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Subdivision Covenants and Restrictions

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CROSS REFERENCE

Cross-Reference 79-117717

910016013

DECLARATION OF COVENANTS AND RESTRICTIONS OF FEATHER BAY PROPERTY OWNERSHIP

FEATHER BAY

THIS DECLARATION made this 19th day of February, 1991, by The Inland Group, Inc., an Indiana corporation, (hereinafter referred to as "the Declarant").

WITNESSETH

WHEREAS, the following facts are true:

A. Declarant, Richard H. Richwine, Jr., and Gunstra Builders, Inc., an Indiana corporation (hereinafter referred to as "Gunstra") are the fee simple owners of certain real estate located in Marion County, Indiana, which real estate is more particularly described in the Exhibit A attached hereto and made a part hereof and is hereinafter referred to as "the Real Estate" or "Feather Bay".

B. Richard H. Richwine, Jr., and Gunstra, as the fee simple owners of the lots specified in Exhibit A, are building or intend to build homes on said lots and hereby consent to the imposition of these covenants and restrictions on said lots.

C. Declarant, by execution of this Declaration, assures that all properties which are a part of the Real Estate shall be conveyed subject to the terms and conditions of this Declaration, which Declaration shall run with the Real Estate and be binding upon all parties having any right, title, or interest in the Real Estate, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

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MARION COUNTY RECORDER

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Applicable Date" shall be the date determined pursuant to Paragraph 9 (b) of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.

(d) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.

(e) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair, and replacement of any and all real estate and improvements owned by the Corporation as enumerated in Paragraphs 4(a), (b), (c), and (d) hereof and any improvements referred to in Paragraphs 7(a), (c) and (e) hereof and all sums lawfully assessed against the Corporation.

(f) "Corporation" shall mean The Feather Bay Property Owners Association, Inc., its successors and assigns, a not-for-profit corporation whose members shall be the Owners of Lots, or appointees as provided in Paragraph 9 of this Declaration; such Corporation being more particularly described in Paragraph 9 of this Declaration.

(g) "Declarant" shall mean and refer to The Inland Group, Inc., an Indiana corporation, and any successors and assigns of said Corporation who it may designate in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(h) "Dwelling Unit" means the living units located upon a Lot or Lots within the Real Estate.

910016013

(i) "Lot" means any plot of ground designated as a numbered Lot upon the recorded primary plat of Feather Bay, or any replat thereof, or any other part thereof. When the term "Lot" is used herein, it shall be deemed to include any Dwelling unit or portion thereof, located thereon.

(j) "Member" means a member of the Corporation.

(k) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(l) "Feather Bay", means the name by which the Real Estate described in Exhibit A hereto, and which is the subject of this Declaration, shall be known.

(m) "Owner" means a person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(n) "Real Estate" means the real estate referred to in Paragraph A above and described in Exhibit A hereto which is platted as Section 1, Feather Bay and which plat it recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 89-0117718.

2. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, conveyed, and transferred in accordance with the provisions of this Declaration.

3. Description of Feather Bay, Section 1. Feather Bay, Section 1, consists of 46 Lots numbered 15 through 60, as designated on the recorded plat thereof. The legal description for each Lot in Feather Bay, Section 1, shall be as follows:

> Lot _____ in Feather Bay, Section 1, a subdivision in Marion County, Indiana, as per plat thereof recorded November 22, 1989, as Instrument Number 89-0117718, in the Office of the Recorder of Marion County, Indiana.

The Declarant has sold the real estate which was originally intended to be developed as Section 2, Feather Bay and accordingly

910016013

the Feather Bay development will consist of only that real estate described in Exhibit "A" hereto.

4. Common Areas. Currently, there are four separate "Common Areas" in Section 1 of Feather Bay which are designated as Blocks "A", "B", "C", and "D" on the plat thereof.

