DECLARATION OF COVENANTS AND RESTRICTIONS

Eagle Springs
Indianapolis, Indiana

Recorded ______, 1995
Instrument No. ______
Office of the Recorder of Marion County

MARION, IN
Page 1 of 37
Document: RL 1996.1422

Printed on 7/20/2017 4:33:27 PM
# Declaration of Covenants and Restrictions

**Eagle Springs**

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Exhibit A: Description of the Tract
Exhibit B: General Plan of Development
DECLARATION OF COVENANTS AND RESTRICTIONS

Eagle Springs

This Declaration, made as of the 20th day of November, 1995, by BRENWICK LAND COMPANY, L.P., an Indiana limited partnership, ("Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant owns the real estate located in Marion County, Indiana, described in Exhibit A and depicted on Exhibit B, upon which Declarant intends, but is not obligated, to develop a residential community to be known as Eagle Springs.

B. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Eagle Springs and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract to the covenants, restrictions, easements, charges and fines hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owners thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities in Eagle Springs, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the recreation, health, safety and welfare of the Owners of Lots in Eagle Springs.

D. Declarant has incorporated under the laws of the State of Indiana a nonprofit corporation known as Eagle Springs Homeowners Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Tract, as they are held and shall be held, conveyed, hypothesis or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of the Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall issue to the benefit of Declarant and its successors in title to the Tract or any part or parts thereof.
1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

"Applicable Date" means the earlier of (i) the date when all Lots in the Tract have been improved by the construction thereon of Residences or (ii) December 31, 2005.

"Architectural Control Assessment" means the assessment levied by the Corporation pursuant to Paragraph 9(d).

"Architectural Review Board" means the entity established pursuant to Paragraph 10 of this Declaration for the purposes therein stated.

"Articles" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Assessments" means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, the Articles or the By-Laws.

"Board of Directors" means the governing body of the Corporation elected in accordance with the By-Laws.

"By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

"Community Area" means (i) the Drainage System, (ii) the Detention Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through the Tract, and (v) any areas of land (i) shown on the Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

"Community Area Initial Assessment" means the initial assessment for the Reserve for Replacements required by Paragraph 9(e).

"Corporation" means Eagle Springs Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns.

"Declarant" means Brenwick Land Company, L.P., its successors and assigns to its interest in the Tract other than Owners purchasing Lots or
Residents by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

"Detention Area" means the area depicted on the Plat as Block "A" which is engineered to accommodate from time to time surface water drainage.

"Drainage Board" means the Marion County, Indiana Drainage Board, its successors or assigns.

"Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and facilities (excluding the Detention Area) located in the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

"Eagle Springs" means the name by which the Tract shall be known.

"Entry Ways" means the structures constructed (including signage) as an entrance to Eagle Springs or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic islands depicted as a designated Blocks on the Plat and any other traffic islands dividing a roadway or cul-de-sac providing access to Eagle Springs or a part thereof, and the grassy area surrounding such structures.

"General Plan of Development" means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Tract, as such may be amended from time to time.

"Landscape Plan" means a portion of a Lot denoted on the Plat as an area to be landscaped.

"Lot" means a platted lot as shown on the Plat.

"Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect.
to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

"Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.

"Member" means a member of the Corporation and "Members" means all members of the Corporation.

"Mortgage" means the holder of a first mortgage on a Residence.

"Owner" means "person, including Declarant, who at the time has or is acquiring any interest in a Lot except a person who has or is acquiring such an interest merely as security for the performance of an obligation.

"Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" means the final secondary plat of the Tract recorded in the Office of the Recorder of Marion County, Indiana.

"Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

"Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incident to the use of a single family residential lot.

"Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

"Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.
"Tract" means the land described in Exhibit A.

"Zoning Authority" with respect to any action means the Administrator of the Division of Neighborhood and Development Services of the Department of Metropolitan Development or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act, of the Administrator.

2. **Declaration.** Declarant hereby expressly declares that the Tract shall be held, transferred, and occupied subject to the Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

3. **The Detention Area.** Declarant shall convey title to the Detention Area to the Corporation. The Corporation shall be responsible for maintaining the Detention Area. The Maintenance Costs of the Detention Area shall be assessed as a General Assessment against all Lots subject to assessment. Declarant shall have no liability to any Person with respect to the Detention Area, the use thereof or access thereto, or with respect to damage to any Lot resulting from the Detention Area or the proximity of a Lot thereto, including loss or damage from erosion.

