FLAT RESTRICTIONS FOR WATERMARK SUBDIVISION

The undersigned WATERMARK TOWNHOMES, L.L.C., an Indiana limited liability company ("Declarant"), owner of record of Watermark I Subdivision (the "Subdivision") located within that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate"), does hereby certify that it has laid off, platted and subdivided the Real Estate into twenty-six (26) lots, numbered 1 through 26, inclusive (individually, a "Lot"; collectively, the "Lots"), and seven (7) blocks, designated alphabetically as "A", "B", "C" "D", "E", "F" and "G" (individually, a "Block"; collectively, the "Blocks") in accordance with the Final Plat of the Subdivision recorded September 4, 1995, as Instrument No. 95-12756, in the Office of the Recorder of Marion County, Indiana (the "Plat"), and does hereby subject the Real Estate to the following covenants, conditions and restrictions:

1. DEFINITIONS.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Covenants and Restrictions of the Subdivision (the "Declaration") dated of even date herewith and recorded on even date herewith in the Office of the Recorder of Marion County, Indiana.

2. STREETS.

All streets in the Subdivision shall be private. Public street access will be solely to North Street, Senate Avenue and Walnut Street.

3. EASEMENTS FOR UTILITIES.

Portions of Blocks A and B, and of the Lots, are subject to perpetual nonexclusive utility easements, as shown on the Plat, which are created and established for use of local utility companies for purposes of installation and maintenance of utilities to serve the Subdivision. Each Lot owner shall connect with any utility or amenity service (which shall include cable television) Declarant may deem necessary. Each Lot owner shall take title subject to the rights with respect to such utility easements of other Lot owners and local utility companies. All utility easements created or reserved on the Plat shall include the right of ingress, egress and access over adjacent property as may reasonably be necessary properly to install or maintain the utility facilities located within such easement areas.

4. ZERO LOT LINE EASEMENTS.

There is hereby imposed upon each Lot a perpetual easement for support, construction, reconstruction, maintenance and repair of any "zero lot line" wall of a dwelling or garage built on an abutting Lot. To the extent building improvements such as footings, utilities and cornice overhangs encroach on an abutting Lot, there is hereby imposed upon the abutting Lot a perpetual easement for the purpose of permitting such encroachment to be maintained; provided,

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however, that in no event shall any easement for underground footings or utilities, or inadvertent encroachments, exceed two (2) feet onto the servient Lot. Exercise of the easement rights imposed by this paragraph 4 must not result in damage or injury to another owner's improvements, and must not unreasonably interfere with or interrupt use or enjoyment of the servient Lot. Additionally, the owner of a dominant Lot benefiting from the easement rights imposed by this paragraph 4 shall, at its sole expense, promptly repair, replace or restore any and all improvements on the servient Lot that may be damaged by such Lot owner in the exercise of such easement rights. The owner of a servient Lot shall be held harmless from all loss, liability, cost or expense incurred in connection with exercise of any easement rights imposed by this paragraph 4 unless occasioned by such owner's negligence or willful misconduct.

5.  **COMMON AREA.**

Blocks B, C, D, E, F and G are hereby designated as Common Area. Drainage easements over and across all of Block B, and a portion of Block C as shown on the Plat, are hereby created and established to provide paths and courses for area and local storm drainage, either overlaid or in adequate underground conduit, including stormwater retention or detention areas, to serve the needs of the Subdivision and adjoining ground and public drainage systems. Under no circumstances shall such drainage easements be blocked in any way. Such drainage easement areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental agency having jurisdiction over drainage or by Declarant. It shall be the individual responsibility of each Lot owner to maintain the drainage across its Lot. A sanitary sewer easement over and across a portion of Block B as shown on the Plat is hereby created and established for use of governmental agencies having jurisdiction over sanitary waste disposal for purposes of installation and maintenance of utilities to serve the Subdivision. A sanitary sewer easement over and across a portion of Block C as shown on the Plat is hereby created and established for use of owners of Lots 22 through 26, inclusive, for purposes of installation and maintenance of a common sanitary sewer lateral to serve such Lots. It shall be the joint and several individual responsibility of such Lot owners to maintain such common sanitary sewer lateral. An access, egress and ingress easement over and across all of Block B is hereby created and established for use of all owners of Block A and Lots, and their guests, invitees, licensees, successors and assigns; and an access, egress and ingress easement over and across all of Block D is hereby created and established for use of owners of Lots 8 through 14, inclusive, and their guests, invitees, licensees, successors and assigns. In addition to such owners, guests, invitees, licensees, successors and assigns, all public vehicles, specifically including, but not limited to, police, fire and other emergency vehicles, utility vehicles, trash and garbage collection vehicles, U.S. Postal Service vehicles, and privately owned delivery and service vehicles, shall have the right to enter upon and use Blocks B and D in the performance of their duties. Blocks E, F and G shall be used solely for installation and maintenance of fences, landscaping and/or walls for common enjoyment of the Owners.

6.  **LANDSCAPING PLAN.**

Any landscaping provided on any Lot shall be subject to the Committee's prior written approval in accordance with the Declaration.

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7. DWELLING SIZE AND USE

All Lots shall be known and designated as residential lots. No business building shall be erected on any Lot; no business shall be conducted on any Lot, other than home occupations permitted by the Dwelling District Zoning Ordinance of Marion County, Indiana; and no Lot shall be used for a group home. No structure or other improvement shall be erected, altered, placed or permitted to remain on any Lot, other than one (1) detached single-family dwelling, not to exceed three (3) stories in height, and residential accessory buildings. Any garage or other residential accessory building erected on any Lot shall be of a permanent type of construction and shall conform to the general architecture and appearance of the dwelling erected on such Lot.

Each dwelling erected on a Lot shall have (i) more than one story, and (ii) a minimum square footage of living space of 1,500 square feet with not less than 700 square feet of living space on the first floor. The square footage of living space is exclusive of porches, terraces, garages, carports, accessory buildings and basements.

8. SITE VISIBILITY AND FENCING

No fence, wall, hedge or shrub planting, that obstructs sight lines or elevations between 2 and 6 feet above a street, shall be placed or permitted to remain on any Lot unless originally placed by Declarant or approved in advance by the Committee in accordance with the Declaration.

9. SETBACK REQUIREMENTS

A. In General - No dwelling, other above-grade structure or other improvement shall be erected or placed on any Lot, except as provided herein.

B. Definitions - "Front Line" means (i) in the case of Lots 1 through 7, inclusive, the south lines of such Lots, (ii) in the case of Lots 8 through 14, inclusive, the west lines of such Lots, (iii) in the case of Lots 15 through 21, inclusive, the north lines of such Lots, and (iv) in the case of Lots 22 through 26, inclusive, the east lines of such Lots. "Rear Line" means (i) in the case of Lots 1 through 7, inclusive, the north lines of such Lots, (ii) in the case of Lots 8 through 14, inclusive, the east lines of such Lots, (iii) in the case of Lots 15 through 21, inclusive, the south lines of such Lots, and (iv) in the case of Lots 22 through 26, inclusive, the west lines of such Lots. "Side Line" means (i) in the case of Lots 1 through 7, and 15 through 21, each inclusive, the east and west lines of such Lots, and (ii) in the case of Lots 8 through 14, and 22 through 26, each inclusive, the north and south lines of such Lots.

C. Front Yards - The front building setback line shall be five (5) feet from the Front Line. The front of each dwelling erected on a Lot shall be on the front building setback line.

D. Rear Yards - The rear building setback line shall be eighteen (18) feet from the Rear Line.
E. Side Yards - The side building setback lines shall be an aggregate of three (3) feet from the Side Lines.

10. PLANS, SPECIFICATIONS AND LOCATION OF BUILDINGS.

No structure or other improvement of any kind, including additions, alterations, fences, screens and walls, shall be erected, altered, placed or permitted to remain on any Lot unless and until plans and specifications therefor, specifically including, but not limited to, a plot plan, in detail and to scale, have been submitted to and approved by the Committee in accordance with the Declaration. The plans and specifications for and location of all construction shall be in compliance with all applicable regulatory rules, codes and orders, specifically including, but not limited to, building, plumbing and electrical requirements.

Any required landscaping, sidewalk and driveway shall be completed at the time of completion of the dwelling, or as soon as weather permits. Sidewalks shall be installed in a manner so as to be uniform throughout the Subdivision.

All areas not covered by structures, paved parking facilities or sidewalks shall be maintained by the Owner as landscaped areas to the pavement edge of any abutting streets.

No fenestration except openings with fully translucent windows shall be permitted in any "zero lot line" wall of any dwelling or garage except a "zero lot line" wall that abuts a Block or a public right-of-way.

11. GARAGES AND DRIVEWAYS.

Each dwelling constructed upon a Lot shall include an attached garage, and the means of ingress and egress to such garage shall be over a driveway of concrete material.

12. LOT ACCESS.

Lots 1 through 7, inclusive, shall be accessed from Walnut Street; Lots 8 through 14, inclusive, shall be accessed from Block D; Lots 15 through 21, inclusive, shall be accessed from North Street; and Lots 22 through 26, inclusive, shall be accessed from Block B.

13. CONSTRUCTION METHODS.

a. No Lot owner shall undertake or permit any work on the exterior or outside of the dwelling on such Lot without first obtaining the Committee's prior written approval, specifically including, but not limited to, the Committee's prior written approval of storage of materials or parking of construction vehicles within the Subdivision.

b. No work by or on behalf of a Lot owner shall interfere with or impair work by Declarant in the Subdivision.
c. Any damage caused by a Lot owner or its contractors during the course of construction, specifically including, but not limited to, damage to drainage courses, streets or curbs, shall be repaired immediately by such owner at its sole cost and expense.

14. CONTROLLING DOCUMENTS.

The foregoing covenants, conditions and restrictions supplement the Plat, and are to be read and interpreted in conjunction with the Plat and the Declaration. In the event of a conflict, the more or most restrictive provision shall control.

15. DURATION.

The foregoing covenants, conditions and restrictions shall run with the Real Estate, and be binding upon all Lot owners and all persons claiming thereunder for the duration of the Declaration. Notwithstanding the foregoing, all easements created or reserved herein or in the Plat shall be perpetual unless otherwise expressly indicated herein or therein.

16. ENFORCEMENT.

The right of enforcement of each of the foregoing covenants, conditions and restrictions by injunction, together with the right to cause removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Association and Lot owners, and their respective legal representatives, successors and assigns, as more fully set out in the Declaration. The Commission shall have no right, power or authority to enforce any covenant, condition, restriction or other limitation contained herein or in the Plat, other than those covenants, conditions, restrictions or limitations that expressly run in the Commission’s favor; provided, however, that nothing herein shall be construed to prevent the Commission from enforcing any provision of the Subdivision Control Ordinance, 58-AO-3, as amended, or any condition to approval of the Plat by the Plat Committee.

17. SEVERABILITY.

Each of the foregoing covenants, conditions and restrictions is hereby declared to be independent of or severable from the rest thereof, and of and from every other one thereof and of and from every combination thereof. Therefore, if any provision hereof is held to be invalid or unenforceable or to lack the quality of running with the Real Estate, such holding shall be without effect upon the validity, enforceability or “running” quality of any other provision hereof.
18. RECORDING.

These Plat Restrictions shall be recorded by Declarant in the Office of the Recorder of Marion County, Indiana.

Dated: September 19, 1995

WATERMARK TOWNHOMES, L.L.C.,
an Indiana limited liability company

By (Signature)

Cornelius M. Allig, Class A Member

Before me, a Notary Public in and for said County and State, personally appeared

Cornelius M. Allig, a Class A Member of Declarant, who acknowledged the execution of the

foregoing.

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

Lyman M. Cleugh, Notary Public and
Resident of Hamilton County, Indiana


This instrument was prepared by Bruce R. Karr, attorney-at-law, 700 Market Tower, 18 West
Market Street, Indianapolis, Indiana 46204-2960, telephone: (317) 464-8200.
Exhibit A

real estate located in the Northeast Quarter of Section 8, Township 13 North, Range 3 East in Center Township, Marion County, Indiana. Said real estate being a part of OUTLOT NONE of the DONATION LANDS to the City of Indianapolis, Indiana:

Beginning at the intersection of the West right-of-way line of Senate Avenue and the South right-of-way line of Walnut Street, as said streets are now located and improved, said intersection being also the Northeast corner of LOT NUMBER ONE (1) in JAMES RANKIN'S SUBDIVISION OF OUTLOT NONE of the DONATION LANDS to the City of Indianapolis, Indiana, the plat of which is recorded on page 281 of Plat Book 1, in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 01 minute 14 seconds West (assumed bearing), on the West right-of-way line of said Senate Avenue 178.82 feet; thence North 00 degrees 08 minutes 45 seconds West, 180.50 feet; thence South 00 degrees 01 minute 14 seconds West parallel with West right-of-way line of said Senate Avenue 259.82 feet to the North right-of-way line of North Street, as now located and improved; thence North 00 degrees 00 minutes 00 seconds West on the North right-of-way line of said North Street 300.00 feet to the Southeast corner of a piece of Real Estate described in Instrument No. 900082546 in said Recorder's Office; thence North 00 degrees 00 minutes 45 seconds East on the Eastery line of said Real Estate 391.37 feet to the Northeast corner of said Real Estate described in Instrument No. 900082546 to the aforesaid South right-of-way line of Walnut Street; thence South 00 degree 00 minutes 25 seconds East on said South right-of-way line 480.96 feet to the place of beginning, containing 2.92 acres, more or less.
DECLARATION OF COVENANTS AND RESTRICTIONS
OF WATERMARK

THIS DECLARATION (the "Declaration"), made this 19th day of September, 1995, by WATERMARK TOWNHOMES, L.L.C., an Indiana limited liability company ("Declarant"),

WITNESSETH: That

WHEREAS, Declarant is the owner in fee simple of that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate"); and

WHEREAS, Declarant has laid off, platted and subdivided the Real Estate into lots and blocks in accordance with the Final Plat (the "Plat") of Watermark I (the "Subdivision"), recorded September 29, 1995, as Instrument No. 95-12807, in the Office of the Recorder of Marion County, Indiana, and has subjected the Real Estate to certain covenants, conditions and restrictions in accordance with the Plat Restrictions (the "Restrictions") for the Subdivision recorded on or before date hereinafter in each such Office; and

WHEREAS, the Subdivision consists of twenty-six (26) lots, numbered 1 through 26, inclusive (individually, a "Lot"; collectively, the "Lots"), known and designated as residential lots, and seven (7) blocks, designated alphabetically as "A," "B," "C," "D," "E," "F" and "G" (individually, a "Block"; collectively, the "Blocks"); and

WHEREAS, Declarant is developing Block A as and for twenty-four (24) condominiums (individually, a "Condominium"; collectively, the "Condominiums"), and desires to coordinate the rights and obligations of Lot owners and Condominium owners; and

WHEREAS, Declarant desires to subject the Real Estate to certain covenants and restrictions in addition to those set forth in the Plat and the Restrictions in order further to insure that development and use of Lots and Blocks are harmonious and do not adversely affect the value of surrounding Lots and Blocks; and

WHEREAS, Declarant desires to provide for maintenance of the Common Area (as hereinafter defined) that is of common benefit to owners of Lots and Condominiums, and to that end desires to establish certain obligations of such owners and a system of assessments and charges upon such owners for certain maintenance and other costs in connection with operation and maintenance of the Subdivision,

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate is and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the Plat, the Restrictions, and the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole, and each Lot and Condominium

[Signature]

Date: 1995-12807

[Redacted]
situated therein. All of the following covenants and restrictions shall run with the Real Estate; shall be binding upon Declarant, and all parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part thereof, and shall inure to the benefit of Declarant's successors in title to the Real Estate or any part thereof.