(a) Block "A", Section One, is a Common Area to be conveyed to the Corporation for its ownership, maintenance, and control in accordance with the provisions set forth herein and on the primary plat of Section One. The Declarant has constructed a private road system within Block "A" to provide access to the lots and other common areas in Section One. It shall be the responsibility of the Corporation to maintain said private road system in a safe, functional and aesthetically pleasing manner at all times and to effect the repair or replacement of the private roads or curbs located in Block A as is necessary. Except as provided in Paragraph 5 hereof, the cost of any work for the maintenance, repairs, replacements, and upkeep referred to herein shall constitute a part of the Common Expenses. There shall be no parking permitted on the private roads or drives as provided in Paragraph 8 of the record plat of Feather Bay, Section One.

(b) Block "B", Section One, is a Common Area to be conveyed to the Corporation for its ownership, maintenance, and control in accordance with this paragraph. The Declarant has constructed an entrance sign, landscaping, irrigation system, and lighting within Block "B" and it shall be the responsibility of the Corporation to maintain Block "B" and any improvements thereon in an aesthetically pleasing and functional manner at all times. The cost of any work for the maintenance, repair, and replacement of improvements located within Block "B" shall constitute a part of the Common Expenses.

(c) Block "C", Section One, is shown on the plat as a "Common Area". It was the original intention of the Declarant to utilize Block "C" as a common access way to a boat dock system to be located adjacent thereto for the use of lots within Feather Bay not having frontage on Geist Reservoir. The Declarant intends to replat portions of Feather Bay in order to delete Block "C" so that it shall be a portion of a lot or lots within the Real Estate.

(d) Block "D", Section One, is shown on the plat as a "Common Area". It was the original intention of the Declarant to utilize Block "D" as a common parking area for the use of owners of lots in Feather Bay. The Declarant intends to replat portions of Feather Bay and, in so doing, it may modify the size and configuration of Block "D". Block "D", or a modification thereof, shall be retained as a common parking area for the use of owners

910016013

of Lots in Feather Bay and, it shall be conveyed to the Corporation for its ownership, maintenance, and control in accordance with the provisions set forth herein and on the record plat. The cost of any work for the maintenance, repair, replacement and upkeep of Block "D", or any modification thereof, shall constitute a part of the Common Expenses. Block "D", or a modification thereof, shall be retained as a common area to provide temporary parking for lot owners, their guests and invitees and shall not be used for permanent storage of any boat, trailer or vehicle of any kind.

5. Declarant's Reservation of Right to Replat Portions of the Real Estate. The Declarant reserves unto itself and its successors and assigns in interest to the Real Estate, the right to replat those portions of the Real Estate not owned by Gunstra or Richwine (as identified in Exhibit A) provided that the total number of residential lots within the Real Estate shall not exceed forty-six (46) lots and further provided that any replat of the Real Estate shall be subject to the same covenants regarding the type of dwelling units and the size and use of dwelling units to be constructed on lots within the Real Estate as set forth in Paragraph 6 of the record plat for Section 1, Feather Bay recorded as Instrument Number 89-0117718 in the Office of the Recorder of Marion County, Indiana.

6. Encroachments and Easements For Dwelling Units and for Access.

(a) For the Dwelling Units. If, by reason of the inadvertent location or construction of a Dwelling Unit or the settling or shifting of a Dwelling Unit (which is constructed to a contemplated zero side yard clearance on one side of a Lot), any part of a Dwelling Unit now encroaches or shall hereafter encroach upon any portion of any other adjacent Lot where the zero lot line is involved, then in such event, an exclusive easement shall be deemed to exist and run to the owner of the encroaching Dwelling Unit for the maintenance, use, and enjoyment of the encroaching Dwelling Unit and all appurtenances thereto.

910016013

(b) For Adjoining Lot Access. There is hereby reserved by the Declarant for the benefit of the owner of any lot, an ingress and egress easement for the purpose of entering upon an adjoining Lot in the area where the Dwelling Unit is built in reliance of a zero side yard. Said easement is reserved for the limited purpose of performing maintenance and repair work on the Dwelling Unit benefited by such easement. The easement herein reserved shall expressly provide for an easement area 5 ft. in width as measured from said zero side yard property line and as designated on the recorded plat. Any persons entering upon a Lot under the rights granted hereunder shall be responsible for repair of any damage resulting from the use of the easement area.

