vehicles, boats, commercial vehicles or similar vehicles, other than ordinary family passenger vehicles (including vans), shall be parked in the garage with the garage door closed such that they are not visible to other occupants of the Subdivision. All passenger vehicles shall be parked in a garage or on a driveway.

E. **Garbage, Trash and Other Refuse.** No Owner shall burn or permit the burying out-of-doors of garbage or other refuse, nor shall any Owner accumulate or permit the accumulation out-of-doors of refuse except as permitted in subparagraph F below. All dwellings in the Subdivision shall be equipped with garbage disposal units.

F. **Trash Receptacles.** Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within or abutting the Subdivision at any time, except at the times when refuse collections are being made.

G. **Temporary Structures.** No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot or Block, except such temporary structures as Declarant may approve in advance and in writing for construction, sales or related purposes, or as

the Committee shall approve in advance and in writing. No overnight camping shall be permitted on any Lot or Block.

H. Utility Services. No utility services shall be installed under finished streets except by jacking, drilling or boring, unless specifically approved in advance and in writing by Declarant. All utility facilities in the Subdivision shall be underground.

I. Wells and Septic Tanks. No water wells shall be drilled in the Subdivision, and no septic tanks shall be installed in the Subdivision.

J. Antennae. Except as otherwise provided by law, exposed antennae and satellite dishes shall be not permitted in the Subdivision.

K. Alternative Energy Sources. No solar heat panels, windmills or other alternative energy sources shall be allowed in the Subdivision.

7. DEVELOPMENT CONTROL COMMITTEE.

A. Powers of Committee.

(i) In General. No dwelling, building, structure or improvement of any type or kind (including repainting) shall be constructed, placed, altered or made on any Lot or Block without Committee's prior written approval. Such approval shall be obtained only after written application has been made to Committee by the Owner of the Lot or Block requesting authorization from Committee. Such written application shall be in the manner and form prescribed from time to time by Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot or Block, and the location of the improvement proposed to be constructed or placed upon the Lot or Block, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information Committee may require. All plans and drawings required to be submitted to Committee shall be drawn to such scale as Committee may require. Plans submitted for a building or improvement location permit shall bear Committee's stamp or signature acknowledging approval thereof.

(ii) Power of Disapproval. Committee may refuse permission to construct, place, alter or make the requested improvement, if:

(a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of the Declaration;

(b) the design, color scheme or use of materials is not in harmony with the Subdivision; or

(c) the proposed improvements or any part thereof would, in Committee's opinion, be contrary to the interests, welfare or rights of all or any part of the other Owners.

B. Duties of Committee. Committee shall establish written architectural control guidelines, and make a copy available to any Owner upon request. Such guidelines may be amended from time to time as Committee may determine, subject to review and approval by Board. Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information has been submitted to it; provided, however, that, if Committee fails to act within such thirty (30) day period, it shall be deemed to have disapproved such proposed improvements. One (1) copy of submitted material shall be retained by Committee for its permanent files. All notifications to applicants shall be in writing and, if such notification is one of disapproval, it shall specify the reason(s) for such disapproval.

C. Liability of Committee. Neither Committee, nor any member or agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or any work done according thereto, or liable to anyone for approval or disapproval except in the event of willful misconduct or fraud.

D. Inspection. Committee may inspect work being performed with its permission to assure compliance with the Declaration and applicable regulations.

E. Remedies for Failure to Obtain Approval. If any improvement is made in the Subdivision without first obtaining Committee's prior written approval as required herein, Association and Committee shall have the enforcement rights set forth in paragraph 9.D., and may require improvements made without Committee's prior written approval to be removed or renovated by whatever means Association and/or Committee deems appropriate, with the costs thereof, including attorneys' fees, to become a lien against the defaulting Owner's Unit, subject to collection (with interest) in the manner described in paragraph 4.H.

8. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOT HAVING ONE OWNER.

Whenever two (2) or more contiguous Lots are owned by the same person, and such Owner desires to use two (2) or more of such Lots as a site for a single dwelling, it shall apply in writing to Committee for permission to so use such Lots. If permission for such a use is granted, the Lots constituting the site for such single dwelling shall be treated as a single Lot for purposes of applying the Declaration to such Lots, except for purposes of Assessments, so long as such Lots remain improved with one (1) single dwelling. No two-family dwelling shall be constructed on any Lot.

9. **REMEDIES.**

A. **In General.** Any party to the benefit of which the Declaration inures, including Declarant, Association or any Owner, may proceed at law or in equity to prevent occurrence or continuation of any violation of the Declaration, but neither Declarant nor Association shall be liable for damages of any kind to any person for failing to abide by, enforce or carry out any of the terms and provisions hereof.

B. **Government Enforcement.** The Metropolitan Development Commission of Marion County (the "Commission"), its successors and assigns, shall have no right, power or authority to enforce any covenant or restriction contained herein, other than those covenants and restrictions, if any, that expressly run in favor of the Commission; **provided, however,** that nothing herein shall be construed to prevent the Commission from enforcing any provision of the Subdivision Control Ordinance, 58-A0-3, as amended, or any condition to approval of the Plat by the Commission's Plat Committee.