4. **Drainage System.** The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Tract and the occasional discharge thereof to the Detention Area as reasonably required from time to time. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1996, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.
5. **Block "C" Entry Ways and Landscape Easements.** The Community Area designated as Block "C" on the Plat shall be used only for the purpose of landscaping installed by Declarant and replaced or supplemented as appropriate by the Corporation. The Corporation shall maintain the Entry Ways and Block "C" and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to Eagle Springs or a part thereof. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. Block "C" shall be maintained to the same standard as that established for Entry Ways. Unless the Board of Directors determines that all or some of the Landscape Easements should be maintained by the Corporation and the Maintenance Costs thereof assessed as a General Assessment, the Owner of each Lot upon which a Landscape Easement is located shall at his/her expense keep the grass, trees, shrubs and other plantings located on a Landscape Easement neatly cut, cultivated or trimmed as reasonably necessary to maintain the same at all times in a good and sightly condition appropriate to a first-class residential subdivision and, if such Owner fails to do so, the Corporation may undertake such maintenance and assess the Maintenance Costs thereof as a Special Assessment against such Lot.

6. **Construction of Residences.**

(a) **Land Use.** Lots may be used only for residential purposes and only one Residence not to exceed two and one-half stories or 55 feet in height measured from finish grade to the underside of the eave line may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Eagle Springs than the number of original Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) **Lot Development Plans.** Prior to commencement of any construction on a Lot, a Lot Development Plan shall be submitted to the Architectural Review Board in accordance with the requirements of Paragraph 10. The Architectural Review Board may require as part of a Lot Development Plan a report of a subsurface soils investigation of the Lot made by a qualified soils engineer, which report shall include recommendations for
the foundations of the proposed Residence. Each Owner shall comply with
the terms and provisions of Paragraph 10 and the requirements of the
Architectural Review Board established pursuant to the authority granted
by this Declaration.

(c) **Site of Residence.** Except as otherwise provided herein, no
Residence may be constructed on any Lot unless such Residence, exclusive of
open porches, attached garages and basements, shall have a ground floor area
of 2,000 square feet if a one-story structure or 1,200 square feet if a higher
structure, but in the case of a building higher than one story, there must also
be at least 800 square feet in addition to the ground floor area and the total
floor area shall not be less than 2,400 square feet.

(d) **Temporary Structures.** No trailer, shack, tent, boat, basement,
garage or other outbuilding may be used at any time as a dwelling, temporary
or permanent, nor may any structure of a temporary character be used as a
dwelling.

(e) **Building Location and Finished Floor Elevation.** No building
may be erected between the building line shown on the Plat and the front Lot
line, and no structure or part thereof may be built or erected nearer than
seven (7) feet to any side Lot line or nearer than twenty-five (25) feet to any
rear Lot line. The aggregate side yard setback shall not be less than nineteen
(19) feet. A minimum finished floor elevation, shown on the development
plan for the Tract, has been established for each Lot and no finished floor
elevation with the exception of flood protected basements shall be constructed
lower than said minimum without the written consent of the Architectural
Review Board. Demonstration of adequate storm water drainage in
conformity with both on-Lot and overall project drainage plans shall be a
prerequisite for alternative finished floor elevations. Before construction
commences, the finished floor elevation shall be physically checked on the Lot
and certified by a licensed professional engineer or a licensed land surveyor.

(f) **Driveways.** All driveways shall be paved with either concrete
or asphalt and maintained dust free.

(g) **Yard Lights.** If street lights are not installed in the Tract, then
each Owner or his builder shall install and maintain a light in operable
condition on his Lot at a location, having a height and of a type, style and
manufacture approved by the Architectural Review Board prior to the
installation thereof. Each such light fixture shall also have a bulb of a
maximum wattage approved by Architectural Review Board to insure uniform
illumination on each Lot and shall be equipped with a photo electric cell or
similar device to insure automatic illumination from dusk to dawn each day.
(b) Storage Tanks. Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a Residence such that they are completely concealed from public view.