7. Maintenance of Retaining Walls, Seawalls, Landscape Areas, and Shoreline.

(a) Retaining Walls. The Declarant shall install a series of timber retaining walls upon portions of various waterfront lots in Section One of the Real Estate. It shall be the responsibility of the owner of a lot on which a retaining wall is located to maintain the retaining wall constructed by Declarant in a structurally safe condition at all times. The Declarant may plant trees, shrubs, and other landscaping materials upon or behind the retaining walls and it shall be the obligation of the Owner of a Lot upon which said trees, plants, and landscape materials are placed to maintain said plants, trees, and landscape materials in a neat, orderly, and healthy condition at all times. The Owner of a Lot subject to this paragraph may not remove, replace, or add to said plant material without the prior written approval of the Architectural Review Board. The maintenance of any stairs, stairways, or decks constructed over, upon, or across the retaining walls shall be the responsibility of the Owner of a Lot upon which said improvements are located. The Owners of a Lot subject to this paragraph shall not alter, remove, or add on to any part of the retaining walls or do or take any action which would in any way weaken or impair the structural integrity or drainage features of said retaining walls. In the event that an Owner fails to maintain the retaining wall on his Lot or any trees, plants, or landscaping materials located upon or behind said retaining wall in an orderly and healthy condition, then the Corporation through its agents, shall have the right to enter upon said Lot in order to perform said maintenance and the cost thereof shall be added to and become a part of the assessment to which such Owner's lot is subject.

(b) Seawalls. Subject to securing all necessary permits from the United States Army Corps of Engineers and other regulatory agencies having jurisdiction thereof, the Declarant intends to

9100160 13

construct concrete seawalls adjacent to certain Lots within the Real Estate. Once such seawalls are installed by the Declarant, it shall be the responsibility of the Owner of the Lot on which the seawall is located to maintain any such seawall in a safe and orderly condition at all times. In the event that an Owner fails to maintain a seawall or portion thereof located on his Lot together with any landscaping planted by the Declarant behind such seawall, in a safe and sightly condition at all times, then the Corporation, through its agents, shall have the right to enter upon said Lot in order to perform said maintenance and the cost thereof shall be added to and become a part of the assessment to which such Owner's lot is subject.

(c) Landscape Areas. The Declarant shall record a "Landscape Easement" across portions of Lots which adjoin Fox Road under which it will reserve the right (but not the obligation) to install all manner of trees, shrubs, plants, landscape materials, walls, and fences which it deems appropriate or desirable. The Corporation shall be responsible for the maintenance, repair, and replacement of all landscaping and improvements installed within the "Landscape Easement" in an orderly and aesthetically pleasing condition at all times and the costs associated therewith shall constitute a Common Expense as provided in Paragraph 14 of this Declaration. The Corporation shall be responsible for restoring any Lot upon which it has entered pursuant to this paragraph, to its same condition as it existed prior to entering upon said Lot to carry-out the obligation set forth herein.

(d) Shoreline. The Declarant has installed stone rip-rap adjacent to certain Lots within the Real Estate in order to minimize erosion. It shall be the responsibility of the Owner of a Lot on which the Declarant has placed stone rip-rap to maintain the shoreline where Declarant has placed stone rip-rap in a sightly condition and to add additional rip-rap to these areas when it is necessary. In the event that an Owner fails to maintain the stone rip-rap on his Lot in a sightly condition at all times, the Corporation, through its agents, shall have the right to enter upon said Lot in order to add additional rip-rap and the cost thereof shall be added to and become a part of the assessment to which such Owner's lot is subject.

(e) Street Lights. The Declarant may elect to install street lights within the Real Estate at its expense. In such event, the cost of operation and maintenance of any said street lights shall be a Common Expense as provided in Paragraph 14 hereof.

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8. Easement for Utilities and Public and Quasi-Public Agencies over Common Areas. An easement is granted to all utility companies and their agents for ingress and egress to install, replace, repair, and maintain all utilities including but not limited to water, sewers, gas, telephone, television cables, and electricity upon, over, and across all of the Common Areas within the Real Estate. By virtue of this easement, electrical and telephone utilities are expressly permitted to erect and maintain necessary equipment within the Common Areas and to affix and maintain electrical and telephone wires, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Dwelling Units. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement without conflicting with the terms of this paragraph. There is hereby further granted to all public and quasi-public agencies which provide police and fire protection or hospitalization or emergency services, an easement of ingress and egress over, upon, and across all of the Common Areas within the Real Estate in order to provide said services to any person, Dwelling Unit, or improvement on or adjacent to the Real Estate. This easement shall permit the use of all manner of emergency vehicles and equipment within the Common Areas in providing the services contemplated herein. The easements granted herein shall in no way affect any other recorded easement on the Real Estate.