1. DEFINITIONS.

Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Plat and the Restrictions. In addition, the following are definitions of terms as they are used herein (which, for purposes hereof, shall supersed any different definition of such terms in the Plat or the Restrictions):

(i) "Assessment" shall mean the share of Common Expenses imposed upon each Unit, as determined and levied pursuant to paragraph 4, and shall include annual and special assessments.

(ii) "Association" shall mean Watermark Homeowners Association, Inc., which has been created as an Indiana nonprofit corporation and membership of which shall consist of all Owners, and its successors and assigns.

(iii) "By-Laws" shall mean Association's code of by-laws.

(iv) "Board" shall mean Association's board of directors.

(v) "Class A" is defined in paragraph 2.B.

(vi) "Class B" is defined in paragraph 2.B.

(vii) "Commission" is defined in paragraph 9.B.

(viii) "Committee" shall mean the Watermark Development Control Committee, comprising three (3) members (who need not be Association members) appointed by Board and subject to removal by Board at any time with or without cause. Any vacancies existing from time to time shall be filled by Board.

(ix) "Common Area" shall mean Blocks B, C, D, E, F and G (including any improvements thereto), which shall be owned by Association for common use and enjoyment of Owners.

(x) "Common Expenses" shall mean the actual and estimated cost to Association for maintenance, management, operation, repair, improvement and replacement of Common Area, snow removal (to the extent, if any, provided by Association), taxes assessed against any Common Area, and any other cost or expense incurred by Association for the benefit of Common Area or the
Subdivision generally, and shall also include the costs of insurance as required herein. Common Expenses shall not include any costs or expenses incurred in connection with the Initial Installation or completion of streets, utility lines and mains, drainage system or other improvements constructed by Declarant.

(xi) "Control Transfer Date" is defined in paragraph 2.B.

(xii) "Declaration" shall mean the Plat, the Restrictions and this Declaration, collectively.

(xiii) "Declarant" shall mean Watermark Townhomes, L.L.C., an Indiana limited liability company, or any other person that succeeds to its interest a matter of law or as evidenced by a written instrument of transfer to such effect recorded in the Office of the Recorder of Marion County, Indiana.

(xiv) "Mortgages" shall mean a holder, insurer or guarantor of a first mortgage on a Unit.

(xv) "Owner" shall mean a person that owns the fee simple interest in and to a Unit, but excluding those persons having such interest merely as security for performance of an obligation.

(xvi) "Pro-Rate Share" is defined in paragraph 4.B.

(xvii) "Unit" shall mean a Condominium or a Lot. Any portion of Block A that has not been subjected to a declaration of horizontal property regime shall be deemed to contain the number of Units determined by subtracting from twenty-four (24) the number of Units contemplated by any declaration(s) of horizontal property regime covering any other portion(s) of Block A.

2. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

A. Membership. Every Owner shall be a member of Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

B. Classes of Membership. Association shall have two classes of voting membership, as follows:

Class A: Class A members shall be all Owners except Declarant, and each Class A member shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by the person that the collective members with respect to such Unit unanimously designate in writing to Association. In no event shall such vote be split into fractional votes and in no event shall more than one (1) vote be cast with respect to any Unit. Each vote cast
with respect to a Unit shall presumptively be valid, but if such vote is questioned by any member holding any interest in such Unit and if all members holding an interest in such Unit are not in agreement as to the validity of the vote for such Unit that is questioned, then such vote shall not be counted.

Class B Declareant shall be the sole Class B member. The Class B member shall be entitled to one (1) vote for each Unit owned thereby, and such other Owner shall be deemed to have given Declareant an irrevocable proxy to vote with respect to such Owner's Unit for so long as Declareant owns any Unit or until Declareant's Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be converted to a Class A membership on the happening of the first to occur of the following events:

(a) When the Class B member no longer owns any Unit,
(b) When the Class B member voluntarily surrenders the Class B membership,
(c) The earlier of (i) four (4) months after seventy-five percent (75%) of the Units have been conveyed by Declareant to other Owners, and (ii) five (5) years after the first Unit is conveyed by Declareant to another Owner.

The first to occur of the foregoing events is hereinafter referred to as the "Control Transfer Date."

C. Board of Directors. The members shall elect Board as prescribed by the By-Laws. Board shall manage Association's affairs. The initial Board shall be appointed by Declareant and shall manage Association's affairs until the Control Transfer Date.

D. Professional Management. No contract or agreement of Association for professional management of Association, and no other contract of Association with Declareant, shall be for a term in excess of three (3) years. Any such contract or agreement shall provide for termination by either party with or without cause, and without any termination fee, by ninety (90) days' written notice.

E. Responsibilities of Association. Association is hereby authorized to act and shall act on behalf, and in the name, place and stead, of the individual Owners in all matters pertaining to maintenance, repair and replacement of Common Area, determination of Common Expenses, collection of annual and special Assessments, and granting of any approvals called for by the Declaration for the common benefit of all Owners. Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Declaration. Neither Association, nor its
directors, officers, employees or agents, shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration. Association shall, to the extent deemed necessary by Board, procure and maintain casualty insurance for Common Area, liability insurance (including directors' and officers' insurance), and such other insurance as it deems necessary or advisable. Association may contract for such services as management, snow removal and security control, and such other services as Association deems necessary or advisable. If Association enters into any such contract prior to the Control Transfer Date, Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto.

F. Mortgage Rights. Any Mortgagee gave the right, but not the obligation, to pay any overdue premiums on hazard insurance policies required to be maintained by Association, or to secure new hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagee making any payment pursuant to this paragraph shall be entitled to reimbursement from Association promptly upon written demand therefor to Association.

G. Primary Responsibility. Subject to the limitations set forth in the Declaration, Association shall be primarily responsible for keeping Common Area in a clean, orderly and well groomed condition, and Association and its agents shall have the right to enter upon Common Area at all reasonable times in order to fulfill this primary responsibility.

3. INSURANCE AND BONDS.

A. Association shall maintain in force such insurance protecting Association against liability for property damage and personal injury occurring on or in connection with Common Area as Board may deem appropriate.

B. A professional management firm shall be required to maintain in force such insurance as Board may determine and must submit evidence of such coverage to Association as required by Board.

C. Except as otherwise provided in any declaration of horizontal property regime governing the Condominium, each Owner shall be solely responsible for loss of or damage to the improvements and personal property located in or on its Unit, however caused, and shall be solely responsible for obtaining its own insurance to cover any loss and risk.

D. Association shall obtain a fidelity bond in an amount adjusted from time to time to be equal to 200% of the annual estimated Common Expenses and reserves, which bond shall cover acts of dishonesty or fraud of any member, employee or agent of Association that handles Association's funds. A third party management company shall also be required to obtain such bond to the extent it handles Association's funds.

E. Neither Declarant, Association or Board, nor any member, director, officer, employee or agent of any of the foregoing, shall be held liable or otherwise subject to any claim
for damages if discretion to obtain insurance permitted by the Declaration is exercised or not exercised.

F. All proceeds of casualty insurance shall be used for restoration of the casualty.

4. MAINTENANCE ASSESSMENTS.

A. Purpose of Assessments. Assessments levied by Association shall be used exclusively for the purpose of preserving the value of Units, and promoting health, safety and welfare of Owners, users and occupants of the same, and, in particular, for improvement, repair, replacement, operation and maintenance of Common Area, including, but not limited to, payment of taxes and insurance thereon, if any, for cost of labor, equipment, material and management furnished with respect to Common Area, and for any and all other Common Expenses. Each Owner, including Declarant, shall pay to Association:

(i) A Pro-Rata Share of annual Assessments fixed, established and determined from time to time as hereinafter provided; and

(ii) A Pro-Rata Share of any special Assessments fixed, established and determined from time to time as hereinafter provided.

B. Pro-Rata Share. The Pro-Rata Share of each Owner for purposes of this paragraph shall be the percentage obtained by dividing one hundred percent (100%) by the total number of Units.

C. Liability for Assessments. Each Assessment, together with any interest thereon and costs of collection thereof, including attorneys’ fees, shall be the personal liability of each Owner, shall be a charge on each Unit, and shall constitute a lien upon each Unit from and after the due date thereof in Association’s favor. Each Assessment, together with any interest thereon and costs of collection thereof, including attorneys’ fees, shall also be the personal obligation of the Owner of each Unit at the time when the Assessment is due. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagor under any mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve any Unit from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability imposed hereby. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

D. Basis of Annual Assessments. Board shall propose and Owners shall approve an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for such fiscal year, together with a reasonable allowance for contingencies and reserves as Board deems appropriate. A copy of such budget shall be delivered to each Owner at least thirty (30) days prior to the beginning of such fiscal year.
E. Basis of Special Assessments. Should Board at any time during a fiscal year determine that Assessments levied for such year may be insufficient to pay Common Expenses for such year, Board shall call a special meeting of Association to consider imposing such special Assessments as may be necessary to meet Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners present or represented at such meeting, and shall be due and payable on the date(s) determined by such Owners or, if not so determined, by Board.

F. Fiscal Year, Date of Commencement of Assessments, Due Dates. Association's fiscal year shall be the calendar year and may be changed from time to time by Board. The first annual Assessment shall be made for the balance of Association's fiscal year in which Declaration first conveys ownership of a Unit to another Owner. Annual Assessments shall be due and payable monthly on the first day of each calendar month, except that Board may from time to time by resolution authorize and requires payment of annual Assessments in quarterly, semi-annual or annual installments.

G. Duties of Association.

1. Board shall cause proper books and records of levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth each Unit and each Assessment applicable thereto, which books and records shall be kept in Association's office and shall be available for inspection and copying by such Owner (or a duly authorized representative of any Owner) during Association's regular business hours. Except as otherwise provided in the By-Laws, Association shall cause financial statements to be prepared at least annually for each fiscal year of Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. Board shall cause written notice of all Assessments levied by Association to be mailed to Owners or their designated representatives. Notices of amounts of annual Assessments and amounts of installments thereof shall be sent annually within thirty (30) days following determination thereof. Notices of amounts of special Assessments shall be sent as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. If such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of each notice.

2. Association shall promptly furnish, upon request to any Owner, prospective purchaser, title insurance company or Mortgagee a certificate in writing signed by an officer or agent of Association, setting forth the extent to which Assessments have been levied and paid with respect to any Unit in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
(iii) Association shall notify any Mortgagee from which it has received a written request for notice: (a) of any default in performance of any obligation under the Declaration by any Owner that is not cured within sixty (60) days; (b) of any condemnation or casualty loss that affects either a material portion of the Subdivision or the Unit securing its loan; and (c) of any proposed action that requires consent of Mortgagees or a specified percentage thereof as set forth in the Declaration.

H. Nonpayment of Assessments: Remedies of Association:

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and cost of collection thereof, including attorneys' fees, become a continuing lien on the Unit against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Unit as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner, and all successors and assigns of such Owner, in such Unit provided, however, that such lien shall be subordinate to any first mortgage on such Unit recorded prior to the date such Assessment becomes due.

(ii) If any Assessment upon any Unit is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum, and Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against such Owner's Unit, and there shall be added to the amount of such Assessment all costs of such action, including Association's attorneys' fees, and, if a judgment is obtained, such judgment shall include such interest, costs and attorneys' fees.

I. Adjustments: If amounts actually expended by Association for Common Expenses in any fiscal year exceed amounts budgeted and assessed for Common Expenses for such fiscal year, the amount of such deficit may be recouped either by inclusion in the budget for annual Assessments for the following fiscal year or by making one or more special Assessments for such purpose, at Association's option. If amounts budgeted and assessed for Common Expenses in any fiscal year exceed amounts actually expended by Association for Common Expenses for such fiscal year, each Owner's Pro-Rata Share of such excess shall be a credit against Assessments due from such Owner for the next fiscal year(s).

J. Notice and Quorum for Imposition of Special Assessments: Written notice of any meeting called for the purpose of imposing special Assessments shall be sent to all Owners not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be
called subject to the same notice requirements, and the required quorum at the subsequent
meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent
meeting shall be held more than sixty (60) days following the preceding meeting.

X. Subordination of Lien to Mortgages. The Lien of Assessments provided for shall
be subordinate to the Lien of any first mortgage. Sale or transfer of any Unit shall not affect
the Assessment lien. No sale or transfer shall relieve the Owner of such Unit from liability for
any Assessments becoming due prior to such sale or transfer, provided, however, that sale or
transfer of any Unit pursuant to foreclosure of any first mortgage on such Unit (without the
consent of the Association in such foreclosure action), or any proceedings or deed in lieu
thereof, shall extinguish the lien of all Assessments first becoming due after the date of
recordation of such mortgage but prior to the date of such sale or transfer.

5. CHARACTER OF SUBDIVISION.

A. In General. No structure or other improvement shall be erected, altered, placed or
permitted to remain upon any Lot, other than one detached single-family dwelling andesidential accessory buildings, subject to the limitations in the Restrictions. No structure or other
improvement shall be erected, altered, placed or permitted to remain upon Block A, other than
twenty-four (24) attached single-family dwellings. No Unit shall be used for a group home.

B. Accessory Outbuilding Prohibited. Except as may otherwise be provided in the
Restrictions, no accessory outbuilding shall be erected on any Lot or Block.

C. Occupancy or Residential Use of Partially Completed Dwellings Prohibited. No
dwelling constructed on any Lot or Block shall be occupied or used for residential purposes or
human habitation until it has been substantially completed in accordance with the
approved building plan. The determination whether a dwelling has been substantially completed
in accordance with the approved building plan shall be made by Committee and such decision
shall be binding on all parties.

D. Other Restrictions. The Real Estate shall be subject to all covenants, restrictions
and limitations of record, and to all governmental zoning authority and regulations affecting
the Real Estate.

E. Fences, Light Fixtures, etc. Any deck, patio, exterior light fixture, basketball
goal, or other exterior structure or other improvement must be approved in advance and in
writing by Committee as to size, location, height and composition.