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 provision of the Declaration shall be held to be a waiver by such party of (or an estoppel of such party to assert) any right available to it upon occurrence, recurrence or continuation of such violation.

D. **Remedies for Failure to Comply.** If any Owner fails fully to observe and perform the obligations set forth herein, and if such failure is not cured within thirty (30) days after written notice of the same is given by Declarant or Association, Declarant or Association shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. If such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Unit or to any person, Declarant and Association shall have the right to enter upon such Unit or immediately to seek injunctive relief for the purpose of correcting such failure, and any harm or damage caused thereby, without any liability whatsoever on Declarant's or Association's part. All costs incurred by Declarant or Association in connection with any act or proceeding undertaken to abate, enjoin or correct such failure, including attorneys' fees and court costs, shall be payable by the defaulting Owner upon demand by Declarant or Association, and shall immediately become a lien against its Unit, subject to payment and collection in the manner provided for collection of Assessments by Association. Declarant's and Association's rights under this paragraph shall be in addition to all other enforcement rights hereunder, at law or in equity.

10. **EFFECT OF BECOMING AN OWNER.**

The Owner of any Unit, by acceptance of a deed conveying title thereto, whether from Declarant or a subsequent Owner of such Unit, shall accept such deed subject to each and every covenant and restriction contained herein. By acceptance of such a deed, an Owner acknowledges Declarant's rights and powers with respect to the Declaration, and also, for itself, its legal representatives, successors and assigns, covenants and agrees with Declarant, and the

Owners and subsequent Owners of each of the other Lots, to keep, observe, comply with and perform such covenants and restrictions.

11. TITLES.

The underlined titles preceding the various paragraphs and subparagraphs hereof are for convenience of reference only, and none of them shall be used as an aid to construction of any provision hereof. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the feminine, masculine or neuter form shall be taken to mean or apply to the other forms.

12. DURATION AND AMENDMENT.

A. The Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both Owners of at least ninety percent (90%) of the Units and Mortgagees of at least ninety percent (90%) of the mortgaged Units vote to terminate the Declaration, in which case the 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 the Declaration shall be perpetual unless otherwise expressly indicated.

B. Association shall have the right to amend the Declaration at any time, and from time to time, upon recommendation of an amendment to Association by Board, and subsequent approval of such amendment by both Owners of at least seventy-five percent (75%) of the Units and Mortgagees of at least ninety percent (90%) of the mortgaged Units; provided, however, that any such amendment of the Declaration shall require Declarant's prior written approval so long as Declarant owns any Unit. Each such amendment must be evidenced by a written instrument, signed and acknowledged by Association's duly authorized officers, and by Declarant when such approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Marion County, Indiana.

C. Declarant hereby reserves the right at any time, and from time to time, to make such amendments to the Declaration as may be deemed necessary or appropriate thereby, without any other person's approval, in order to bring the Declaration into compliance with the requirements of any public agency having jurisdiction thereof, any agency guaranteeing, insuring or approving mortgages, or any person that regularly purchases mortgages for resale in the secondary mortgage market, to enable reasonable development of, construction on and sale of the Units; provided, however, that Declarant shall not be entitled to make any amendment that has a material adverse effect on any Mortgagee's rights, or that substantially impairs the benefits of the Declaration to any Owner or substantially increases the obligations imposed by the Declaration on any Owner. Declarant further reserves the right to make such amendments to the Declaration as may be deemed necessary or appropriate by Declarant, without any other person's approval, which amendments shall be fully effective in accordance with their terms:

(i) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision, in the Declaration;

(ii) to insert such provisions clarifying matters or questions arising under the Declaration as are necessary or desirable and are not contrary to or inconsistent with the Declaration as theretofore in effect; or

(iii) to amend or modify the Declaration in any manner that, in Declarant's reasonable opinion, does not adversely affect in any material respect the rights of any Mortgagee or Owner, substantially impair the benefits of the Declaration to any Owner or substantially increase the obligations imposed by the Declaration on any Owner.

D. Subject to the other requirements of this paragraph 12, unless Mortgagees of at least two-thirds (2/3) of the mortgaged Units and Owners (other than Declarant) of at least two-thirds (2/3) of the Units have given their prior written approval, Association shall not be entitled to:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any material part of Common Area (the granting by Association of easements for public utilities or for other public purposes consistent with the intended use of Common Area shall not be deemed a transfer within the meaning of this clause);

(ii) change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of dwellings, exterior maintenance of dwellings, maintenance of Common Area, or upkeep of lawns and plantings in the Subdivision; or

(iv) use hazard insurance proceeds for losses to any Common Area other than for repair, replacement or reconstruction of Common Area.

13. RIGHTS OF MORTGAGEES.

Except to the extent otherwise provided in paragraph 4.K., no breach of the Declaration shall defeat or render invalid the lien of any mortgage now existing or hereafter executed upon any portion of the Subdivision; provided, however, that, if all or any portion of the Subdivision is sold under foreclosure of any mortgage, any purchaser at such sale, and its successors and assigns, shall hold any and all land so purchased subject to the Declaration.