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9. Corporation; Membership; Voting; Functions.

(a) Membership in Corporation. Declarant and each Owner of a Lot within the Real Estate shall automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases. Membership shall terminate when an Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he forecloses upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:

1. the date upon which the written resignation of the Class B Members is delivered to the resident agent of the Corporation;

9100160 13

2. thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or;

3. May 1, 1998.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, and administration of the Common Areas and improvements thereon and the improvements described in Paragraphs 4 (a), (b), (c), and (d) hereof and to pay any other necessary expenses and costs in connection with these Common Areas, and to perform such other functions as may be designated by it to perform under this Declaration.

10. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed to be an Owner in accordance with this Declaration, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 10.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Hayes T. O'Brien, Thomas Michael Quinn, and Richard H. Richwine, Jr., (hereinafter referred to as the "Initial Board") all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained herein, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of judicial acts, inter vivos, or causa mortis or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and be irrevocable until the Applicable Date in order to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws, or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of special Assessments, mortgaging Common Areas or improvements or the merger or consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact

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and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust, or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at

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the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep, and replacement as required of any improvements within the various Common Areas and those improvements described in Paragraphs 7 (a), (c) and (e) hereof and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon sixty (60) days written notice to the other party. Other than the Initial Management under Paragraph 11, any decision thereafter to employ a professional property management agent shall require the prior consent of the Owners of at least fifty percent (50%) of the vote. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(i) protection and surveillance of the various Common Areas, retaining walls, and landscape areas, provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board, or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(ii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;

(iii) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(iv) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting

shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

(v) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas, retaining walls, landscape areas, and improvements thereon and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current Rules) shall be available for examination by an Owner, Mortgagee, insurer, or guarantor of a first mortgage at any time during normal business hours;

(vi) procuring and maintaining for the benefit of the Corporation and the Board, the insurance coverage required under this Declaration and such other insurance coverage as the Board, in its sole discretion, may deem necessary or advisable;

(vii) paying any other necessary expenses and costs incurred in connection with the maintenance, repair, or replacement of the Common Areas and improvements thereon; and

(viii) to furnish, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year.

(g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(i) to employ a Managing Agent to assist the Board in performing its duties;

(ii) to purchase, lease, or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

(iii) to employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be

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necessary or desirable in connection with the business and affairs of the Corporation;

(iv) to employ, designate, discharge, and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) to open and maintain a bank account or accounts in the name of the Corporation; and

(vii) to adopt rules and regulations covering use of the Common Areas and improvements thereon or any of the improvements described in Paragraph 7 (a), (c) and (e) hereto.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than $10,000 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) contracts for replacing or restoring portions of the Common Areas and improvements thereon and the retaining walls and landscape areas which are damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The

Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

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(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith, or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm, or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless, and defend any person, his heirs, assigns, and legal representatives, made a party to any action, suit, or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit, or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit, or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit, or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit, or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney, or other person, firm, or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) Bond. At such time that forty (40) lots have been sold and closed, the Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such

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sureties as may be approved by the Board of Directors (provided, *however, in no event shall the aggregate amount of the bond be* less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

11. Initial Management. The Board of Directors has entered into or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon sixty (60) days' written notice under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management, and maintenance of the Common Areas and any improvements thereon, together with the retaining walls and landscape areas; and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any ma. gement agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary

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contained herein, so long as a management agreement between the Corporation and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Common Areas and improvements thereon together with the improvements described in Paragraph 7 (a), (c) and (e) hereof and perform all the functions of the Corporation.