F. Landscaping or Exterior Construction. Any proposed landscaping on any Lot or
Block, or construction on or alteration of any Lot or Block, or any building thereon, must be
approved in advance and in writing by Committee as set forth in paragraph 7. The following
requirements shall be applicable unless Committee shall approve otherwise: (1) all utility
facilities in the Subdivision will be underground, except where required to be placed above
ground by the individual utility supplier; (ii) each driveway in the Subdivision will be of concrete material; (iii) no additional parking will be permitted on a Lot or Block other than in the existing driveways; (iv) all garage doors in the Subdivision will be of a hardboard, metal or wood material; (v) wherever possible, all utility meters and HVAC units in the Subdivision will be located in places unseen or screened from the fronts of the dwellings; (vi) no outside fuel storage tanks will be permitted and no gasoline storage will be permitted above or below ground in the Subdivision; (vii) all windows in the Subdivision will be factory or on the job painted; no raw aluminum windows will be permitted and all windows will have an approved thermal break; (viii) all gutters and downspouts in the Subdivision will be factory painted; (ix) all roofing in the Subdivision will be of a consistent color scheme and a shingle-type material acceptable to Committee; (x) all roof pitches will be acceptable to Committee; (xi) no metal, fiberglass or similar type material awnings or patio covers will be permitted in the Subdivision; (xii) no swimming pools will be permitted in the Subdivision; and (xiii) modular-type construction is not permitted in the Subdivision, provided, however, that prefabricated home components such as walls and roof trusses will not be considered modular-type construction.

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

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

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

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

(i) Mow and care for the lawns at such times as may reasonably be required in order to prevent unsightly growth of vegetation and weeds;

(ii) Remove all debris or rubbish;

(iii) Prevent existence of any other condition that reasonably tends to detract from or diminish aesthetic appearance of the Subdivision;

(iv) Cut down and remove dead trees; and

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
6. MISCELLANEOUS PROVISIONS AND PROHIBITIONS

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

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

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

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

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

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

G. Temporary Structures. No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot or Block, except such temporary structures as Declarat. may approve in advance and in writing for the purposes of construction, sales or related purposes, or as
the Committee shall have in advance and in writing. No overnight camping shall be permitted on any Lot or Block.

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

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

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

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

7. DEVELOPMENT CONTROL COMMITTEE

A. Powers of Committee

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

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

(a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of the Declaration;
(b) the design, color scheme or use of materials is not in harmony with the Subdivision; or

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

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

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

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

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

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

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

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

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

C. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any provision of the Declaration shall be held to be a waiver by such party of (or an estoppel of such party to assert) any right available to it upon occurrence, recurrence or continuation of such violation.

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

10. **EFFECT OF BECOMING AN OWNER**

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

11. TITLES.

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

12. DURATION AND AMENDMENT.

A. The Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both Owners of at least ninety percent (90%) of the Units and Mortgages of at least ninety percent (90%) of the mortgaged Units vote to terminate the Declaration, in which case the Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by the Declaration shall be perpetual unless otherwise expressly indicated.

B. Association shall have the right to amend the Declaration at any time, and from time to time, upon recommendation of an amendment to the Association by Board, and subsequent approval of such amendment by both Owners of at least seventy-five percent (75%) of the Units and Mortgages of at least ninety percent (90%) of the mortgaged Units; provided, however, that any such amendment of the Declaration shall require Declarant's prior written approval no longer than Declarant owns any Unit. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the Association's duly authorized officers, and by Declarant when such approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Marion County, Indiana.

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

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

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

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

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

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

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

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

13. RIGHTS OF MORTGAGEES.

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

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

If to Declarant, 700 Market Tower
the Association or 10 West Market Street
the Committee: Indianapolis, Indiana 46204-2960
Attention: Harold D. Garrison

Notices to an Owner shall be sent to the address provided by such Owner to Association or to such Owner's Unit. Declarant, Association and Committees may change address for notice purposes by notice to Owners. An Owner may change address for notice purposes by notice to Association.

15. CONDEMNATION.

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

16. CONFLICTING PROVISIONS.

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

17. SEVERABILITY.

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

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

WATERMARK TOWNHOMES, L.L.C.

By: ____________________________
    Carolleen M. Allig, Corp A Mem
STATE OF INDIANA

COUNTY OF MARION

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

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

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


This instrument was prepared by Bruce R. Kerr, attorney-at-law, 700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204-2960, telephone (317) 464-8200.
the following described real estate located in the Northeast Quarter of Section 8, Township 15 North, Range 3 East in Center Township, Marion County, Indiana. Said real estate being a part of OUTLOT NINE of the DONATION LANDS to the City of Indianapolis, Indiana:

Beginning at the intersection of the West right-of-way line of Senate Avenue and the South right-of-way line of Walnut Street, as said streets are now located and improved, said intersection being also the Northeast corner of LOT NUMBER ONE (1) in JAMES BLAIR'S SUBDIVISION OF OUTLOT NINE of the DONATION LANDS to the City of Indianapolis, Indiana, the point of which is recorded on page 281 of Plat Book 1, in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 01 minute 14 seconds West (assumed bearing) on the West right-of-way line of said Senate Avenue 179.83 feet; thence North 59 degrees 46 minutes 46 seconds West 125.50 feet; thence South 00 degrees 01 minute 14 seconds West parallel with West right-of-way line of said Senate Avenue 204.82 feet to the North right-of-way line of North Street as now located and improved; thence North 90 degrees 00 minutes 00 seconds West on the North right-of-way line of said North Street 300.99 feet to the Southeast corner of a piece of Real Estate described in Instrument No. 900083564 in said Recorder's Office; thence North 00 degrees 05 minutes 40 seconds East on the Easterly line of said Real Estate 391.27 feet to the Northeast corner of said Real Estate described in Instrument No. 900083564 to the aforementioned South right-of-way line of Walnut Street; thence South 00 degrees 40 minutes 23 seconds East on said South right-of-way line 449.99 feet to the place of beginning, containing 3.20 acres, more or less.
CODE OF BY-LAWS OF
WATERMARK HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

Definitions

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Declaration of Covenants and Restrictions of Watermark dated September 19, 1995, and recorded October 3, 1995, as Instrument No. 95-124128 in the Office of the Recorder of Marion County, Indiana (the "Declaration").

ARTICLE II

Identification and Applicability

Section 2.01. Identification and Adoption. These By-Laws are adopted to govern Watermark Homeowners Association, Inc. (the "Association"), in the conduct of its activities and duties pursuant to its Articles of Incorporation (the "Articles") and the Declaration. The Declaration is incorporated herein by reference, and all of the covenants, conditions, rights, restrictions and liabilities contained therein shall apply hereto and govern interpretation hereof. The provisions hereof shall apply to the Subdivision, and to administration and conduct of the Association's affairs.

Section 2.02. Individual Application. All Owners, their guests, invitees and tenants, and any other person that might now or hereafter use or occupy a Unit or any part of the Real Estate, shall be subject to the rules, restrictions, terms and conditions set forth herein and in the Declaration, as amended from time to time.

Section 2.03. Membership. The Association's members shall be the Owners, and the terms "member" and "Owner," as used herein, in the Declaration or in the Articles, shall be interchangeable. A member shall be deemed to be in good standing so long as it remains in compliance with the covenants and obligations of an Owner hereunder and under the Declaration. Each member shall be entitled to a certificate signed by the President or a Vice President, and attested by the Secretary or an Assistant Secretary, certifying the membership held by it and such other information as may be required by law. The form of such certificate shall be prescribed by the Board (as hereinafter defined). Such certificate shall not be transferable.
ARTICLE III

Meetings of Association

Section 3.01. Purpose of Meetings. At least annually, and at such other times as may be necessary or appropriate, an Owners' meeting shall be held for the purpose of electing the Board, approving the annual budget and providing for collection of Common Expenses, and for such other purposes as may be required hereby, by the Declaration or by the Articles.

Section 3.02. Annual Meetings. The first annual Owners' meeting shall be held in April, 1996. All subsequent annual Owners' meetings shall be held on any date selected by the Board that is within thirty (30) days of the anniversary of the first annual meeting. At each annual meeting, the Owners shall elect the Board in accordance with the provisions hereof and transact such other business as may properly come before the meeting.

Section 3.03. Special Meetings. A special Owners' meeting may be called by resolution of a majority of the Board, or upon written petition of the President or the Owners of not less than ten percent (10%) of the Units. The resolution or petition shall be presented to the President or the Secretary, and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the resolution or petition.

Section 3.04. Notice and Place of Meetings. All Owners' meetings shall be held at such location within the State of Indiana as may be designated by the Board. Written notice stating the date, time and place of any Owners' meeting, and, in the case of a special meeting or when otherwise required by law, the purpose(s) for which the meeting is called, shall be mailed by the Secretary to each Owner and, if applicable, to each Mortgagee not less than thirty (30) days prior to the date of such meeting. If, at any meeting, an amendment to the Declaration or the Articles is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. The notice shall be mailed by first class U.S. Mail, postage prepaid, to the Owners at their respective addresses as the same appear upon the Association's records, and, if applicable, by first class U.S. Mail, postage prepaid, to the Mortgagees at their respective addresses as the same appear on the Association's records. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting. Furthermore, notice of any meeting may be waived by any Owner in writing filed with the Secretary.

Section 3.05. Voting.

(a) Number of Votes. To avoid fractional votes and to facilitate orderly conduct of the meeting, each Unit shall be entitled to one (1) vote on each matter coming before the meeting.

(b) Multiple Owners. When the Owner of a Unit constitutes more than one (1) person or is an entity, there shall only be one (1) voting representative entitled to cast the vote allocable to such Unit. At the time of acquisition
of title to a Unit by more than one (1) person or an entity, all persons constituting such Owner, or the chief executive officer, general partner or manager of such entity, shall file with the Secretary an irrevocable proxy appointing one (1) of such persons or a designated individual on behalf of such entity as the voting representative for such Unit, which shall remain in effect until such voting representative is replaced in like manner, relinquishes such appointment in writing, becomes incompetent or dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to Subsection (c) of this Section 3.05, which shall constitute relinquishment of his right to act as voting representative for such Unit at such meeting(s).

(e) **Proxy.** An Owner may vote either in person or by duly authorized and designated attorney-in-fact. When voting is by proxy, the Owner shall duly designate its attorney-in-fact in writing and shall deliver such written designation to the Secretary prior to commencement of the meeting.

(d) **Quorum.** Except where otherwise expressly provided herein, in the Declaration or in the Articles, the presence of Owners owning in excess of sixty percent (60%) of the total number of Units shall constitute a quorum at all meetings. The term "majority of Owners" or "majority of the vote," as used herein, shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total number of Owners as determined by the applicable provisions set forth in the Declaration, and the term "majority vote" shall mean more than fifty percent (50%) of the total votes present or represented at such meeting. Except where otherwise expressly provided herein, in the Declaration or in the Articles, any action required or permitted to be taken at any Owners' meeting with respect to any question or matter shall be taken pursuant to majority vote.

(e) **Conduct of Meeting.** The President shall chair each Owners' meeting. He shall call the meeting to order at the duly designated time, and business shall be conducted in the following order:

1. **Reading of Minutes.** The Secretary or an Assistant Secretary shall read the minutes of the last annual or special meeting.

2. **Treasurer's Report.** The Treasurer or an Assistant Treasurer shall report on the Association's financial condition, and answer relevant questions concerning the Common Expenses and financial report for the current fiscal year and the proposed budget for the following fiscal year.
(3) **Budget.** The proposed budget for the following fiscal year shall be presented to the Owners for approval or amendment.

(4) **Election of Board.** Nominations for the Board may be made by an Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary at least forty-five (45) days prior to the annual meeting. Voting for Directors (as hereinafter defined) will be by paper ballot. The ballot shall contain the name of each person nominated to serve as Director. Each Owner may cast its vote for as many nominees as are to be elected; however, it shall not be entitled to accumulate its votes. Those persons receiving the highest numbers of votes shall be elected.

(5) **Other Business.** Other business may be brought before the meeting only upon a written request submitted to the Secretary at least forty-five (45) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the vote.

(6) **Committee Reports.** Reports of committees designated to supervise and advise on respective segments of development, construction, landscaping, maintenance and operations assigned by the Board shall be presented.

(7) **Adjournment.** Upon completion of all business before the meeting, the President, upon any Owner's motion, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Owners for the following fiscal year.

(f) **Action by Consent.** Any action required or permitted to be taken at any Owners' meeting may be taken without a meeting if, prior to such action, a written consent to such action is signed by all Owners and filed with the minutes of the Association's proceedings.

Section 3.06 **Control During Development.** Notwithstanding any other provision hereof, of the Declaration or of the Articles, from and after the date of the Declaration until the Control Transfer Date, the Association shall be governed by an initial Board appointed by Declarant. The initial Board shall hold all rights and powers of the Board hereunder, under the Declaration and under the Articles, except as specifically limited in this Section 3.06. The initial Board may
appoint from time to time from among the Owners committees to advise and assist it in performance of its functions. The rights and powers of the initial Board shall be limited as follows:

(a) The initial Board shall have no power to reallocate voting power among the Owners in any manner contrary to the Declaration.

(b) The initial Board shall not take any action requiring any Mortgagee's vote or consent unless such vote or consent is obtained.

On the Control Transfer Date, the initial Board's rights and powers shall terminate, and the Association shall thereafter be governed in accordance with the provisions hereof, of the Declaration and of the Articles, other than this Section 3.06.

ARTICLE IV

Board of Directors

Section 4.01. Constituency. The Association's affairs shall be governed and managed by the Board of Directors (collectively, the "Board"; individually, "Directors"). The initial Board shall be comprised of three (3) persons appointed by Declarant. After expiration of the term of the initial Board as provided in Section 3.06, the constituency of the Board may be increased to, but shall not exceed, five (5) and may be decreased to, but shall not be below, three (3). The number of Directors shall be increased or decreased in accordance with this Section 4.01 only if the increase or decrease is properly brought before the Owners at an annual meeting or a special meeting called for such purpose and approved by majority vote. No person shall be eligible to serve as a Director unless he is (i) an Owner or the voting representative of an Owner that is not an individual, or (ii) an agent, employee, attorney or representative of Declarant. Except temporarily due to resignation, removal, death or incapacity of a Director, there shall be an odd number of Directors at all times.

Section 4.02. Additional Qualifications. When an Owner constitutes more than one (1) person or is an entity, then the voting representative of such Owner shall be eligible to serve as Director.

Section 4.03. Term of Office and Vacancy. The Board shall be elected at each annual Owners' meeting, subject to the limitations set forth in Section 3.06. Any vacancy occurring in the Board shall be filled by vote of a majority of the remaining Directors or by majority vote of the Owners if a Director is removed in accordance with Section 4.04.