(i) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date. Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase from Declarant is not improved with a Residence shall commence construction of a Residence upon the Lot within three (3) years from the date the Owner acquired title thereto and shall complete construction of such Residence within one (1) year after the date of commencement of the building process, but in no event later than four (4) years after the date the Owner acquired title to the Lot unless such Lot is adjacent to a Lot upon which the Owner has constructed a Residence in which such Owner permanently resides. If the Owner fails to commence or complete construction of a Residence within the time periods specified herein, or if the Owner should, without Declarant’s written approval, sell, contract to sell, convey, or otherwise dispose of, or attempt to sell, convey or otherwise dispose of, the Lot before completion of construction of a Residence on the Lot, then, in any of such events, Declarant may:

(1) re-enter the Lot and divest the Owner of title thereto by tendering to the Owner or to the Clerk of the Circuit Court of Marion County the lesser of (i) the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot, together with such actual costs, if any, as the Owner may prove to have been incurred in connection with the commencement of construction of a Residence on the Lot and (ii) the then fair market value of the Lot, as determined by averaging two (2) appraisals made by qualified appraisers appointed by the Judge of the Marion County Circuit or Superior Court;

(2) obtain injunctive relief to force the Owner to proceed with construction of any Residence, a Lot Development Plan for which has been approved by the Architectural Review Board upon application by such Owner; or
(3) By other remedies at law or in equity as may be available to Decedent.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the Lot within the time periods specified herein. For the purposes of this subparagraph, construction of a Residence will be deemed "completed" when the building permits for the building site begins and shall be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(9) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(k) Septic Systems. No septic tank, absorption field or any other one-piece sewage disposal system (other than a lateral main connected to a sanitary sewerage collection system operated by the City of Indianapolis or a successor public agency or public utility) shall be installed or maintained on any Lot.

(l) Water Systems. No private or semi-private water supply system may be located upon any Lot which is not in compliance with regulations or procedures adopted or established by the Indiana State Board of Health, or other civil authority having jurisdiction. To the extent that domestic water service is available from a water line located within 200 feet of the Lot line maintained by a public or private utility company, each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot.

(m) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any
adjacent Lot shall have adequate drainage along such swale. Lots within the Tract may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Tract will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots.

(o) **Garages.** Each Residence shall have an attached garage for at least two (2) cars.

(p) **Exterior Building Finish.** Each Residence shall have a minimum of fifty percent (50%) of the vertical exterior finished with masonry, excluding from this computation, doors, windows, gables, porches, patio and upper levels of Residences having two (2) or more levels, with masonry on at least three (3) sides of each Residence. Each chimney shall be finished with masonry. Wood trim shall be required on all windows. Masonite, vinyl and aluminum siding, awnings, shutters and patio roofs shall not be permitted on any Residence or Lot.

(q) **Accessory Buildings.** No mini-barn, storage shed or other accessory building or structure other than gazebos shall be permitted on any Lot.

(r) **Pools.** No above ground pool shall be permitted on any Lot.

(s) **Building Foundation.** No Residence shall be constructed on a "slab" foundation.

(t) **Open Area.** The minimum open space on each Lot shall be seventy-five percent (75%) of the gross area of the Lot.

(u) **Street Numbers.** Street numbers shall be uniformly displayed on all Residences and shall be of such type, size, color and material as are prescribed by the Architectural Review Board.

7. **Maintenance of Lots.**

(v) **Vehicle Parking.** No recreational vehicle, motor home, truck, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.
(b) **Signs.** Except for such signs as Declarant may in its absolute discretion display in connection with the development of Eagle Springs and the sale of Lots therein and such signs as may be located on the Community Area, no sign of any kind shall be displayed to the public view on any Lot except that one sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale or for rent, or may be displayed by a builder to advertise the property during construction and sale.

(c) **Fencing.** No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is located on a Landscape Easement or is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot and along the bank of the Detention Area. All fences shall be kept in good repair. No fence, wall, hedge or shrub 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 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) **Vegetation.** An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this Restriction, the Board of Directors shall cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Corporation shall have a lien against the cleared Lot for the expense thereof.