12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed on each Lot. In the event that the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. In addition, in such case, an Owner shall also pay his proportionate share of the real estate taxes assessed on any improvements on the Real Estate or part thereof assessed as a whole, based upon the ratio that the square footage of his Lot bears to the square footage of all improved Lots and improved portions of the Real Estate assessed as a whole. Real Estate taxes assessed against any Common Area shall be paid by the Corporation and the cost thereof shall be treated as a Common Expense.

910016013

13. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

14. Maintenance Repairs, and Replacements. Maintenance, repairs, replacements, and upkeep of the Common Areas and improvements thereon and any retaining walls and landscape areas as provided in Paragraph 7 hereof, shall be furnished by the Corporation as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean, and aesthetically pleasing condition at all times. If, due to the willful, intentional, or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee, or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any improvements thereon, or if maintenance, repairs, or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's lot is subject.

910016013

If any Owner shall fail to so maintain and keep his Lot or any part thereof in a good, clean, and sanitary condition, exclusive of dwelling maintenance, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Real Estate is subject to this Declaration each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair, or other work contemplated herein.

15. Architectural Control.

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is established an Architectural Review Board consisting of three (3) or more persons as may, from time-to-time, be provided in the By-Laws. Until the Applicable Date, the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

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

(c) Conditions. No improvements, alterations, painting, repairs, excavation, changes in grade, changes in color, or other work which in any way alters the exterior of any Lot or the improvements located thereon (including a Dwelling Unit) from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant or the builder of a Dwelling Unit to an Owner shall be made or done without the prior written approval of the Architectural Review Board, except as otherwise

910016013

expressly provided in this Declaration. No building, fence, wall, deck, patio, exterior antenna, Dwelling Unit, or other structure or improvement shall be commenced, erected, maintained, improved, altered, made or done on any Lot or Dwelling Unit without the prior written approval of the Architectural Review Board.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify, or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications, and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

(e) Obligations of Architectural Review Board. The Corporation may not waive or abandon the procedure for regulating and enforcing the architectural design of the Dwelling Units and other improvements to be located on any Lot, nor for maintaining the Common Areas and improvements thereon together with the improvements described in Paragraph 7 (a), (c) and (e) hereof without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(f) One Dwelling Unit on Two or more Lots. Subject to the approval of the Architectural Review Board, a single Dwelling Unit may be constructed on one or more Lots in which case the Dwelling Unit will be considered as occupying one (1) Lot for purposes of this Declaration.

16. Assessments.

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner, a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for

910016013

the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting. The annual budget, the Regular Assessments, and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement of the improvements located within the Common Areas and the areas described in Paragraph 7 (a), (c) and (e) hereof which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement of improvements within the Common Areas and the areas described in Paragraph 7 (a), (c) and (e) hereof shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time-to-time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall be based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget and shall contain a proposed assessment against each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to

910016013

reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in semi-annual installments commencing on the first day of the first month of each fiscal year and semi-annually thereafter. Payment of these installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments annually in advance. In the event the Regular Assessment for a particular fiscal year of the corporation was initially based upon a temporary budget, then:

(i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full with the remaining payments due in such fiscal year, or

(ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustment set forth under (i) and (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined,

910016013

approved, and adjusted as herein provided, sells, conveys, or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot, from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessments as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 16 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matter set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semi-annual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time-to-time, Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact, or proxy in this vote pursuant to Paragraph 10 (b) of this Declaration, the Board of Directors shall have the full right, power, and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time-to-time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date and Exemption of Declarant and Builders of Dwelling Units from the Payment of Regular or Special Assessments. During the period that Dwelling Units are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall

910016013

be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this subparagraph.

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 11 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) 1 year after the date of execution, the Regular Assessment shall not exceed Two Hundred Dollars ($200) (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, Declarant guarantees that the Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to any replacement reserve created shall be held by the Initial Board and if required, applied to the replacement required in the Common Areas or areas described in Paragraph 7 (a), (c) and (e) hereof. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date. Payment of regular Assessments prior to the Applicable Date with respect to each Lot (that is not owned by Declarant) shall commence at such time that a Lot is conveyed to an Owner provided, however, that the builder of any Dwelling Unit within the Real Estate shall not have to pay any Regular or Special Assessment as provided herein, from the date of conveyance by Declarant to such new owner. The first payment shall be payable at the date of conveyance prorated to the first day of the semi-annual period next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each semi-annual period thereafter during the period