Section 4.04. Removal of Directors. After expiration of the term of the initial Board, a Director may be removed with or without cause by majority vote at a special Owners' meeting duly called and constituted. In such case, his successor shall be elected at the same meeting from eligible persons nominated at the meeting. A Director selected shall serve until the next annual Owners' meeting, or until his successor is duly elected and qualified.
Section 4.05. Duties of Board. The Board shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board’s business judgment, the following:

(a) Repair and replacement of the Common Area;

(b) Landscaping maintenance of the Common Area;

(c) Assessment and collection from the Owners of each Owner’s Pro-Rata Share of the Common Expenses;

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

(e) Preparation and delivery annually to the Owners of a full accounting of all receipts and expenses for each fiscal year, which accounting shall be delivered to each Owner within ninety (90) days after the end of such fiscal year;

(f) Maintenance of a current, accurate and detailed record of receipts and expenditures affecting the Common Area, specifying and itemizing the Common Expenses (which record shall be available for examination by any Owner at any time during normal business hours); and

(g) Procurement and maintenance of all insurance coverage required by the Declaration to be maintained for the Subdivision.

Section 4.06. Powers of Board. The Board shall have such powers as are reasonably necessary or appropriate to accomplish performance of its duties. These powers include, but are not limited to, the power:

(a) To employ a professional managing agent or real estate management company (a “Managing Agent”) to assist the Board in performing its duties;

(b) To purchase for the Owners’ benefit such equipment, materials, labor and services as may be necessary in the Board’s judgment;

(c) To procure all insurance required or permitted under the Declaration, for the benefit of the Owners and the Association;

(d) To employ legal counsel, architects, contractors, accountants and others as in the Board’s judgment may be necessary or desirable in connection with the Association’s business and affairs;
(e) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(f) To open and maintain a bank account or accounts in the Association's name;

(g) Subject to the provisions of the Declaration, to adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and enjoyment of the Common Area; provided, however, that the Board shall give the Owners written notice of such rules and regulations, and any revision, amendment or alteration thereof; and

(h) To appoint one or more committees to supervise and interpret the policies and regulations adopted by the Board, including a Development Control Committee as more particularly described in the Declaration.

Section 4.07. Limitations on Board Action. After expiration of the term of the initial Board, the Board's authority to enter into contracts shall be limited to contracts involving a total expenditure of less than five percent (5%) of the annual budget for the current year, unless prior approval of a majority of Owners present at any meeting is obtained, except in the following cases:

(a) Supervision and management of replacement or restoration of any portion of the Common Area damaged or destroyed by fire or other casualty, if the cost thereof is payable out of insurance proceeds actually received; and

(b) Proposed contracts and expenditures expressly set forth in an annual budget approved by the Owners.

Section 4.08. Compensation. No Director shall receive any compensation for his services as such, except as expressly authorized by majority vote.

Section 4.09. Meetings. Regular Board meetings shall be held quarterly at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular Board meetings to each Director by first class U.S. Mail, postage prepaid, at least fifteen (15) days prior to the date of such meetings. At any time after expiration of the term of the initial Board, a special Board meeting may be called by the President or one-third (1/3) of the Directors. The person(s) calling such meeting shall give written notice thereof to the Secretary, who shall by first class U.S. Mail, postage prepaid, and at least fifteen (15) days prior to the date of such special meeting, but immediately upon receipt of such notice, give notice to the Directors. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice.

Section 4.10. Waiver of Notice. Before any Board meeting, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to giving of
such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If a majority of Directors is present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4.11. Quorum and Voting at Meetings. At any Board meeting, presence of a majority of the Directors shall constitute a quorum. Any action required or permitted to be taken at any Board meeting with respect to any question or matter shall be taken pursuant to the affirmative vote of a majority of the Directors present at the meeting, so long as a quorum exists.

Section 4.12. Action by Consent. Any action required or permitted to be taken at any Board meeting may be taken without a meeting if, prior to such action, a written consent to such action is signed by all Directors and filed with the minutes of Board proceedings.

Section 4.13. Committees. The President or the Board may from time to time create and appoint standing and special committees from among the Owners to undertake studies, make recommendations, carry on functions for the purpose of efficiently accomplishing the Association's purposes, and perform such other duties as the President or the Board may from time to time prescribe.

ARTICLE V

Officers

Section 5.01. Officers of Association. The principal Association officers shall be the President, one or more Vice Presidents, the Secretary and the Treasurer, all of whom shall be elected by the Board. The Directors may appoint one or more Assistant Secretaries and/or Assistant Treasurers, and such other officers as in their judgment may be necessary. Any two (2) offices may be held by the same person, except that the offices of President and Secretary shall not be held by the same person.

Section 5.02. Election of Officers. The Association's officers shall be elected annually by the Board at the first Board meeting following each election of Directors. Officers may serve unlimited consecutive terms. Any officer may be removed with or without cause, and his successor elected, at any regular Board meeting or any special Board meeting called for such purpose.

Section 5.03. Vacancies. Whenever any vacancy occurs in any Association office for any reason, such vacancy may be filled by the Board at any meeting thereof, and any officer so elected shall hold office until expiration of the term of the officer causing the vacancy, or until his successor is duly elected and qualified.

Section 5.04. Compensation. No officer shall receive any compensation for his services as such, except as fixed by duly recorded Board action.
Section 5.05. The President. The President shall be elected from among the Directors and shall be the Association's chief executive officer. The President shall preside at all Owners' and Board meetings, and shall have and discharge all general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under Indiana law.

Section 5.06. The Vice Presidents. The Vice Presidents shall be elected from among the persons qualified to serve as Director, and shall perform all duties incumbent upon the President during the President’s absence or disability. The Vice Presidents shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed on them by the Board or the President.

Section 5.07. The Secretary. The Secretary shall be elected from among the persons qualified to serve as Director. The Secretary shall attend all Owners’ and Board meetings, shall keep or cause to be kept true and complete records of proceedings of such meetings, and shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. If required, the Secretary shall attest execution by the Association of deeds, leases, agreements and other official documents. The Secretary shall specifically ensure that all notices of Owners’ and Board meetings are duly given in accordance with the provisions hereof.

Section 5.08. The Treasurer. The Board shall elect from among the persons qualified to serve as Director a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the Association’s financial condition, and perform all other duties incident to the office of Treasurer. The Treasurer shall be legal custodian of all monies, notes, securities and other valuables which may from time to time come into the Association’s possession. The Treasurer shall immediately deposit all Association funds coming into his hands in some reliable bank or other depository designated by the Board, and shall keep such bank account in the name and for the exclusive benefit of the Association.

Section 5.09. Assistant Officers. The Board may from time to time designate and elect from among the persons qualified to serve as Director one or more Assistant Secretaries and/or Assistant Treasurers, who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them, and such other powers and duties as these By-Laws or the Board may prescribe.

ARTICLE VI

Additional Rights and Duties of Board

Subject to the provisions of the Declaration, the Board may promulgate such reasonable rules and regulations regarding operation of the Common Area as the Board may deem desirable, including but not limited to use of the Common Area. Such rules as are adopted may be repealed or amended by the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be mailed promptly to all Owners at least fifteen
(15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be enforced by the Board in a consistent and nondiscriminatory manner.

ARTICLE VII

Procedures for Assessments

Section 7.01. Obligations of Owners. Each Owner shall automatically and mandatorily become an Association member, and be entitled to all privileges and subject to all obligations thereof. All Owners, by their acceptance of their respective deeds to their Units, shall be bound by the conditions, restrictions and obligations contained herein, and in the Declaration, the Articles, and the Association's rules and regulations.

Section 7.02. Annual Accounting. Annually, within ninety (90) days after the close of each fiscal year, the Board shall cause to be prepared and mailed to each Owner a financial statement showing all receipts and expenses received, incurred and paid by the Association during such fiscal year.

Section 7.03. Proposed Annual Budget. Annually, prior to the annual Owners' meeting, the Board shall cause to be prepared and mailed to each Owner a proposed annual budget for the following fiscal year estimating the total Common Expenses for such fiscal year. The proposed annual budget shall be submitted to the Owners at the annual meeting for approval and, if so approved, shall be the basis for annual Assessments for the following fiscal year. At the annual Owners' meeting, the proposed annual budget may be approved in whole or in part, or amended in whole or in part, by majority vote (provided a quorum is present); provided, however, that in no event shall the annual Owners' meeting be adjourned until an annual budget is approved at such meeting.

Section 7.04. Annual Assessments. The annual budget as approved shall, based on the estimated cash requirements for Common Expenses in the following fiscal year set forth therein, contain a proposed annual Assessment against each Unit based on the Pro-Rata Share of each Unit times the total amount of the budget. The annual Assessment against each Unit shall be paid in accordance with the Declaration. The annual budget shall contain provision for a reserve fund for replacement or major repair of Common Area based upon good faith estimates of replacement costs and useful lives of the Common Area. The total of all such annual Assessments shall be applied to payment of the Common Expenses provided for in the annual budget, including expenses for maintenance and repair of the Common Area, necessary insurance costs, reserve funds for replacements and maintenance, costs of operation of Association community activities and facilities, and any other necessary or appropriate expenses for maintenance and operation of the Subdivision.

Section 7.05. Special Assessments. In addition to annual Assessments, the Association may levy such special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) expense of any
other contingency or event not provided for in the Association's annual budget, reserves and working capital; provided, however, that no special Assessment shall be levied without the approval of two-thirds (2/3) of the Owners present or represented at a meeting duly called for such purpose. Each Owner shall pay the Association a special Assessment based on its Pro-Rata Share times the total sum approved. The Association may, in connection with levy of any special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

Section 7.06. Adjustments. If the approved budget and annual Assessments, plus the Association's reserves and working capital, prove insufficient to meet the Association's actual expenses in any fiscal year, such deficiency may be corrected through one or more special Assessments.

Section 7.07. Temporary Budget and Assessments. If for any reason an annual budget and annual Assessments for any fiscal year have not been determined as of the beginning of such year, the budget and annual Assessments in effect during the preceding fiscal year shall continue in effect until such time as the annual budget and annual Assessments are determined in accordance with the Declaration and these By-Laws; provided, however, that such budget and Assessments may be increased by up to twelve percent (12%) as the Board may deem necessary in the temporary budget and Assessments.

Section 7.08. Reserve and Working Capital Funds. The Association shall establish a reserve fund for repair and replacement of those portions of the Common Area that must be replaced periodically, based upon good faith estimates of the useful lives and replacement costs of such items made or obtained by the Association. The reserve fund shall be funded by annual Assessments and not by special Assessments. Extraordinary expenditures not originally included in the annual budget that become necessary during a fiscal year shall be charged first against the reserve fund so established before any special Assessment is made or levied therefor. In addition to the reserve fund, a working capital fund shall be established and maintained by the Association. At the closing of the initial sale of each Unit to an Owner other than Declarant, the Association shall be paid by the purchaser of such Unit an amount equal to one month's installment of the annual Assessment for such Unit, which amount shall be retained by the Association as working capital. In addition, each Owner shall maintain on deposit with the Association an amount at least equal to two months' installments of the annual Assessment for its Unit for the current fiscal year as a security deposit. Amounts paid or deposited into the working capital fund shall not relieve an Owner from responsibility for annual Assessments due in accordance with this Article VII. All amounts held by the Association pursuant to this Section 7.08 shall be maintained in a federally insured, interest-bearing account in a bank, or savings and loan association, doing business in Indiana, and all interest thereon shall be added to and deemed a part of such fund. Notwithstanding anything contained herein to the contrary, Declarant shall not be required to fund reserves; maintain on deposit with the Association the contribution to the working capital fund described in this Section 7.08; or fund the security deposit.
Section 7.09. Status of Funds Collected by Association. All funds collected pursuant to this Article VII shall be held and expended by the Association solely for the purposes designated herein, and, except for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be deemed to be held for the use, benefit and account of all Owners for payment of Common Expenses in accordance with the Owners' respective Pro-Rata Shares.

ARTICLE VIII

Notices and Mortgagors

Section 8.01. Notice to Association. Any Owner that places a first mortgage lien upon its Unit or the Mortgagee thereof shall notify the Secretary, and provide the Mortgagee's name and address. A record of Mortgagees' names and addresses shall be maintained by the Secretary. Any notice required to be given to any Mortgagee pursuant to the terms hereof or of the Declaration shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage, and the Mortgagee's name and address, are furnished to the Secretary, either by an Owner or the Mortgagee, no notice to such Mortgagee as may otherwise be required hereby or by the Declaration shall be required, and such Mortgagee shall not be entitled to vote on any matter on which it otherwise may be entitled to vote by virtue hereof or of the Declaration, or by proxy granted to such Mortgagee in connection with the mortgage.

Section 8.02. Notices to Mortgagees. The Association shall promptly provide to any Mortgagee, of which the Association has been provided notice under Section 8.01, notice of any of the following:

(a) Any condemnation or casualty loss that affects a material portion of the Common Area or improvements on the Unit that is the subject of its mortgage;

(b) Any delinquency in payment of annual or special Assessments owed by the Owner of the Unit that is the subject of its mortgage, if such delinquency continues for more than sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires consent of a specified percentage of Mortgagees.

Section 8.03. Availability of Information. The Association shall keep and make available to prospective purchasers of Units, upon request at reasonable business hours, copies hereof, and of the Declaration, the Association's current rules and regulations, if any, and the Association's most recent financial statements.
ARTICLE IX

Miscellaneous

Section 9.01. Corporate Seal. The Association shall have no seal.

Section 9.02. Execution of Contracts and Other Documents. Unless otherwise ordered by the Board, all written contracts and other documents entered into by the Association shall be executed on the Association's behalf by the President or a Vice President, and, if required, attested by the Secretary or an Assistant Secretary.

Section 9.03. Fiscal Year. The Association's fiscal year shall begin on January 1 of each year and end on the immediately following December 31.

ARTICLE X

Amendment to By-Laws

The Board shall have the right to amend these By-Laws at any time, and from time to time; provided, however, that any such amendment shall require Declarant's written approval so long as Declarant owns any Unit. These By-Laws may be amended by Declarant in the same manner and to the same extent as the Declaration.

CERTIFICATION

The undersigned, being first duly sworn, hereby certifies that the within and foregoing Code of By-Laws of Watermark Homeowners Association, Inc., is true and correct.

[Signature]

Jack V. Reutemann, Incorporator
and Registered Agent
STATE OF INDIANA

COUNTY OF MARION

Subscribed and sworn to before me, a Notary Public in and for said County and State, this _ day of November, 1996.