(e) **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may
become an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) **Livestock and Poultry.** 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 are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) **Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) **Antennas and Receivers.** No satellite receiver, down-link or antenna which is visible from a public way or from any other Lot, and no satellite dish greater than eighteen (18) inches in diameter, shall be permitted on any Lot without the prior written consent of the Architectural Review Board. Unless consent thereto is granted by a majority of the Owners, the Architectural Review Board shall not give its consent to the installation of any exterior television antenna if television reception is available from underground cable connections serving the Lot, nor shall it give its consent to the installation of any other exterior antenna unless all Owners of Lots within 200 feet of the Lot upon which the proposed antenna would be erected consent in writing to the installation thereof.

(j) **Exterior Lights.** No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) **Electric Bug Killers.** Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.
(1) **Air Conditioners.** No air condition unit shall be installed so as to project from any structure located on a Lot (including but not limited to the window of any Residence or garage) if the same would be visible from a public way or any other Lot.

8. **Eagle Springs Homeowners Association, Inc.**

   (a) **Membership.** Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

   (b) **Powers.** The Corporation shall have such powers as are set forth in this Declaration and the Articles, together with all other powers that belong to it by law.

   (c) **Classes of Members.** The Corporation shall have a single class of members.

   (d) **Voting and Other Rights of Members.** The voting and other rights of Members shall be as specified in the Articles and By-Laws.

   (e) **Reserve for Repairs.** The Board of Directors shall establish and maintain the Reserve for Repairs by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Repairs shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Prior to the Applicable Date, funds from the Reserve for Repairs may be withdrawn and applied at the direction of Declarant to meet the cost of periodic maintenance, repairs, renewal or replacement of the Community Area.

   (f) **Limitation on Action by the Corporation.** Unless at least two-thirds of the Mortgages (based on one vote for each first mortgage
owned) or two-thirds (2/3) of the Members (other than Declarant) have given
their prior written approval, the Corporation, the Board of Directors and the
Owners may not: (i) except as authorized by Paragraph 10(a), by act or
omission seek to abandon, partition, subdivide, encumber, sell or transfer the
Community Area (but the granting of easements for public utilities or other
public purposes consistent with the intended use of the Community Area shall
not be deemed a transfer for the purposes of this clause); (ii) fail to maintain
fire and extended coverage on insurable Community Area on a current
replacement cost basis in an amount at least one hundred percent (100%) of
the insurable value (based on current replacement cost); (iii) use hazard
insurance proceeds for losses to any Community Area for other than the
repair, replacement or reconstruction of the Community Area; (iv) change the
method of determining the obligations, assessments, dues or other charges
that may be levied against the Owner of a Residence; (v) by act or omission
change, waive or abandon any scheme of regulations or their enforcement
pertaining to the architectural design or the exterior appearance of
Residences, or the maintenance and up-keep of the Community Area; or (vi)
fail to maintain the Reserve for Replacements in the amount required by this
Declaration.

(g) **Mergers.** Upon a merger or consolidation of another
corporation with the Corporation, its properties, rights and obligations may,
as provided in its articles of incorporation, by operation of law be transferred
to another surviving or consolidated corporation or, alternatively, the
properties, rights and obligations of another corporation may by operation of
law be added to the properties, rights and obligations of the Corporation as
a surviving corporation pursuant to a merger. The surviving or consolidated
corporation may administer the covenants and restrictions established by this
Declaration within the Tract together with the covenants and restrictions
established upon any other properties as one scheme. No other merger or
consolidation, however, shall affect any revocation, change or addition to the
covenants established by this Declaration within the Tract except as
hereinafter provided.

9. **Assessments.**

(a) **Creation of the Lien and Personal Obligation of Assessments.**
Declarant hereby covenants, and each Owner of any Lot by acceptance of a
deed thereto, whether or not it shall be so expressed in such deed, is deemed
to covenant and agree to pay to the Corporation the following: (1) General
Assessments, (2) Community Area Initial Assessment, (3) Architectural
Control Assessments (to the extent levied) and (4) Special Assessments, such
Assessments to be established and collected as hereinafter provided.
All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance, repair, replacement and operation of the Community Area.

ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a Person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed upon recommendation of the Board of Directors if such change is approved by (i) two-thirds (2/3) of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagors (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such Members duly called for this purpose.

iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the
Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. The cost of maintaining, operating, restoring or replacing the Community Area has been allocated in this Declaration among Owners of Lots on the basis of the location of the lands and improvements constituting the Community Area and the intended use thereof. In determining the General Assessment, costs and expenses which in accordance with the provisions of this Declaration are to be borne by all Owners shall first be allocated to all Owners. Costs and expenses which in accordance with the provisions of this Declaration are to be borne by the Owners of certain Lots shall then be allocated to the Owners of such Lots. The provisions of subparagraph (ii) for uniform assessment shall not be deemed to require that all assessments against vacant Lots or Lots improved with comparable types of Residences be equal, but only that each Lot be assessed uniformly with respect to comparable Lots subject to assessment for similar costs and expenses.

(c) Community Area Initial Assessment. On the date a Lot is conveyed by Declarant to an Owner (other than the holder of a first mortgage on such Lot in a conveyance which constitutes a deed in lieu of foreclosure), there shall be due and payable to the Corporation by the Owner of such Lot the sum of Five Hundred Dollars ($500.00) which shall be deposited in the Reserve for Replacements maintained by the Corporation.

(d) Architectural Control Assessment. If any Owner fails to comply with the requirements of the first two sentences of Paragraph 6(i) and/or the provisions of Paragraph 10(c) of this Declaration, then the Corporation may levy against the Lot owned by such Owner an Assessment in an amount determined by the Board of Directors which does not exceed the greater of (i) One Hundred Dollars ($100.00) for each day that such failure continues after written notice thereof is given by Declarant or the Corporation to such Owner or (ii) Ten Thousand Dollars ($10,000.00). Such Assessment shall constitute a lien upon the Lot of such Owner and may be enforced in the manner provided in subparagraph (g) below. The levy of an Architectural Control Assessment shall be in addition to, and not in lieu of, any other remedies available to Declarant and/or the Corporation provided in this Declaration, at law or in equity in the case of the failure of an Owner to comply with the provisions of this Declaration.
(e) **Special Assessment.** In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Declarant and of a majority of the votes of the Members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of the Members duly called for this purpose.

(f) **Date of Commencement of General Assessments.** The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot in the Tract to an Owner who is not Declarant. The initial General Assessment on any assessable Lot shall be adjusted according to the days remaining in the month in which the Lot became subject to assessment. Notwithstanding the foregoing, if an Owner owns more than two (2) Lots which have not been improved by the construction of a Residence thereon, the General Assessment shall not commence with respect to such unimproved Lots until the earlier of (i) the date the Owner commences construction of a Residence thereon or (ii) the first day of the sixth month following the date the Owner acquired title to the Lots.

(g) **Effect of Nonpayment of Assessments; Remedies of the Corporation.** Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(b) **Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or
assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(i) Certificate. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(j) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met.

10. Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of three (3) or more Persons as provided in the By-Laws shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the structure and improvements thereon in such manner as to preserve and enhance the values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work in any way altering any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings on a Lot, any Architectural Review Board, and no Residence, other building, fence, wall, swimming pool, tennis court, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval of the Architectural Review Board.
Architectural Review Board of a Lot Development Plan relating to such
construction, erection, alteration or plantings. Such approval shall be in
addition to, and not in lieu of, all approvals, consents, permits and/or
variances required by law from governmental authorities having jurisdiction
over Eagle Springs, and no Owner shall undertake any construction activity
within Eagle Springs unless all legal requirements have been satisfied. Each
Owner shall complete all improvements to a Lot strictly in accordance with
the Lot Development Plan approved by the Architectural Review Board. As
used in this subparagraph (c), "plantings" does not include flowers, bushes,
shrubs or other plants having a height of less than eighteen (18) inches.

(d) Procedures. In the event the Architectural Review Board fails
to approve, modify or disapprove in writing a Lot Development Plan within
sixty (60) days after notice of such plan has been duly filed with the
Architectural Review Board in accordance with procedures established by the
Board of Directors, approval will be deemed denied. A decision of the
Architectural Review Board (including a denial resulting from the failure of
such Board to act on the plan within the specified period) may be appealed
to the Board of Directors which may reverse or modify such decision
(including approve a Lot Development Plan deemed denied by the failure of
the Architectural Review Board to act on such plan within the specified
period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board
shall have the power to establish and modify from time to time such written
architectural and landscaping design guidelines and standards as it may deem
appropriate to achieve the purpose set forth in subparagraph (b) to the extent
that such design guidelines and standards are not in conflict with the specific
provisions of this Declaration. Any such guideline or standard may be
appealed to the Board of Directors which may terminate or modify such
guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) Application of Guidelines and Standards. The Architectural
Review Board shall apply the guidelines and standards established pursuant
to subparagraph (e) in a fair, uniform and reasonable manner consistent with
the discretion inherent in the design review process. In disapproving any Lot
Development Plan, the Architectural Review Board shall furnish the applicant
with specific reasons for such disapproval and may suggest modifications in
such plan which would render the plan acceptable to the Board if resubmitted.