910016013

prior to the Applicable Date. NOTWITHSTANDING ANY OTHER PROVISION IN THIS DECLARATION, DECLARANT AND THE BUILDER OF ANY DWELLING UNIT WITHIN THE REAL ESTATE SHALL BE EXEMPT FROM THE PAYMENT OF ANY REGULAR OR SPECIAL ASSESSMENT PROVIDED FOR HEREIN.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 11 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. With the exception of Declarant and the builder of a Dwelling Unit within the Real Estate, no Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the various Common Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several if any Owner shall fail, refuse, or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due, the Board may in its discretion accelerate the entire balance of unpaid assessments and the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit, costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate then being charged by Indiana National Bank & Trust Company of Indianapolis to its largest and best corporate customers (or if said bank is no longer in existence then such rate charged by another National Bank in Marion County, Indiana, selected by the Board of Directors). The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage.

91001613

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer, or conveyance; provided however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners including the party acquiring the subject Lot from which it arose.

17. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws, or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws, or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled to vote by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount

910016013

of the unpaid Regular Assessments or Special Assessments or other charges against the Lot which statement shall be binding upon the operation and the Owner, and any Mortgagee or grantee of this Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any delinquent real estate taxes assessed against the Common Areas and (2) to pay any overdue premiums on hazard insurance for the Common Areas or to secure new hazard insurance for the Common Areas on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.

(d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of the Real Estate. Mortgagees shall also be timely notified of any lapse, cancellation, or material modification of any insurance policy or fidelity bond held by the Corporation.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

18. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Corporation's improvements within the Common Areas and the improvements described in Paragraph 7 (a), (c) and (e) hereof (other than underground utilities or roads) in an amount consonant with the full replacement value of these improvements. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees

The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for non-payment of premiums or for any other reason or shall not be substantially modified without at least thirty (30) days prior written notice to the Corporation.

Each Owner shall otherwise be solely responsible for loss or damage to his Lot or Dwelling Unit, the contents of his Dwelling Unit and Lot however caused and his personal property stored elsewhere on the Real Estate and the Corporation shall have no liability to the Owner for loss or damage to the Lot, the Dwelling Unit, the contents of any Dwelling Unit, or any personal property stored elsewhere on the Real Estate. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

(b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time-to-time but not less than $1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least thirty (30) days written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained including, but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time-to-time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles or equipment owned or leased by the

910016013

Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors, and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

19. Restoration of Common Area Improvements ("Improvements"). In the event of damage to or destruction of any of the Improvements located within any of the Common Areas or of the retaining walls, or landscape areas, referred to in Paragraph 7 (a) and (c) hereof, due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired, reconstructed, or replaced. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair, reconstruction, or replacement.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair, reconstruction, or replacement of the Improvements, or in the event there are no insurance proceeds, the cost for restoring the damage

910016013

and repairing, reconstructing, or replacing the Improvements so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction, and restoration shall mean construction or rebuilding the "Improvements" to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

20. Covenants and Restrictions. The following covenants and restrictions covering the use and enjoyment of the Lots, Dwelling Units, and Common Areas shall be in addition to any other covenants or restrictions contained herein and in the recorded plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the Real Estate and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof provided, however, that there shall be no right of reversion or

910016013

forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.

(b) No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Areas which would result in a cancellation of insurance or increase in insurance premiums on any of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit, Common Area, or on any Lot. The Board of Directors determination as to what is a nuisance shall be conclusive.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter, or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior consent of the Architectural Review Board.

(e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Dwelling Unit or on any Lot or any of the Common Areas except that pet dogs, cats, or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred, or maintained for any commercial purpose and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its Owner and an Owner shall be fully liable for any injury or damage caused by his pet to persons or property, including the Common Areas. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time-to-time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.

(f) The Common Areas shall be kept free and clear of rubbish, debris, and other unsightly materials.

(g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism, or otherwise shall be conducted, practiced, or permitted on the Real Estate.

(h) No "for sale", "for rent", or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate, any Lot or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Lots and Dwelling Units.