14. **NOTICES.**

All notices shall be in writing and shall be deemed given on the date deposited in the U.S. Mail, postage prepaid, certified or registered mail, return receipt requested, addressed as follows:

If to Declarant, the Association or the Committee:	700 Market Tower 10 West Market Street Indianapolis, Indiana 46204-2960 Attention: Harold D. Garrison
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Notices to an Owner shall be sent to the address provided by such Owner to Association or to such Owner's Unit. Declarant, Association and Committee may change address for notice purposes by notice to Owners. An Owner may change address for notice purposes by notice to Association.

15. **CONDEMNATION.**

If any part of Common Area is taken by eminent domain or transferred in lieu thereof, the proceeds shall be used by Association to restore or replace that which was taken or transferred, and, if the same is not reasonably practicable, shall be distributed to Owners in accordance with their Pro-Rata Shares.

16. **CONFLICTING PROVISIONS.**

To the extent any subject matter, restriction, covenant or condition hereof is also, in whole or in part, addressed in the Plat and/or the Restrictions, the more or most restrictive provision of such documents shall be controlling.

17. **SEVERABILITY.**

Every provision of the Declaration is hereby declared to be independent of and severable from the other provisions thereof and of and from every combination of the provisions thereof. Therefore, if any provision of the Declaration is held to be invalid or unenforceable, or to lack the quality of running with the Real Estate, such holding shall be without effect upon the validity, enforceability or "running" quality of any other provision thereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 19th day of September, 1995.

WATERMARK TOWNHOMES, L.L.C.

By: 
Cornelius M. Alig, Class A Member

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

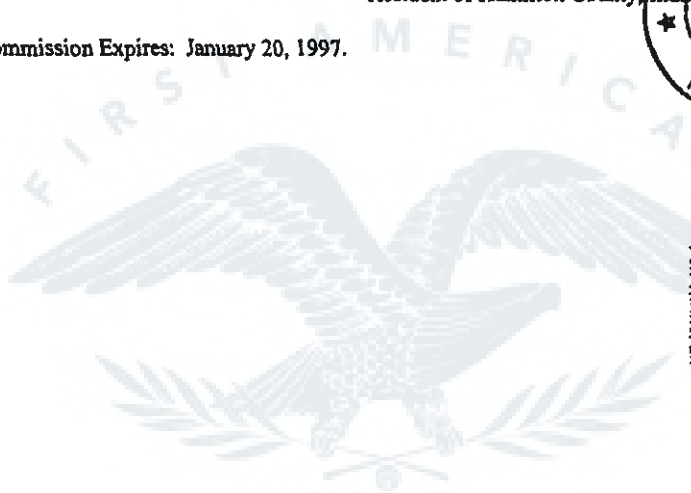
Before me, a Notary Public in and for said County and State, personally appeared Cornelius M. Alig, a Class A Member of Watermark Townhomes, L.L.C., an Indiana limited liability company, and acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Watermark as such Class A Member acting for and on behalf of such limited liability company.

WITNESS my hand and Notarial Seal this 19th day of September, 1995.

Lynn M. Clough
Lynn M. Clough, Notary Public
Resident of Hamilton County, Indiana



My Commission Expires: January 20, 1997.



JOHN E. VON ARX
MARION COUNTY ATTORNEY
017030 OCT-95
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

This instrument was prepared by Bruce R. Karr, attorney-at-law, 700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204-2960, telephone (317) 464-8200.

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Exhibit A

the following described
real estate located in the Northeast Quarter of Section 2, Township 15
North, Range 3 East in Center Township, Marion County, Indiana. Said
real estate being a part of OUTLOT NINE, of the DONATION LANDS to the
City of Indianapolis, Indiana:

Beginning at the intersection of the West right-of-way line of Senate
Avenue and the South right-of-way line of Walnut Street, as said
streets are now located and improved, said intersection being also the
Northeast corner of LOT NUMBER ONE (1) in JAMES BLAKE'S SUBDIVISION of
OUTLOT NINE of the DONATION LANDS to the City of Indianapolis,
Indiana, the plat of which is recorded on page 261 of Plat Book 1, in
the Office of the Recorder of Marion County, Indiana; thence South 00
degrees 01 minute 14 seconds West (assumed bearing) on the West right-
of-way line of said Senate Avenue 179.63 feet; thence North 89 degrees
58 minutes 46 seconds West 120.50 feet; thence South 00 degrees 01
minute 14 seconds West parallel with West right-of-way line of said
Senate Avenue 209.92 feet to the North right-of-way line of North
Street as now located and improved; thence North 90 degrees 00 minutes
00 seconds West on the North right-of-way line of said North Street
300.99 feet to the Southeast corner of a piece of Real Estate described
in Instrument No. 900083546 in said Recorder's Office; thence North 00
degrees 06 minutes 40 seconds East on the Easterly line of said Real Estate
391.37 feet to the Northeast corner of said Real Estate described in
Instrument No. 900083546 to the aforesaid South right-of-way line
of Walnut Street; thence South 89 degrees 46 minutes 23 seconds East
on said South right-of-way line 420.99 feet to the place of beginning,
containing 3.20 acres, more or less.