(g) Design Consultants. The Architectural Review Board may
utilize the services of architectural, engineering and other Persons possessing
design expertise and experience in evaluating Lot Development Plans. No
presumption of any conflict of interest or impropriety shall be drawn or

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assumed by virtue of the fact that any of such consultants may, from time to
time, represent Persons filing Lot Development Plans with the Architectural
Review Board.

(h) **Existing Violations of Declaration.** The Architectural Review
Board shall not be required to consider any Lot Development Plan submitted
by an Owner who is, at the time of submission of such Lot Development Plan,
in violation of the requirements of the first two sentences of Paragraph 6(i)
and/or the provisions of subparagraph (c) of this Paragraph 10, unless such
Owner submits to the Architectural Review Board with such Lot Development
Plan an irrevocable agreement and undertaking (with such surety as the Board
may reasonably require) to remove from the Owner's Lot any improvements
or landscaping constructed and/or installed prior to the submission or
approval of a Lot Development Plan (or constructed and/or installed in
violation of a previously approved Lot Development Plan) to the extent any
such previously constructed and/or installed improvement or landscaping is
not subsequently approved by the Architectural Review Board. The
Architectural Review Board shall have the power to recommend to the Board
of Directors that the Corporation assess an Architectural Control Assessment
against any Owner who fails to comply with the requirements of Paragraphs
5 or 10 of this Declaration. Under no circumstances shall any action or
inaction of the Architectural Review Board be deemed to be unreasonable,
arbitrary or capricious if, at the time of such decision, the Person having
submitted a Lot Development Plan for approval by the Architectural Review
Board has violated Paragraphs 5 or 10 of this Declaration and such violation
remains uncorrected.

(i) **Exercise of Discretion.** Declarant intends that the members of
the Architectural Review Board exercise discretion in the performance of
their duties consistent with the provisions of subparagraph (f), and every
Owner by the purchase of a Lot shall be conclusively presumed to have
consented to the exercise of discretion by such members. In any judicial
proceeding challenging a determination by the Architectural Review Board
and in any action initiated to enforce this Declaration in which an abuse of
discretion by the Architectural Review Board is raised as a defense, abuse of
discretion may be established only if a reasonable Person, weighing the
evidence and drawing all inferences in favor of the Board, could only conclude
that such determination constituted an abuse of discretion.

(j) **Liability of Board.** Neither the Architectural Review Board, nor
any member thereof, nor any agent thereof, nor the Declarant shall be
responsible in any way for any defects in any plans, specifications or other
materials submitted to it, nor for any defects in any work done according
thereto. Further, the Board does not make, and shall not be deemed by
virtue of any action of approval or disapproval taken by it to have made, any
representation or warranty as to the suitability or advisability of the design,
the engineering, the method of construction involved, or the materials to be

(k) **Inspection.** Members of the Architectural Review Board may
inspect work being performed to assure compliance with these Restrictions
and applicable regulations.

11. **Community Area.**

(c) **Ownership.** The Community Area shall remain private, and
neither Declarant’s execution or recording of an instrument portraying the
Community Area, nor the doing of any other act by Declarant is, or is
intended to be, or shall be construed as, a dedication to the public of such
Community Area. Declarant or the Corporation may, however, dedicate or
transfer all or any part of the Community Area to any public agency, authority
or utility for use as roads, utilities, parks or other public purposes.

(b) **Obligations of the Corporation.** The Corporation, subject to the
rights of Declarant and the Owners set forth in this Declaration, shall be
responsible for the exclusive management and control of the Community Area
and all improvements thereon (including furnishings and equipment related
thereto), and shall keep the Community Area in good, clean, attractive and
sanitary condition, order and repair.