(i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time-to-time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.

(j) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, mini bikes, or mopeds shall be permitted, parked, or stored anywhere within the Real Estate except as otherwise specifically permitted by the Board. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles.

(k) No Owner shall be allowed to plant trees, landscape, or do any gardening in any of the Common Areas except with the express written permission from the Board.

(l) The Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time-to-time adopted by the Board.

(m) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

(n) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(o) The Owner of any Lot having frontage on Geist Reservoir may not place, construct, or install any fill or improvements below an elevation of 788.4 mean sea level without a permit from the United States Corps of Engineers and the Architectural Review Board.

910016013

(p) No cable television "dishes" or similar apparatus shall be located upon any Dwelling Unit or Lot within the Real Estate.

(q) There shall be no permanent storage of any boat, car, truck, camper, recreational vehicle, trailer, motorcycle, or other vehicle on any Lot with the exception of overnight parking of said vehicles.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant, and the builder of any Dwelling Unit within the Real Estate, shall have the right to use and maintain any Lots and Dwelling Units and other portions of the Real Estate owned by them for the purpose of providing model homes, advertising signs, and promotions that they deem necessary or appropriate for the sale of Lots and Dwelling Units within the Real Estate.

21. Right of Owners to Use the Backbay Recreation Facilities. The Owners of Lots within the Real Estate shall have the right to use certain recreational facilities in the Backbay Condominium Project subject to the terms and conditions set forth in a certain document entitled "Eighth Amendment to Declaration of Backbay Horizontal Property Regime, Agreement Regarding Future Development and Assignment" which document is recorded as Instrument Number 89-62462 in the Office of the Recorder of Marion County, Indiana.

22. Boat Docks. The Declarant may install boat docks adjacent to certain waterfront Lots within the Real Estate. In this event, the Declarant shall convey title to said boat docks to the various Owners of Lots where the boat docks are located. The

91 016013

Owners of said docks shall be responsible for the maintenance of said docks in a safe and sightly condition at all times. The owner or owners of a boat dock may not alter, paint, carpet, replace, or add any appurtenances (such as awnings or boat lifts) to a boat dock without the prior written consent of the Architectural Review Board. It is contemplated that certain boat docks will be designed in such a way as to provide space for two (2) boats within one dock. In such cases, the two Owners of the dock shall share equally in the maintenance and care of the boat dock.

23. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

910016013

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (a) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Areas and improvements thereon and the areas described in Paragraph 7 (a) and (c) hereof in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 15 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Lot; without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest has been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Additional Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Areas and improvement thereon or the improvements described in Paragraph 7 (a) and (c) hereof, or (3) right to use the Common Areas, or (4) the leasing of Dwelling Units, or (5) termination of the applicability of this Declaration, or (6) any provisions which are for the express benefit of Mortgagees; without the consent of at least seventy-five percent (75%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least fifty percent (50%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgagees.

(vii) Recording. Each amendment to this Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of

91016013

Marion County, Indiana, and such amendment shall not become effective until so recorded.

(viii) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other document, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees, or any other person, to amend or supplement this Declaration at any time and from time-to-time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Declarant to vote in favor of, make, execute, and record any such amendments.

(c) Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

24. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this

91016013

Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time-to-time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time-to-time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate as though such provisions were recited and stipulated at length in each and every deed, conveyance mortgage, or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy, or control a Lot or Lots or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time-to-time.

25. Negligence. Each Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the

910016013

Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his misuse of the Common Areas.

26. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required hereunder or to comply with any provisions of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time-to-time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

27. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot.

28. Severability Clause. The invalidity of any covenant, restriction, condition, limitation, or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

29. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

910016013

30. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

31. The Plat. The Primary Plat of Feather Bay, Section 1, is incorporated into this Declaration by reference and has been filed in the Office of the Recorder of Marion County, Indiana, as of the 22nd day of November, 1989, as Instrument No. 89-0117718.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed the day and year first above written.

THE INLAND GROUP, INC.
"Declarant"

By: Hayes T. O'Brien
Hayes T. O'Brien, President

ATTEST:
Thomas Michael Quinn, Secretary

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State personally appeared Hayes T. O'Brien, President

9100166013

and Thomas Michael Quinn, Secretary, of The Inland Group, Inc., and who, having been duly sworn, state that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 4th day of February, 1991.