(Stacey L. Bemlow)
Stacey L. Bemlow
of Marion County, Indiana

Cross Reference Instrument No. 95-124127

AMENDED AND RESTATED PLAT RESTRICTIONS
FOR WATERMARK SUBDIVISION

The undersigned WATERMARK TOWNHOMES, L.L.C., an Indiana limited liability company ("Declarant"), having obtained the consent of all other owners of record of Watermark I subdivision (the "Subdivision") pursuant to that certain Consent to Vacation, Replat and Amendment of Plat Restrictions and Declaration of Covenants and Restrictions of Watermark I Subdivision (the "Consent"), recorded on June 13, 1997, as Instrument No. 97-0082145, which Subdivision is located within that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate"), does hereby completely amend and restate that certain Plat Restrictions for Watermark Subdivision, recorded October 3, 1995, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 95-124127, and certifies that it has laid off, replatted and subdivided the Real Estate into twenty-nine (29) lots, numbered 1 through 29, inclusive (individually, a "Lot"; collectively, the "Lots"), and nine (9) blocks, designated alphabetically as "A," "B," "C," "D," "E," "F," "G," "H," and "I" (individually, a "Block"; collectively, the "Blocks") in accordance with the Final Plat of Watermark II, recorded June 13, 1997, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-0082146 (the "Plat"), and does hereby subject the Real Estate to the following covenants, conditions and restrictions:

1. DEFINITIONS

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Amended and Restated Declaration of Covenants and Restrictions of Watermark (the "Declaration") recorded on June 13, 1997, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-0082147.

2. STREETS

All streets in the Subdivision shall be private. Public street access will be solely to North Street, Senate Avenue and Walnut Street.

3. EASEMENTS FOR UTILITIES

Portions of Blocks A and B, and of the Lots, are subject to perpetual nonexclusive utility easements, as shown on the Plat, which are created and established for use of local utility companies for purposes of installation and maintenance of utilities to serve the Subdivision. Each Lot owner shall connect with any utility or amenity service (which shall include cable television) Declarant may deem necessary. Each Lot owner shall take title subject to the rights with respect to such utility easements of other Lot owners and local utility companies. All utility easements created or reserved on the Plat shall include the right of ingress, egress and access over adjacent property as may
reasonably be necessary properly to install or maintain the utility facilities located within such easement areas.

4. ZERO LOT LINE EASEMENTS

There is hereby imposed upon each Lot a perpetual easement for support, construction, reconstruction, maintenance and repair of any "zero lot line" wall of a dwelling or garage built on an abutting Lot. To the extent building improvements such as footings, utilities and cornice overhangs encroach on an abutting Lot, there is hereby imposed upon the abutting Lot a perpetual easement for the purpose of permitting such encroachment to be maintained; provided, however, that in no event shall any easement for underground footings or utilities, or inadvertent encroachments, exceed two (2) feet onto the servient Lot. Exercise of the easement rights imposed by this paragraph 4 must not result in damage or injury to another owner's improvements, and must not unreasonably interfere with or interrupt use or enjoyment of the servient Lot. Additionally, the owner of a dominant Lot benefiting from the easement rights imposed by this paragraph 4 shall, at its sole expense, promptly repair, replace or restore any and all improvements on the servient Lot that may be damaged by such Lot owner in the exercise of such easement rights. The owner of a servient Lot shall be held harmless from all loss, liability, cost or expense incurred in connection with exercise of any easement rights imposed by this paragraph 4 unless occasioned by such owner's negligence or willful misconduct.

5. COMMON AREA

Blocks B, C, D, E, F, G, H and I are hereby designated as Common Area. Drainage easements over and across all of Blocks B and H, and a portion of Block C as shown on the Plat, are hereby created and established to provide paths and courses for area and local storm drainage, either overlaid or in adequate underground conduit, including stormwater retention or detention areas, to serve the needs of the Subdivision and adjoining ground and/or public drainage systems. Under no circumstances shall such drainage easements be blocked in any way. Such drainage easement areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Declarant. It shall be the individual responsibility of each Lot owner to maintain the drainage across its Lot. A sanitary sewer easement over and across a portion of Blocks B and H as shown on the Plat is hereby created and established for use of governmental agencies having jurisdiction over sanitary waste disposal for purposes of installation and maintenance of a common sanitary sewer lateral to serve such Lots. It shall be the joint and several individual responsibility of such Lot owners to maintain such common sanitary sewer lateral. An access, egress and ingress easement over and across all of Blocks B and H is hereby created and established for use of all owners of Block A and Lots, and their guests, invitees, licensees, successors and assigns; and an access, egress and ingress easement over and across all of Block D is hereby created and established for use of owners of Lots 7 through 19, inclusive, and their guests, invitees, licensees, successors and assigns. In addition to such owners, guests, invitees, licensees, successors and assigns;
assigns, all public vehicles, specifically including, but not limited to, police, fire and other emergency vehicles, utility vehicles, trash and garbage collection vehicles, U.S. Postal Service vehicles, and privately owned delivery and service vehicles, shall have the right to enter upon and use Blocks B and D in the performance of their duties. Blocks E, F, G and I shall be used solely for installation and maintenance of fences, landscaping and/or walls for common enjoyment of the Owners.

6. **LANDSCAPING PLAN.**

Any landscaping provided on any Lot shall be subject to the Committee's prior written approval in accordance with the Declaration.

7. **DWELLING SIZE AND USE.**

All Lots shall be known and designated as residential lots. No business building shall be erected on any Lot; no business shall be conducted on any Lot, other than home occupations permitted by the Dwelling Districts Zoning Ordinance of Marion County, Indiana; and no Lot shall be used for a group home. No structure or other improvement shall be erected, altered, placed or permitted to remain on any Lot, other than one (1) detached single-family dwelling, not to exceed three (3) stories in height, and residential accessory buildings. Any garage or other residential accessory building erected on any Lot shall be of a permanent type of construction and shall conform to the general architecture and appearance of the dwelling erected on such Lot. Each dwelling erected on a Lot shall have (i) more than one story, and (ii) a minimum square footage of living space of 1,500 square feet with not less than 700 square feet of living space on the first floor. The square footage of living space is exclusive of porches, terraces, garages, carports, accessory buildings and basements.

8. **SITE VISIBILITY AND FENCING.**

No fence, wall, hedge or shrub planting, that obstructs sight lines at elevations between 2 and 6 feet above a street, shall be placed or permitted to remain on any Lot unless originally placed by Declarant or approved in advance by the Committee in accordance with the Declaration.

9. **SETBACK REQUIREMENTS.**

A. In General - No dwelling, other above-grade structure or other improvement shall be erected or placed on any Lot, except as provided herein.

B. Definitions - "Front Line" means (i) in the case of Lots 1 through 6, inclusive, the south lines of such Lots, (ii) in the case of Lots 7 through 19, inclusive, the west lines of such Lots, (iii) in the case of Lots 20 through 24, inclusive, the north lines of such Lots, and (iv) in the case of Lots 25 through 29, inclusive, the east lines of such Lots. "Rear Line" means (i) in the case of Lots 1 through 6, inclusive, the north lines of such Lots, (ii) in the case of Lots 7 through 19, inclusive, the east lines of such Lots, (iii) in the case of Lots 20 through 24, inclusive, the south lines of such Lots.
Lots, and (iv) in the case of Lots 25 through 29, inclusive, the west lines of such Lots. "Side Line" means (i) in the case of Lots 1 through 6, and 20 through 24, each inclusive, the east and west lines of such Lots, and (ii) in the case of Lots 7 through 19, and 25 through 29, each inclusive, the north and south lines of such Lots.

C. Front Yards - The front building setback line shall be five (5) feet from the Front Line. The front of each dwelling erected on a Lot shall be on the front building setback line, unless otherwise approved by the Development Control Committee (as defined in the Declaration).

D. Rear Yards - The rear building setback line shall be eighteen (18) feet from the Rear Line.

E. Side Yards - The side building setback lines shall be an aggregate of three (3) feet from the Side Lines.

10. PLANS, SPECIFICATIONS AND LOCATION OF BUILDINGS

No structure or other improvement of any kind, including additions, alterations, fences, screens and walls, shall be erected, altered, placed or permitted to remain on any Lot unless and until plans and specifications therefor, specifically including, but not limited to, a plot plan, in detail and to scale, have been submitted to and approved by the Committee in accordance with the Declaration. The plans and specifications for and location of all construction shall be in compliance with all applicable regulatory rules, codes and orders, specifically including, but not limited to, building, plumbing and electrical requirements.

Any required landscaping, sidewalk and driveway shall be completed at the time of completion of the dwelling, or as soon as weather permits. Sidewalks shall be installed in a manner so as to be uniform throughout the Subdivision.

All areas not covered by structures, paved parking facilities or sidewalks shall be maintained by the Owner as landscaped areas to the pavement edge of any abutting streets.

No fenestration except openings with fully translucent windows shall be permitted in any "zero lot line" wall of any dwelling or garage except a "zero lot line" wall that abuts a Block or a public right-of-way.

11. GARAGES AND DRIVEWAYS

Each dwelling constructed upon a Lot shall include an attached garage, and the means of ingress and egress to such garage shall be over a driveway of concrete material.
12. **LOT ACCESS.**

Lots 1 through 6, inclusive, shall be accessed from Walnut Street; Lots 7 through 19, inclusive, shall be accessed from Block D; Lots 20 through 24, inclusive, shall be accessed from North Street; and Lots 25 through 29, inclusive, shall be accessed from Block B.

13. **CONSTRUCTION METHODS.**

a. No Lot owner shall undertake or permit any work on the exterior or outside of the dwelling on such Lot without first obtaining the Committee's prior written approval, specifically including, but not limited to, the Committee's prior written approval of storage of materials or parking of construction vehicles within the Subdivision.

b. No work by or on behalf of a Lot owner shall interfere with or impair work by Declarant in the Subdivision.

c. Any damage caused by a Lot owner or its contractors during the course of construction, specifically including, but not limited to, damage to drainage courses, streets or curbs, shall be repaired immediately by such owner at its sole cost and expense.

14. **CONTROLLING DOCUMENTS.**

The foregoing covenants, conditions and restrictions supplement the Plat, and are to be read and interpreted in conjunction with the Plat and the Declaration. In the event of a conflict, the more or most restrictive provision shall control.

15. **DURATION.**

The foregoing covenants, conditions and restrictions shall run with the Real Estate, and be binding upon all Lot owners and all persons claiming thereunder for the duration of the Declaration. Notwithstanding the foregoing, all easements created or reserved herein or in the Plat shall be perpetual unless otherwise expressly indicated herein or therein.

16. **ENFORCEMENT.**

The right of enforcement of each of the foregoing covenants, conditions and restrictions by injunction, together with the right to cause removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Association and Lot owners, and their respective legal representatives, successors and assigns, as more fully set out in the Declaration. The Commission shall have no right, power or authority to enforce any covenant, condition, restriction or other limitation contained herein or in the Plat, other than those covenants, conditions, restrictions
or limitations that expressly run in the Commission's favor; provided, however, that nothing herein shall be construed to prevent the Commission from enforcing any provision of the Subdivision Control Ordinance, 58-AO-3, as amended, or any condition to approval of the Plat by the Plat Committee.

17. **SEVERABILITY**

Each of the foregoing covenants, conditions and restrictions is hereby declared to be independent of or severable from the rest thereof, and of and from every other one thereof and of and from every combination thereof. Therefore, if any provision hereof is held to be invalid or unenforceable, or to lack the quality of running with the Real Estate, such holding shall be without effect upon the validity, enforceability or "running" quality of any other provision hereof.

18. **RECORDING**

These Plat Restrictions shall be recorded by Declarant in the Office of the Recorder of Marion County, Indiana.

Dated: **May 28**, 1997

WATERMARK TOWNHOMES, L.L.C.,

an Indiana limited liability company

By: [Signature]

Comelius M. Alig, Member
STATE OF INDIANA
COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared Cornelius M. Alig, a Member of Declarant, who acknowledged the execution of the foregoing.

Witness my hand and Notarial Seal this ______ day of ______, 1997.

Kimberly L. Dalton, Notary Public and
Resident of Marion County, Indiana

My Commission Expires: ____________________

This instrument was prepared by and please return after recordation to:

Robert T. Buday, attorney-at-law
JOHNSON, SMITH, PENCE, DENSBORN, WRIGHT & HEATH,
One Indiana Square, Suite #1800
Indianapolis, IN 46204
WATERMARK II
LEGAL DESCRIPTION

LAND DESCRIPTION

A parcel of land lying within the Northeast Quarter of Section 2, Township 15 North, Range 3 East, Second Principal Meridian, Center Township, Marion County, Indiana, said parcel being more particularly described as follows:

BEGINNING at the intersection of the South right-of-way line of Walnut Street and the West right-of-way line of Senate Avenue as said street and said avenue are shown on the plat of WATERMARK I, a subdivision in Indianapolis, Indiana, the plat of which is recorded as instrument #650124125 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 01 minute 14 seconds West (plat bearing) 389.71 feet on the West right-of-way line of said Senate Avenue to the North right-of-way line of North Street as said street is shown on the plat of said WATERMARK I; thence North 90 degrees 00 minutes 00 seconds West 421.49 feet on the North right-of-way line of said North Street to the Southwest corner of Block "A" in said WATERMARK I; thence North 00 degrees 05 minutes 49 seconds East 391.37 feet on the West line of said Block "A" to the Northwest corner thereof, being on the South line of said Walnut Street; thence South 89 degrees 46 minutes 23 seconds East 420.79 feet on the South line of said Walnut Street to the BEGINNING POINT, containing 3.777 acres, more or less.
AMENDMENT OF DECLARATION OF WATERMARK HORIZONTAL PROPERTY REGIME

THIS AMENDMENT OF DECLARATION OF WATERMARK HORIZONTAL PROPERTY REGIME (the "Amendment"), is made this 22nd day of FEBRUARY, 2000, by WATERMARK TOWNHOMES, L.L.C., an Indiana limited liability company ("Declarant").

RECEPTIVE:

A. Declarant executed that certain Declaration of Watermark Horizontal Property Regime, dated October 30, 1996 and recorded October 31, 1996 in the Office of the Recorder of Marion County, Indiana as Instrument No. 96-0153647 (the "Declaration").

B. Declarant is the owner in fee simple of those certain parcels of real estate located in Marion County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (said real estate is defined as the "Adjacent Real Estate" in the Declaration).

C. Declarant now desires to amend the Declaration in accordance with the terms and provisions provided herein.

NOW, THEREFORE, Declarant hereby makes this Amendment, and declares as follows:

1. Incorporation of Definitions. All defined terms used herein shall have the meanings ascribed thereto in the Declaration unless otherwise specifically provided herein.

2. Removal of Adjacent Real Estate From Regime. In accordance with Section 15E of the Declaration, Declarant hereby elects not to annex the Adjacent Real Estate, and therefore, the Adjacent Real Estate shall be excluded from the Regime and shall not become a part thereof.

3. Continuing Effect. All other terms, conditions, provisions, representations and warranties set forth in the Declaration not specifically relating to those items explicitly modified by this Amendment shall remain unchanged and shall continue in full force and effect.

4. Terms of the Amendment Shall Control. The Declaration shall constitute the entire agreement of the parties. If there shall be any inconsistency or ambiguity between the terms of this Amendment and the Declaration, the terms of this Amendment shall govern and control.