(c) **Reserved Rights of the Corporation.** The rights of the Owners
to the use and benefits of the Community Area are subject to the following:

(i) the right of the Corporation to mortgage any or
all of the Community Area and the facilities constructed
thereon for the purposes of improvements to, or repair of, the
Community Area or facilities constructed thereon, pursuant to
approval of two-thirds (2/3) of the votes of the Members
(excluding Declarant) or two-thirds (2/3) of the Mortgagors
(based on one vote for each first mortgage owed), voting in
person or by proxy at a regular meeting of the Corporation or
a meeting duly called for this purpose; and

(ii) the right of the Corporation to dedicate or
transfer all or any part of the Community Area to any public
agency, authority or utility, but no such dedication or transfer
shall be effective unless an instrument signed by the appropriate
officers of the Corporation acting pursuant to authority granted

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by two-thirds (2/3) of the votes of the Members (excluding Declarant) or two-thirds (2/3) of the Mortgagors (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(d) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

(e) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Detention Area to the Corporation, free and clear of all liens and financial encumbrances except as otherwise provided herein, not later than the Applicable Date. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes for such Community Area until title is conveyed.

12. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Marion County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) Drainage Easements (DEF) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Eagle Springs and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of
each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) **Sewer Easements (SE)** are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Eagle Springs for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) **Utility Easements (UE)** are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) **Entry Way Easements (EWE)** are created for the use by Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) **Landscape Easements (LE)** are created for the use by Declarant, the Architectural Review Board and the Corporation, at their election, for the planting and maintenance of trees, shrubs and other plantings.

(vi) **Non-Access Easements (NAE)** are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a
Person who is not an Owner by an instrument recorded in the Office of the Recorder of Marion County, but a paved driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof) shall not be deemed a "structure" for the purpose of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Tract for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Tract and to excavate for such purposes if Declarant or such company restores the disturbed area as nearly as is practicable to the condition in which it was found. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Tract except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Tract to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms hereof. This blanket easement shall in no way affect any other recorded easements on the Tract, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways and walkways provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways and walkways, and neither Declarant nor any
utility company using the easements shall be liable for any damage done by
either of them or their assigns, agents, employees, or servants to shrubbery,
trees, flowers or other improvements of the Owner located on the land
covered by said easements.

(1) **Defendant's Reserves to Correct Drainage.** For a period of ten
(10) years from the date of conveyance of the first Lot in the Tract, Declarant
reserves a blanket easement and right on, over and under the ground within
the Tract to maintain and to correct drainage of surface water in order to
maintain reasonable standards of health, safety and appearance. Such right
expressly includes the right to cut any trees, bushes or shrubbery, make any
gradings of the soil, or to take any other similar action reasonably necessary,
following which Declarant shall restore the affected property to its original
condition as nearly as practicable. Declarant shall give reasonable notice of
its intention to take such action to all affected Owners, unless in the opinion
of Declarant an emergency exists which precludes such notice.

(2) **Water Retention.** The Owner of each Lot, by acceptance of a
deed thereto, consents to the temporary storage (detention) of storm water
within the drainage easements (DE) on such Owner's Lot.

13. **Use of Lots During Construction.**

(a) **By Declarant.** Notwithstanding any provisions to the contrary
contained herein or in any other instrument or agreement, Declarant or its
sales agents or contractors may maintain during the period of construction and
sale of Lots and Residences in the Tract, upon such portion thereof as is
owned or leased by Declarant, such facilities as in the sole opinion of
Declarant may be reasonably required, convenient or incidental to the
construction and sale of Lots and Residences, including, but without limiting
the generality thereof, a business office, storage area, construction yards, signs,
model Residences and sales offices.

(b) **By Builders.** Notwithstanding any provisions to the contrary
contained herein, a builder who has constructed a Residence in Eagle Springs
may, with the prior consent of the Board of Directors, use such Residence as a
"model" home and may hold such home open to the public, either
individually or as part of a "home show" approved by the Board of Directors
for such reasonable period as the Board of Directors may specify. With the
approval of Declarant, Lots adjacent to or in proximity to such model home
may be used for parking by visitors to such model home.