Sharyl D. Groves
Notary Public
Printed: SHARYL D. GROVES

My Commission Expires: JUNE 14 1991
My County of Residence: MARION

CONSENT

Richard H. Richwine, Jr., as the owner of a lot in Feather Bay, Section One identified in EXHIBIT A, does hereby consent to the imposition of this Declaration of Covenants and Restrictions upon said lot and agrees on behalf of himself, his successors and assigns in interest to said lot, to be bound by each and every one of the aforementioned covenants, restrictions, assessments and conditions set forth in this Declaration of Covenants and Restrictions.

By: Richard H. Richwine, Jr.
Richard H. Richwine, Jr.

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State personally appeared Richard H. Richwine, Jr. and

910016013

who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 6th day of February, 1991.

Kelly L. Moon
Notary Public
Printed: Kelly L. Moon

My Commission Expires: 10/3/93
My County of Residence: Marion

CONSENT

Gunstra Builders, Inc., as the owner of the lots in Feather Bay, Section One identified in EXHIBIT A, does hereby consent to the imposition of this Declaration of Covenants and Restrictions upon said lots and agrees on behalf of itself, its successors and assigns in interest to said lots, to be bound by each and every one of the aforementioned covenants, restrictions, assessments and conditions set forth in this Declaration of Covenants and Restrictions.

GUNSTRA BUILDERS, INC.

By: [signature]
B.A. Gunstra

ATTEST:

[signature]
Jeffrey Bennett

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State personally appeared B.A. Gunstra, President

910016013

_____ and Jeffrey Bourff _____, of Gunstra Builders, Inc., and who, having been duly sworn, state that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 6th day of February, 1991.

Kelly L Moon
Notary Public

Printed: Kelly L Moon

My Commission Expires: 10/3/93
My County of Residence: Marion

This instrument was prepared by Hayes T. O'Brien, Attorney at Law, 7168 Graham Road, Suite 110, Indianapolis, Indiana 46250.

910016013

EXHIBIT A

Part of the North Half of the Southwest Quarter and part of the North Half of the SOutheast Quarter, both of Section 21, Township 17 North, Range 5 east of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Beginning at the Southeast Corner of the North Half of said Southwest Quarter; thence South 89 degrees 26 minutes 23 seconds West along the south line thereof a distance of 466.17 feet; thence North 03 degrees 00 minutes 12 seconds West 182.41 feet to the Point of Curvature of a curve to the left (said curve having a radius of 40.00 feet and being subtended by a chord bearing North 33 degrees 07 minutes 56 seconds West and a length of 40.16 feet); thence in a northwesterly direction along said curve 42.07 feet to the Point of Tangency thereof (said point being the point of curvature of a curve to the right (said curve having a radius of 40.00 feet and being subtended by a chord bearing North 50 degrees 11 minutes 25 seconds West and a length of 18.09 feet)); thence in a northwesterly direction along said curve 18.25 feet; thence South 52 degrees 52 minutes 49 seconds West 20.00 feet; thence North 90 degrees 00 minutes 00 seconds West 124 feet, more or less, to a point on the southwestern shoreline of Geist Reservoir as established when said reservoir is full (with the water level thereof being at an elevation of 785.00 feet above mean sea level); thence generally easterly and southerly along said meandering shoreline 2,220 feet, more or less, to the south line of the North Half of said Southeast Quarter; thence South 89 degrees 20 minutes 46 seconds West along the said south line a distance of 722 feet, more or less, to the Point of Beginning and containing 10.50 acres, more or less.

The above described Real Estate is also known as Feather Bay, Section One comprising 46 lots numbered 15 through 60 and Blocks "A" through "D", and a cove area. The plat of Feather Bay, Section One is recorded as Instrument Number 890117718 in the Office of the Recorder of Marion County, Indiana.

Gunstra Builders, Inc., is the fee simple owner of Lots 20, 37, 39, 42 and 43 of Feather Bay, Section One and Richard H. Richwine, Jr., is the fee simple owner of Lot 38 Feather Bay, Section One.

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