5. Waiver. No provision hereof shall constitute a waiver of any of the terms or conditions of the Declaration, other than those terms or conditions explicitly modified or otherwise affected hereby.

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IN WITNESS WHEREOF, Declarant has caused this Amendment to be executed as of the date and year first above written.

DECLARANT:

WATERMARK TOWNHOMES, L.L.C.

By: 

Cornelius M. Alig, Class A Member

STATE OF INDIANA

CO. SS.

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared Cornelius M. Alig, who, being first duly sworn by me upon his oath, says that he is a Class A Member of Watermark Townhomes, L.L.C., an Indiana limited liability company, and he acknowledged execution of the foregoing for an on behalf of said limited liability company.

Witness my hand and Notarial Seal this 27th day of FEBRUARY, 2010.

JENNIFER DUBOIS
Notary Public
State of INDIANA
Commission Expires Jan 18, 2013

My Commission Expires: 1-18-07

NOTARY PUBLIC:

Printed: My County of Residence:

This instrument was prepared by John B. Baxter, Attorney-at-Law, Johnson, Smith, Pence & Heath, LLP, One Indiana Square, Suite #1800, Indianapolis, IN 46204.
EXHIBIT A

Legal Description

Beginning at a point on the West line of BLOCK "A" in the plot of WATERMARK II, as per plat thereof recorded as Instrument Number 9700082146 in the Office of the Recorder of Marion County, Indiana, said point being 74.69 feet measured South 00 degrees 05 minutes 40 seconds East (assumed bearing) on the West line of said BLOCK "A" from the Northwest corner of said BLOCK "A"; thence continuing South 00 degrees 05 minutes 40 seconds East on said West line 316.68 feet to the Southwest corner of said BLOCK "A," said corner being on the North right of way line of North Street, as said right of way was vacated March 12, 1997 by Declaratory Resolution No. 97-VAC-8; thence North 90 degrees 00 minutes 00 seconds East on said North Street right of way prior to the vacated thereof, and the South line of said BLOCK "A," a distance of 85.74 feet to the Southeast corner of said BLOCK "A"; thence North 00 degrees 01 minute 14 seconds East on the East line of said BLOCK "A," a total distance of 316.51 feet to a point that is 74.52 feet South of the Northeast corner of said BLOCK "A," thence North 89 degrees 53 minutes 15 seconds West 85.33 feet to the place of beginning. Subject to all legal easements and rights of way.
SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK (the "Declaration") is made this 29th day of April, 2000, by WATERMARK TOWNHOMES, L.L.C., an Indiana limited liability company ("Declarant").

RECITALS:

A. Declarant, as the owner in fee simple of that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate"), laid off, platted and subdivided the Real Estate into lots and blocks in accordance with the Final Plat of Watermark I (the "Original Plat"), recorded September 27, 1995, and re-recorded October 3, 1995, as Instrument No. 95-124128, in the Office of the Recorder of Marion County, Indiana.

B. Declarant further subjected the Real Estate to certain covenants, conditions and restrictions in accordance with the Declaration of Covenants and Restrictions of Watermark (the "Original Declaration") recorded on October 3, 1995, as Instrument No. 95-124128 and the Plat Restrictions for Watermark Subdivision (the "Original Restrictions") recorded on October 3, 1995, as Instrument No. 95-124127.

C. Pursuant to that certain Consent to Vacation, Replat and Amendment of Plat Restrictions and Declaration of Covenants and Restrictions of Watermark I Subdivision (the "Watermark II Consent"), recorded on June 13, 1997, as Instrument No. 97-82145, Declarant vacated the Original Plat and replatted the Real Estate as a residential subdivision (the "Subdivision") in accordance with that certain Final Plat of Watermark II, recorded June 13, 1997, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-82146 (the "Watermark II Plat"). Declarant amended and restated the Original Restrictions pursuant to that certain Amended and Restated Plat Restrictions for the Subdivision, recorded June 13, 1997, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-0082148 (the "Watermark II Restrictions"), and Declarant amended and restated the Original Declaration pursuant to that certain Amended and Restated Declaration of Covenants and Restrictions of Watermark, recorded
D. Pursuant to the Watermark II Plat, the Subdivision consists of twenty-nine (29) lots, numbered 1 through 29, inclusive, known and designated as residential lots, and nine (9) blocks, designated alphabetically as "A," "B," "C," "D," "E," "F," "G," "H" and "I".

E. All of Block A was to be developed as and for twenty-four (24) condominiums (individually, a "Condominium"; collectively, the "Condominiums"), however only three (3) Condominiums have been developed.

F. Declarant, as the owner in fee simple of that certain portion of Block A, more particularly described on Exhibit B attached hereto and made a part hereof ("Parcel 2 of Block A"), laid off, platted and subdivided Parcel 2 of Block A into nine (9) lots, numbered 30 through 38, inclusive, known and designated as residential lots, in accordance with the Final Replat of Watermark II (Parcel 2 of Block A), recorded October 5, 1999, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 99-0204065 (the "Parcel 2 of Block A Plat") (the Watermark II Plat and the Parcel 2 of Block A Plat are hereinafter referred to together as the "Plat"), and is subjecting Parcel 2 of Block A to certain covenants, conditions and restrictions in accordance with the Plat Restrictions for Amendment of Watermark II, Block A to be recorded in the Office of the Recorder of Marion County, Indiana (the "Parcel 2 of Block A Restrictions") (the Watermark II Restrictions and the Parcel 2 of Block A Restrictions are hereinafter referred to collectively as the "Restrictions").

G. Declarant, as Owner of Parcel 2 of Block A and additional portions of the Real Estate and having obtained the consent of all the Owners and Mortgagees (as such terms are hereinafter defined) pursuant to each Consent to Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, attached hereto and made a part hereof (the "Consents"), now desires to completely amend and restate the Watermark II Declaration.

H. Declarant desires to provide for maintenance of the Common Area (as hereinafter defined) that is of common benefit to owners of Lots and Condominiums, and to that end desires to establish certain obligations of such owners and a system of assessments and charges upon such owners for certain maintenance and other costs in connection with operation and maintenance of the Subdivision.

DECLARATION:

NOW, THEREFORE, Declarant, having obtained the consent of all other Lot owners and Mortgagees, hereby declares that all of the Real Estate is and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the Plat, the Restrictions, and the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole, and each Lot and Condominium situated therein. All of the following covenants and restrictions shall run with the Real Estate; shall be binding upon Declarant, and all parties having
NOW, THEREFORE, Declarant, having obtained the consent of all other Lot owners and Mortgagees, hereby declares that all of the Real Estate is and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the Plat, the Restrictions, and the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole, and each Lot and Condominium situated therein. All of the following covenants and restrictions shall run with the Real Estate; shall be binding upon Declarant, and all parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part thereof; and shall inure to the benefit of all successors in title to the Real Estate or any part thereof.

1. **Definitions.**

   Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Plat and the Restrictions. In addition, the following are definitions of terms as they are used herein (which, for purposes hereof, shall supersede any different definition of such terms in the Plat or the Restrictions):

   (i) "Additional Real Estate" is defined in paragraph 11.

   (ii) "Assessment" shall mean the share of Common Expenses imposed upon each Unit, as determined and levied pursuant to paragraph 4, and shall include annual and special assessments.

   (iii) "Association" shall mean Watermark Homeowners Association, Inc., which has been created as an Indiana nonprofit corporation and membership of which shall consist of all Owners, and its successors and assigns.

   (iv) "Block" shall mean each of blocks set forth in Recital D and any part of the Additional Real Estate the Declarant may hereafter designate as a block.

   (v) "By-Laws" shall mean Association's code of by-laws.

   (vi) "Board" shall mean Association’s board of directors.

   (vii) "Class A" is defined in paragraph 2.B.

   (viii) "Class B" is defined in paragraph 2.B.

   (ix) "Commission" is defined in paragraph 9.B.

   (x) "Committee" shall mean the Watermark Development Control Committee, comprising three (3) members (who need not be Association members)
appointed by Board and subject to removal by Board at any time with or without cause. Any vacancies existing from time to time shall be filled by Board.

(xii) "Common Area" shall mean Blocks B, C, D, E, F, G, H and I (including any improvements thereto) and such real estate (including the Additional Real Estate) as the Declarant may hereafter designate as common area from time to time, which shall be owned by Association for common use and enjoyment of Owners.

(xii) "Common Expenses" shall mean the actual and estimated cost to Association for maintenance, management, operation, repair, improvement and replacement of Common Area, snow removal (to the extent, if any, provided by Association), taxes assessed against any Common Area, and any other cost or expense incurred by Association for the benefit of Common Area or the Subdivision generally, and shall also include the costs of insurance as required herein. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of streets, utility lines and mains, drainage system or other improvements constructed by Declarant.

(xiii) "Control Transfer Date" is defined in paragraph 2.B.

(xiv) "Declaration" shall mean the Plats, the Restrictions and this Declaration, collectively.

(xv) "Declarant" shall mean Watermark Townhomes, L.L.C., an Indiana limited liability company, or any other person that succeeds to its interest as a matter of law or as evidenced by a written instrument of transfer to such effect recorded in the Office of the Recorder of Marion County, Indiana.

(xvi) "Lot" shall mean each of the lots set forth in Recital D and Recital F and any part of the Additional Real Estate the Declarant may hereafter designate as a lot.

(xvii) "Mortgagee" shall mean a holder, insurer or guarantor of a first mortgage on a Unit.

(xviii) "Owner" shall mean a person that owns the fee simple interest in and to a Unit, but excluding those persons having such interest merely as security for performance of an obligation.

(xix) "Pro-Rata Share" is defined in paragraph 4.B.

(xx) "Unit" shall mean a Condominium or a Lot.

2. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS
A. **Membership.** Every Owner shall be a member of Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

B. **Classes of Membership.** Association shall have two classes of voting membership, as follows:

**Class A.** Class A members shall be all Owners except Declarant, and each Class A member shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by the person that the collective members with respect to such Unit unanimously designate in writing to Association. In no event shall such vote be split into fractional votes and in no event shall more than one (1) vote be cast with respect to any Unit. Each vote cast with respect to a Unit shall presumptively be valid, but if such vote is questioned by any member holding any interest in such Unit and if all members holding an interest in such Unit are not in agreement as to the validity of the vote for such Unit that is questioned, then such vote shall not be counted.

**Class B.** Declarant shall be the sole Class B member. The Class B member shall be entitled to one (1) vote for each Unit owned thereby, and each other Owner shall be deemed to have given Declarant an irrevocable proxy to vote with respect to such Owner’s Unit for so long as Declarant shall own any Unit or until Declarant’s Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be converted to a Class A membership on the happening of the first to occur of the following events:

(a) When the Class B member no longer owns any Unit,

(b) When the Class B member voluntarily surrenders the Class B membership, or

(c) The earlier of (i) four (4) months after seventy-five percent (75%) of the Units have been conveyed by Declarant to other Owners, and (ii) five (5) years after the first Unit is conveyed by Declarant to another Owner.

The first to occur of the foregoing events is hereinafter referred to as the “Control Transfer Date.”

C. **Board of Directors.** The members shall elect Board as prescribed by the By-Laws. Board shall manage Association’s affairs. The initial Board shall be appointed by Declarant and shall manage Association’s affairs until the Control Transfer Date.
D. Professional Management. No contract or agreement of Association for professional management of Association, and no other contract of Association with Declarant, shall be for a term in excess of three (3) years. Any such contract or agreement shall provide for termination by either party with or without cause, and without any termination fee, by ninety (90) days' written notice.

E. Responsibilities of Association. Association is hereby authorized to act and shall act on behalf, and in the name, place and stead, of the individual Owners in all matters pertaining to maintenance, repair and replacement of Common Area, determination of Common Expenses, collection of annual and special Assessments, and granting of any approvals called for by the Declaration for the common benefit of all Owners. Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Declaration. Neither Association, nor its directors, officers, employees or agents, shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration. Association shall, to the extent deemed necessary by Board, procure and maintain casualty insurance for Common Area, liability insurance (including directors' and officers' insurance), and such other insurance as it deems necessary or advisable. Association may contract for such services as management, snow removal and security control, and such other services as Association deems necessary or advisable. If Association enters into any such contract prior to the Control Transfer Date, Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto.

F. Mortgagess' Rights. Any Mortgagor have the right, but not the obligation, to pay any overdue premiums on hazard insurance policies required to be maintained by Association, or to secure new hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagor making any payment pursuant to this paragraph shall be entitled to reimbursement from Association promptly upon written demand therefor from Association.

G. Primary Responsibility. Subject to the limitations set forth in the Declaration, Association shall be primarily responsible for keeping Common Area in a clean, orderly and well groomed condition, and Association and its agents shall have the right to enter upon Common Area at all reasonable times in order to fulfill this primary responsibility.

3. INSURANCE AND BONDS.

A. Association shall maintain in force such insurance protecting Association against liability for property damage and personal injury occurring on or in connection with Common Area as Board may deem appropriate.

B. A professional management firm shall be required to maintain in force such insurance as Board may determine and must submit evidence of such coverage to Association as required by Board.
C. Except as otherwise provided in any declaration of horizontal property regime governing the Condominiam, each Owner shall be solely responsible for loss of or damage to the improvements and personal property located in or on its Unit, however caused, and shall be solely responsible for obtaining its own insurance to cover any loss and risk.

D. Association shall obtain a fidelity bond in an amount adjusted from time to time to be equal to 200% of the annual estimated Common Expenses and reserves, which bond shall cover acts of dishonesty or fraud of any member, employee or agent of Association that handles Association's funds. A third party management company shall also be required to obtain such bond to the extent it handles Association's funds.

E. Neither Declarant, Association or Board, nor any member, director, officer, employee or agent of any of the foregoing, shall be held liable or otherwise subject to any claim for damages if discretion to obtain insurance permitted by the Declaration is exercised or not exercised.

F. All proceeds of casualty insurance shall be used for restoration of the casualty.

4. MAINTENANCE ASSESSMENTS.

A. Purpose of Assessments. Assessments levied by Association shall be used exclusively for the purpose of preserving the value of Units, and promoting health, safety and welfare of Owners, users and occupants of the same, and, in particular, for improvement, repair, replacement, operation and maintenance of Common Area, including, but not limited to, payment of taxes and insurance thereon, if any, for cost of labor, equipment, material and management furnished with respect to Common Area, and for any and all other Common Expenses. Each Owner, including Declarant, shall pay to Association:

(i) A Pro-Rata Share of annual Assessments fixed, established and determined from time to time as hereinafter provided; and

(ii) A Pro-Rata Share of any special Assessments fixed, established and determined from time to time as hereinafter provided.

B. Pro-Rata Share. The Pro-Rata Share of each Owner for purposes of this paragraph shall be the percentage obtained by dividing one hundred percent (100%) by the total number of Units.