14. **Enforcement.** The Corporation, any Owner or Declarant shall have the right
to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants,
reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to thereafter, or an estoppel of that Person to assert any right available to him up to the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

15. Limitations on Rights of the Corporation. Prior to the Applicable Date, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

16. Approvals by Declarant. Notwithstanding any other provisions hereof, prior to the Applicable Date, the following actions shall require the prior approval of Declarant: dedication or transfer of the Community Area; mergers and consolidations of the Tract with other real estate; mortgaging of the Community Area; amendment of this Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Community Area Initial Assessment.

17. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Residence or the Mortgagor shall notify the Secretary of the Board of Directors of such mortgage and provide the name and address of the Mortgagor. A record of such Mortgagor's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagor pursuant to the terms of the Declaration, the Articles or the By-Laws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagor at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagor are furnished to the Secretary, either by the Owner or the Mortgagor, no notice to any Mortgagor as may be otherwise required by the Organizational Documents shall be required and no Mortgagor shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagor in connection with the mortgage.
(b) Notices to Mortgagors. The Corporation shall promptly provide to any Mortgagor of whom the Corporation has been provided notice under subparagraph (a) above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagor holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagors; and,

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence or (C) the purposes for which any Residence or the Community Area are restricted.

(c) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagor, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

(d) Financial Statements. Upon the request of any Mortgagor, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

(e) Payments by Mortgagors. Any Mortgagee may (i) pay taxes or other charges thereon in default and that may or have become a lien upon the Community, or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the
Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

18. Amendments.

(a) Generally, this Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required by Paragraph 16, (ii) Declarant.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to the Applicable Date. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Marion County, Indiana. No such amendment, however, shall restrict or diminish materially the rights or increase or expand materially the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 12(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the Office of the Recorder of Marion County, Indiana.

19. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. 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 to the neuter.

20. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2025, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.
21. **Severability.** Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the enforceability or "running" quality of any other one of the Restrictions, all the other Restrictions shall survive.

22. **Non-Liability of Declarant.** Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed, and of the builder of such Residence and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over or under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

BRENNICK LAND COMPANY, L.P.

By: [Signature]

George H. sweets, General Manager

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STATE OF INDIANA  
COUNTY OF HAMILTON

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared George P. Sweet, the General Manager of Brenwick Land Company, L.P., an Indiana limited partnership, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions for and on behalf of said limited partnership.

WITNESS my hand and Notarial Seal this 20 day of May, 1995.

[Signature]
Notary Public Residing in Hendricks County

My Commission Expires:

[Signature]

This instrument prepared by (and return to) Tom Charles Huston, Attorney at Law, 1313 Merchants Bank Building, 11 South Meridian Street, Indianapolis, Indiana 46204.

[Signature]
EXHIBIT A
DESCRIPTION OF TRACT

Part of the Northeast Quarter of Section 10, Township 16 North, Range 2 East, in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Northeast Quarter; thence North 90 degrees 00 minutes 00 seconds West along the North line of said Quarter a distance of 1115.26 feet (1114.74 feet dead and plat) to the Northwest corner of the Trees Section IV, per plat thereof recorded as Instrument number 86-86016 in the Office of the Recorder of Marion County; thence South 00 degrees 42 minutes 13 seconds West along the West line of said subdivision a distance of 798.40 feet to the Point of Beginning; thence continuing South 00 degrees 42 minutes 13 seconds West along the West line of The Trees Section II, per plat thereof recorded as Instrument number 86-86016 in said Recorder's Office and the Southerly prolongation of said line a distance of 637.40 feet; thence South 89 degrees 09 minutes 27 seconds West a distance of 996.13 feet to a point on a curve being concave Easterly on the Easterly right-of-way of Dandy Trail per plans for Indianapolis Department of Transportation project EC06219 and a right-of-way grant recorded as Instrument number 69-866 in said Recorder's Office having a central angle of 10 degrees 06 minutes 02 seconds and a radius of 2824.79 feet, thence Northerly along said curve on arc distance of 497.97 feet (said curve being subtended by a chord having a bearing of North 04 degrees 48 minutes 58 seconds West and a length of 497.92 feet); thence on the following two (2) courses along said Easterly right-of-way line: 1) North 13 degrees 36 minutes 59 seconds West a distance of 41.02 feet; 2) North 00 degrees 33 minutes 45 seconds East a distance of 115.62 feet; thence South 89 degrees 59 minutes 50 seconds East a distance of 1034.12 feet to the Point of Beginning, containing 15.296 acres.