C. Liability for Assessments. Each Assessment, together with any interest thereon and costs of collection thereof, including attorneys' fees, shall be the personal liability of each Owner, shall be a charge on each Unit, and shall constitute a lien upon each Unit from and after the due date thereof in Association's favor. Each Assessment, together with any interest thereon and costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of
each Unit at the time when the Assessment is due. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee under any mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve any Unit from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability imposed hereby. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

D. **Basis of Annual Assessments.** Board shall propose and Owners shall approve an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for such fiscal year, together with a reasonable allowance for contingencies and reserves as Board deems appropriate. A copy of such budget shall be delivered to each Owner at least thirty (30) days prior to the beginning of such fiscal year.

E. **Basis of Special Assessments.** Should Board at any time during a fiscal year determine that Assessments levied for such year may be insufficient to pay Common Expenses for such year, Board shall call a special meeting of Association to consider imposing such special Assessments as may be necessary to meet Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners present or represented at such meeting, and shall be due and payable on the date(s) determined by such Owners or, if not so determined, by Board.

F. **Fiscal Year; Date of Commencement of Assessments; Due Dates.** Association's fiscal year shall be the calendar year and may be changed from time to time by Board. The first annual Assessment shall be made for the balance of Association's fiscal year in which Declarant first conveys ownership of a Unit to another Owner. Annual Assessments shall be due and payable monthly on the first day of each calendar month, except that Board may from time to time by resolution authorize and require payment of annual Assessments in quarterly, semi-annual or annual installments.

G. **Duties of Association.**

(i) Board shall cause proper books and records of levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth each Unit and each Assessment applicable thereto, which books and records shall be kept in Association's office and shall be available for inspection and copying by each Owner (or a duly authorized representative of any Owner) during Association's regular business hours. Except as otherwise provided in the By-Laws, Association shall cause financial statements to be prepared at least annually for each fiscal year of Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. Board shall cause written notice of all Assessments levied by Association to be mailed to Owners or their designated representatives. Notices of amounts of Annual Assessments and amounts of installments thereof shall be sent
annually within thirty (30) days following determination thereof. Notices of amounts of special Assessments shall be sent as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. If such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(ii) Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company or Mortgagee a certificate in writing signed by an officer or agent of Association, setting forth the extent to which Assessments have been levied and paid with respect to any Unit in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(iii) Association shall notify any Mortgagee from which it has received a written request for notice: (a) of any default in performance of any obligation under the Declaration by any Owner that is not cured within sixty (60) days; (b) of any condemnation or casualty loss that affects either a material portion of the Subdivision or the Unit securing its loan; and (c) of any proposed action that requires consent of Mortgagees or a specified percentage thereof as set forth in the Declaration.

H. Nonpayment of Assessments; Remedies of Association.

(i) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and cost of collection thereof, including attorneys' fees, become a continuing lien on the Unit against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Unit as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner, and all successors and assignees of such Owner, in such Unit; provided, however, that such lien shall be subordinate to any first mortgage on such Unit recorded prior to the date such Assessment becomes due.

(ii) If any Assessment upon any Unit is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum, and Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against such Owner's Unit, and there shall be added to the amount of such Assessment all costs of such action, including Association's
attorneys' fees, and, if a judgment is obtained, such judgment shall include such interest, costs and attorneys' fees.

I. **Adjustments.** If amounts actually expended by Association for Common Expenses in any fiscal year exceed amounts budgeted and assessed for Common Expenses for such fiscal year, the amount of such deficit may be recouped either by inclusion in the budget for annual Assessments for the following fiscal year or by making one or more special Assessments for such purpose, at Association's option. If amounts budgeted and assessed for Common Expenses in any fiscal year exceed amounts actually expended by Association for Common Expenses for such fiscal year, each Owner's Pro-Rata Share of such excess shall be a credit against Assessment(s) due from such Owner for the next fiscal year(s).

J. **Notice and Quorum for Imposition of Special Assessments.** Written notice of any meeting called for the purpose of imposing special Assessments shall be sent to all Owners not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

K. **Subordination of Lien to Mortgages.** The lien of Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the Assessment lien. No sale or transfer shall relieve the Owner of such Unit from liability for any Assessments becoming due prior to such sale or transfer, provided, however, that Sale or transfer of any Unit pursuant to foreclosure of any first mortgage on such Unit (without the necessity of joining Association in such foreclosure action), or any proceedings or deed in lieu thereof, shall extinguish the lien of all Assessments first becoming due after the date of recordation of such mortgage but prior to the date of such sale or transfer.

5. **CHARACTER OF SUBDIVISION.**

A. **In General.** No structure or other improvement shall be erected, altered, placed or permitted to remain upon any Lot, other than one detached single-family dwelling and residential accessory buildings, subject to the limitations in the Restrictions. No structure or other improvement shall be erected, altered, placed or permitted to remain upon Block A, other than three (3) attached single-family dwellings. No Unit shall be used for a group home. Declarant may use or permit use of any Unit as a model, and/or sales and/or management office.

B. **Accessory Outbuilding Prohibited.** Except as may otherwise be provided in the Restrictions, no accessory outbuilding shall be erected on any Lot or Block.
C. Occupancy or Residential Use of Partially Completed Dwellings Prohibited. No
dwelling constructed on any Lot or Block shall be occupied or used for residential purposes or
human habitation until it has been substantially completed for occupancy in accordance with the
approved building plan. The determination whether a dwelling has been substantially completed in
accordance with the approved building plan shall be made by Committee and such decision shall be
binding on all parties.

D. Other Restrictions. The Real Estate shall be subject to all easements, restrictions
and limitations of record, and to all governmental zoning authority and regulations affecting the Real
Estate.

E. Fences, Light Fixtures, Etc. Any deck, patio, exterior light fixture, basketball goal,
hot tub, other exterior structure or other improvement must be approved in advance and in writing
by Committee as to size, location, height and composition.

F. Landscaping or Exterior Construction. Any proposed landscaping on any Lot or
Block, or construction on or alteration of any Lot or Block, or any building thereon, must be
approved in advance and in writing by Committee as set forth in paragraph 7. The following
requirements shall be applicable unless Committee shall approve otherwise: (i) all utility facilities
in the Subdivision will be underground, except where required to be placed above ground by the
individual utility supplier; (ii) each driveway in the Subdivision will be of concrete material; (iii) no
additional parking will be permitted on a Lot or Block other than in the existing driveway(s); (iv)
all garage doors in the Subdivision will be of a hardboard, metal or wood material; (v) whenever
possible, all utility meters and HVAC units in the Subdivision will be located in places unseen or
screened from the fronts of the dwellings; (vi) no outside fuel storage tanks will be permitted and
no gasoline storage will be permitted above or below ground in the Subdivision; (vii) all windows
in the Subdivision will be factory or on the job painted, no raw aluminum windows will be permitted
and all windows will have an approved thermal break; (viii) all gutters and downspouts in the
Subdivision will be factory painted; (ix) all roofing in the Subdivision will be of a consistent color
scheme and a shingle-type material acceptable to Committee; (x) all roof pitches will be acceptable
to Committee; (xi) no metal, fiberglass or similar type material awnings or patio covers will be
permitted in the Subdivision; (xii) no swimming pools will be permitted in the Subdivision; and
(xiii) modular-type construction is not permitted in the Subdivision, provided, however, that
prefabricated home components such as walls and roof trusses will not be considered modular-type
construction.

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

H. Damaged Structures. No improvement that has partially or totally been destroyed
by fire or otherwise shall be allowed to remain in such state for more than three (3) months from
time of such destruction.
I. **Prohibition of Used Structures and Modular Homes.** All structures constructed or placed on any Lot or Block shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any Lot or Block, nor shall modular constructed structures be placed on any Lot or Block.

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

(i) Mow and care for the lawn at such times as may reasonably be required in order to prevent unsightly growth of vegetation and weeds;

(ii) Remove all debris or rubbish;

(iii) Prevent existence of any other condition that reasonably tends to detract from or diminish aesthetic appearance of the Subdivision;

(iv) Cut down and remove dead trees; and

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

6. **MISCELLANEOUS PROVISIONS AND PROHIBITIONS.**

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

B. **Construction of Sewage Lines.** All sanitary sewage lines in the Subdivision shall be designed and constructed in accordance with all applicable City of Indianapolis requirements. Copies of all permits, plans and designs relating to construction of sanitary sewer service facilities shall be submitted in duplicate to Committee at the time of submission of all other plans or documents required for obtaining Committee's permission to proceed as provided in paragraph 7.
C. Animals. No animals shall be kept or maintained in the Subdivision except usual household pets in types and numbers established by Board, and, in such case, such household pets shall be kept reasonably quiet, controlled and on a leash whenever outside, so as not to become a nuisance. Each Owner shall be responsible for removing its pets' waste materials.

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

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

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

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

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

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

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

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

7. DEVELOPMENT CONTROL COMMITTEE.

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

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

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

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

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

**B. Duties of Committee.** Committee shall establish written architectural control guidelines, and make a copy available to any Owner upon request. Such guidelines may be amended from time to time as Committee may determine, subject to review and approval by Board. Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information has been submitted to it; provided, however, that, if Committee fails to act within such thirty (30) day period, it shall be deemed to have disapproved such proposed improvements. One (1) copy of submitted material shall be retained by Committee for its permanent files. All notifications to applicants shall be in writing and, if such notification is one of disapproval, it shall specify the reason(s) for such disapproval.
C. **Liability of Committee.** Neither Committee, nor any member or agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or any work done according thereto, or liable to anyone for approval or disapproval except in the event of willful misconduct or fraud.

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

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

8. **RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER.**

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

9. **REMEDIES.**

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

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

C. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any provision of the Declaration shall
be held to be a waiver by such party of (or an estoppel of such party to assert) any right available to it upon occurrence, recurrence or continuation of such violation.

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

10. EFFECT OF BECOMING AN OWNER.

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

11. ANNEXATION OF ADDITIONAL REAL ESTATE.

Declarant shall have the unilateral right, privilege and option, but not the obligation, from time to time to subject any additional real estate to the terms and provisions of this Declaration and the jurisdiction of the Association (the "Additional Real Estate"). Declarant may, without the consent of the other Owners, develop and plat the Additional Real Estate, or any part thereof, and record a supplement of this Declaration in the Office of the Recorder of Marion County, Indiana, incorporating said Additional Real Estate herein and designate within such Additional Real Estate additional Lots, Blocks and Common Area. Upon such recordation, the owner of any lots contained therein shall have the same rights and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Additional Real Estate or parts thereof as provided herein. The Assessment which the owner of any lot located upon the Additional Real Estate, if within the jurisdiction of the Association, shall be obligated to pay shall be equal to that
paid by any Owner herein and shall commence on the date of conveyance of any such lot by Declarant and the Unit located thereon is occupied for residential purposes.

12. **TITLES.**

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

13. **DURATION AND AMENDMENT.**

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

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

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

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

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

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

D. Subject to the other requirements of this paragraph 13, unless Mortgagees of at least two-thirds (2/3) of the mortgaged Units and Owners (other than Declarant) of at least two-thirds (2/3) of the Units have given their prior written approval, Association shall not be entitled to:

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

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

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

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

14. RIGHTS OF MORTGAGEES

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

15. NOTICES.

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

If to Declarant, the Association or the Committee: 700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204-2960
Attention: Harold D. Garrison

Notices to an Owner shall be sent to the address provided by such Owner to Association or to such Owner’s Unit. Declarant, Association and Committee may change address for notice purposes by notice to Owners. An Owner may change address for notice purposes by notice to Association.

16. CONDEMNATION.

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

17. CONFLICTING PROVISIONS.

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

18. SEVERABILITY.

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

IN WITNESS WHEREOF, Declarant, having obtained the consent of the other Owners and the Mortgagees, has executed this Declaration as of the date first above written.
WATERMARK TOWNHOMES, L.L.C.

By: ________________________________
    Cornelius M. Alig, Member

STATE OF INDIANA

) SS:

COUNTY OF MARION

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

WITNESS my hand and Notarial Seal this 10th day of OCTOBER, 1999.

JENNIFER DUBEANSKY
Notary Public
State of INDIANA
Commission Expires Jan 15, 2008

My Commission Expires: 1-15-08

NOTARY PUBLIC

My County of Residence: Marion
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

MANSUR HOMES, L.L.C., an Indiana limited liability company, is the record owners
of the real estate commonly known as 327 WEST WALNUT STREET, Indianapolis, Indiana,
and more particularly described as Lot 2 in the Watermark II Subdivision by deed executed the
21st day of July 1994, and recorded in the Office of the Recorder of Marion
County, Indiana, as Instrument No. 94-11755, and hereby consents to the terms and
conditions of the foregoing Second Amended and Restated Declaration of Covenants and
Restrictions of Watermark.

MANSUR HOMES, L.L.C.

By: CMA Investments, L.L.C., its Member

DATED: 10/18/99

By: Cornelius M. Alig, its sole member
STATE OF INDIANA
)
COUNTY OF MARION
)

Before me, a Notary Public in and for said County and State, personally appeared CORNELIUS M. ALIG, sole member of CMA Investments, L.L.C., a Member of MANSUR HOMES, L.L.C., an Indiana limited liability company, who acknowledged the execution of the foregoing instrument as his voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 18th day of October, 1999.

JENNIFER DUBEANSKY
Notary Public
State of INDIANA
Commission Expires Jan 18, 2007

My Commission Expires:
January 18, 2007

Jennifer Dubeansky, Notary Public and
Resident of Marion County
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK

STANDARD FEDERAL BANK ("Mortgagee"), which holds a mortgage encumbering
Lot 2 in Watermark II Subdivision, as executed in its favor MANSUR HOMES, L.L.C. and
recorded June 2, 1999, in the office of the Recorder of Marion County, Indiana, as
Instrument No. 99, 114595 (the "Mortgage"), hereby consents to the terms and conditions
of the foregoing Second Amended and Restated Declaration of Covenants and Restrictions
of Watermark, and Mortgagee further acknowledges and agrees that its rights, title and interests in
and to the property encumbered by the Mortgage shall be subject and subordinate to the
Amended and Restated Declaration of Covenants and Restrictions of Watermark and all
documents incorporated therein.

DATED: 11-24-99

MORTGAGEE:

By: ____________________________

Printed: Douglas F. Fyock

Title: Vice President

STATE OF Indiana) SS.
COUNTY OF Allen )

Before me, a Notary Public in and for said County and State, personally appeared
Douglas F. Fyock, who, being first duly sworn by me upon his/her oath, says that
he/she is the Vice President of Standard Federal Bank, and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 4th day of November, 1999.

NOTARY PUBLIC:

Printed: Tony J. Mankey

My Commission Expires: 8/21/2000

My County of Residence: Allen
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

DENNIS L. ERPELDING, is the record owner of the real estate commonly known as
323 WEST WALNUT STREET, Indianapolis, Indiana, and more particularly described as Lot
3 in the Watermark II Subdivision by deed executed the 21st day of May, 1998, and
recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 98-
68347, and hereby consents to the terms and conditions of the foregoing Second Amended
and Restated Declaration of Covenants and Restrictions of Watermark.

DATED: 01/30/99

[Signature]

Printed Name: DENNIS L. ERPELDING
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared DENNIS L. ERPULDING, who acknowledged the execution of the foregoing instrument as his voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 30th day of OCTOBER, 1999.

JENNIFER DUBEANSKY  
Notary Public  
State of INDIANA  
Commission Expires Jan 18, 2007

My Commission Expires:  
1/18/07

My County of Residence:  
MARION

NOTARY PUBLIC:

Printed: JENNIFER DUBEANSKY
CONSENT AND SUBORDINATION OF MORTGAGEE TO SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK

HUNTINGTON MORTGAGE COMPANY ("Mortgagee"), which holds a mortgage encumbering Lot 3 in Watermark II Subdivision, as executed in its favor by DENNIS L. ERPELDING and recorded MAY 20th, 1998, in the office of the Recorder of Marion County, Indiana, as Instrument No. 98-84367, (the "Mortgage"), hereby consents to the terms and conditions of the foregoing Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees that its rights, title and interests in and to the property encumbered by the Mortgage shall be subject and subordinate to the Amended and Restated Declaration of Covenants and Restrictions of Watermark and all documents incorporated therein.

DATED: 2-8-00

MORTGAGEE:
Huntington Mortgage Company

By: ___________________________
Printed: MICHAEL D. GREENWOOD
Title: VICE PRESIDENT

STATE OF (Ohio) SS.
COUNTY OF (Franklin) SS.

Before me, a Notary Public in and for said County and State, personally appeared Michael D. Greenwood, who, being first duly sworn by me upon his/her oath, says that he/she is the Vice President of Huntington Mortgage Company and he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 8th day of February, 2000.

NOTARY PUBLIC:

DELSE K. BOYD
Notary Public, State of Ohio
My Commission Expires 12/5/04

Printed: DELSE K. BOYD
My County of Residence: Franklin

12/5/04
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

TROY PFEFFERKORN and MARIAN DEL ROSARIO, husband and wife, are
the record owners of the real estate commonly known as 319
WALNUT STREET, Indianapolis, Indiana, and more particularly described as Lot 4 in the Watermark II Subdivision
by deed executed the 27th day of May, 1998, and recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 98-87240, and hereby consent to the terms and
conditions of the foregoing Second Amended and Restated Declaration of Covenants and
Restrictions of Watermark.

DATED: 3/25/00

[Signature]

Printed Name: TROY PFEFFERKORN

[Signature]

Printed Name: MARIAN DEL ROSARIO
STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared TROY
PFEFFERKORN and MARIAN DEL ROSARIO, husband and wife, who acknowledged the
execution of the foregoing instrument as their voluntary act and deed and who, having been duly
sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 26th day of March, 2000.

JENNIFER DUBEANSKY
Notary Public
State of INDIANA
Commission Expires Jan 18, 2007

NOTARY PUBLIC:

Printed: JENNIFER DUBEANSKY

My Commission Expires: 1-18-07

My County of Residence: Marion
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK

HOMESIDE LENDING, INC. ("Mortgagee"), which holds a mortgage encumbering
Lot 4 in Watermark II Subdivision, as executed in its favor by MARIAN PFEFFERKORN and
TROY PFEFFERKORN, and recorded __May 27__, 1998 in the office of the Recorder of
Marion County, Indiana, as Instrument No. 98-67240 (the "Mortgage"), hereby consents to
the terms and conditions of the foregoing Second Amended and Restated Declaration of
Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees that
its rights, title and interests in and to the property encumbered by the Mortgage shall be subject
and subordinate to the Amended and Restated Declaration of Covenants and Restrictions of
Watermark and all documents incorporated therein.

DATED: __11/1/99__

MORTGAGEE:
HOMESIDE LENDING, INC.

By:________________________

Printed: ____________________
Title: CUSTOMER SERVICE MANAGER

STATE OF __TEXAS__ )
COUNTY OF __BEXAR__ )

Before me, a Notary Public in and for said County and State, personally appeared
JOE S. PARTIDA, who, being first duly sworn by me upon his/her oath, says that
he/she is the C/S MANAGER of HOMESIDE LENDING, INC., and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this __10__ day of December __1999__.

NOTARY PUBLIC:

Printed: ____________________

My Commission Expires: __1-22-02__
My County of Residence: __Bexar__
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared MARY ANNE SULLIVAN and BRIAN SULLIVAN, husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 25th day of OCTOBER, 1999.

NOTARY PUBLIC:

[Signature]

Printed: [Signature]


My County of Residence: MARION
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK
4856-8

CHARTER ONE MORTGAGE COMPANY ("Mortgagee"), which holds a mortgage
cumbering Lot 5 in Watermark II Subdivision, as executed in its favor by MARY ANNE
SULLIVAN and BRIAN SULLIVAN, and recorded W-14-99, 1992, in the office of the
Recorder of Marion County, Indiana, as Instrument No. 97-14366, (the "Mortgage"), hereby
consents to the terms and conditions of the foregoing Second Amended and Restated Declaration
of Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees
that its rights, title and interests in and to the property encumbered by the Mortgage shall be
subject and subordinate to the Amended and Restated Declaration of Covenants and Restrictions of
Watermark and all documents incorporated therein.

DATED: 11/23/99

MORTGAGEE:

Charter One Mortgage Corp.

By: Janet L. Bryan
Printed: Janet L. Bryan
Title: Ass't. Vice President

STATE OF Virginia,
COUNTY OF Marion

Before me, a Notary Public in and for said County and State, personally appeared
Janet L. Bryan, who, being first duly sworn by me upon his/her oath, says that
he/she is the Ass't. VP of Charter One Mortgage Corp., and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 23 day of November, 1999.

NOTARY PUBLIC:

Heidi Hess
Printed: Heidi Hess
My Commission Expires: 3-31-03
My County of Residence: Marion
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

MARY ANNE SULLIVAN and BRIAN SULLIVAN, husband and wife, are the record
owners of the real estate commonly known as 315 WEST WALNUT STREET, Indianapolis,
Indiana, and more particularly described as Lot 5 in the Watermark II Subdivision by deed
exe. dog the ______ day of ______ 1999, and recorded in the Office of the Recorder of
Marion County, Indiana, as Instrument No. 99, 114, 588, and hereby consent to the terms and
conditions of the foregoing Second Amended and Restated Declaration of Covenants and
Restrictions of Watermark.

DATED: __/5/99

[Signature]

Printed Name: BRIAN J. SULLIVAN

[Signature]

Printed Name: MARY ANN SULLIVAN
CONSENT OF LOT OWNER TO SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK

SHIRLEY MUDD and HOWARD MUDD, husband and wife, are the record owners of the real estate commonly known as 311 WEST WALNUT STREET, Indianapolis, Indiana, and more particularly described as Lot 6 in the Watermark II Subdivision by deed executed the 13th day of June, 1997 and recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-00384/46, and hereby consent to the terms and conditions of the foregoing Second Amended and Restated Declaration of Covenants and Restrictions of Watermark.

DATED: April 22, 2000

[Signature]

Printed Name: Howard Mudd

[Signature]

Printed Name: Shirley J. Mudd
STATE OF INDIANA       
                        
COUNTY OF MARION       
                        
Before me, a Notary Public in and for said County and State, personally appeared SHIRLEY MUDD and HOWARD MUDD, husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 22 day of April, 2009.

NOTARY PUBLIC:

ANGELA N. GARVIN
Notary Public
State of INDIANA
Commission Expires Jan 19, 2007

My Commission Expires:    1/19/07
My County of Residence:  MARION
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

JAMES M. SCHEMBRE and LECLA S. SCHEMBRE, husband and wife, are
record owners of the real estate commonly known as 626 NORTH SENATE AVENUE,
Indianapolis, Indiana, and more particularly described as Lot 14 in the Watermark II Subdivision
by deed executed the 21ST day of SEPTEMBER, 1997, and recorded in the Office of the
Recorder of Marion County, Indiana, as Instrument No. 97-138529, and hereby consent to
the terms and conditions of the foregoing Second Amended and Restated Declaration of
Covenants and Restrictions of Watermark.

DATED: 2-3-00

[Signature]

Printed Name: JAMES M. SCHEMBRE

[Signature]

Printed Name: LECLA S. SCHEMBRE
STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared JAMES M. SCHEMBRE and LEICIA S. SCHEMBRE, husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 27th day of FEBRUARY, 2000.

JENNIFER DUBEANSKY
Notary Public
State of INDIANA
Commission Expires Jan 13, 2011

My Commission Expires: 1-18-07
My County of Residence: MARION

NOTARY PUBLIC:

Printed: JENNIFER DUBEANSKY
CONSENT AND SUBORDINATION OF MORTGAGEE TO SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK

FIRST NATIONAL BANK OF KOKOMO ("Mortgagee"), which holds a mortgage encumbering Lot 14 in Watermark II Subdivision, as executed in its favor by JAMES M. SCHEMBRE and LECIA S. SCHEMBRE and recorded SEPTEMBER 21st, 1999, in the office of the Recorder of Marion County, Indiana, as Instrument No. 99-178529, (the "Mortgage"), hereby consents to the terms and conditions of the foregoing Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees that its rights, title and interests in and to the property encumbered by the Mortgage shall be subject and subordinate to the Amended and Restated Declaration of Covenants and Restrictions of Watermark and all documents incorporated therein.

DATED: 2/4/00

MORTGAGEE:
First National Bank & Trust
By: Todd A. Lore
Printed: Todd A. Lore
Title: VP

STATE OF Indiana
COUNTY OF Howard

Before me, a Notary Public in and for said County and State, personally appeared Todd A. Lore, who, being first duly sworn by me upon his/her oath, says that he/she is the VP of First National Bank & Trust, and he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 4th day of February, 2000.

NOTARY PUBLIC:
Heidi Clark
Printed: Heidi Clark

My Commission Expires: 7-22-07
My County of Residence: Howard
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

HENRY J. LONNEMANN and JOAN LONNEMANN, husband and wife, are the
record owners of the real estate commonly known as 622 NORTH SENATE STREET,
Indianapolis, Indiana, and more particularly described as Lot 15 in the Watermark II Subdivision
by deed executed the 12th day of July, 1999, and recorded in the Office of the Recorder of
Marion County, Indiana, as Instrument No. 99-132369, and hereby consent to the terms and
conditions of the foregoing Second Amended and Restated Declaration of Covenants and
Restrictions of Watermark.

DATED: April 8, 2000

[Signature]

Printed Name: JOAN LONNEMANN

[Signature]

Printed Name: HENRY J. LONNEMANN
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally HENRY J. LONNEMANN and JOAN LONNEMANN who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 8th day of April, 1999.

CHRYL LYNN EGENOLF  
Notary Public  
State of INDIANA  
Commission Expires June 9, 2001

NOTARY PUBLIC:

Printed: CHRYL LYNN EGENOLF

My Commission Expires:  

June 9, 2001

My County of Residence:  

Marion
CONSENT AND SUBORDINATION OF MORTGAGEE TO SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK

FIRST INDIANA BANK ("Mortgagee"), which holds a mortgage encumbering Lot 15 in Watermark II Subdivision, as executed in its favor HENRY J. LONNEMAN and recorded July 12, 1999 in the office of the Recorder of Marion County, Indiana, as Instrument No. 9-01327 (the "Mortgage"), hereby consents to the terms and conditions of the foregoing Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees that its rights, title and interests in and to the property encumbered by the Mortgage shall be subject and subordinate to the Amended and Restated Declaration of Covenants and Restrictions of Watermark and all documents incorporated therein.

DATED: 1/10/2000

MORTGAGEE:

By: ____________________________

Printed: Timothy J. O'Neill
Title: Sr. Vice President

STATE OF Indiana )
COUNTY OF Johnson )

Before me, a Notary Public in and for said County and State, personally appeared Timothy J. O'Neill, who, being first duly sworn by me upon his/her oath, says that he/she is the Sr. Vice President of First Indiana Bank, and he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 10th day of January, 1999/ 2000

NOTARY PUBLIC:

Printed: Mary Joanne Hartkorn

My Commission Expires: 10/17/2000
My County of Residence: Johnson
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

MANSUR HOMES, L.L.C., an Indiana limited liability company, is the record owners
of the real estate commonly known as 610 SENATE AVENUE, Indianapolis, Indiana, and more
particularly described as Lot 18 in the Watermark II Subdivision by deed executed the 12th day
of August, 1994, and recorded in the Office of the Recorder of Marion County, Indiana,
as Instrument No. 94-015303., and hereby consents to the terms and conditions of the
foregoing Second Amended and Restated Declaration of Covenants and Restrictions of
Watermark.

MANSUR HOMES, L.L.C.

By: CMA Investments, L.L.C., its Member

DATED: 10/18/09

By: Cornelius M. Alig, its sole member
STATE OF INDIANA   
COUNTY OF MARION   

Before me, a Notary Public in and for said County and State, personally appeared CORNELIUS M. ALIG, sole member of CMA Investments, L.L.C., a Member of MANSUR HOMES, L.L.C., an Indiana limited liability company, who acknowledged the execution of the foregoing instrument as his voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 18th day of October, 1999.

[Signature]

Jennifer Dubzansky, Notary Public and Resident of Marion County

My Commission Expires:
January 18, 2007
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK

STANDARD FEDERAL BANK ("Mortgagee"), which holds a mortgage encumbering
Lot 18 in Watermark I Subdivision, as executed in its favor MANSUR HOMES, L.L.C. and
recorded August 4, 1999, in the office of the Recorder of Marion County, Indiana, as
Instrument No. 94-047203 (the "Mortgage"), hereby consents to the terms and conditions of
the foregoing Second Amended and Restated Declaration of Covenants and Restrictions of
Watermark, and Mortgagee further acknowledges and agrees that its rights, title and interests in
and to the property encumbered by the Mortgage shall be subject and subordinate to the
Amended and Restated Declaration of Covenants and Restrictions of Watermark and all
documents incorporated therein.

DATED: 11-4-99

MORTGEE:

By: __________________________

Printed: _________________________

Title: Vice President

STATE OF Indiana

COUNTY OF Allen

Before me, a Notary Public in and for said County and State, personally appeared
Douglas P. Frock, who, being first duly sworn by me upon his/her oath, says that
he/she is the Vice President of Standard Federal Bank, and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 4th day of November, 1999.

NOTARY PUBLIC:

Printed: _________________________

My Commission Expires: 8/21/2000

My County of Residence: Allen
CONSENT OF LOT OWNER
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

CLYDE MICHAEL MILLHORN and CATHY SUE MILLHORN, husband and
wife, are the record owners of the real estate commonly known as 606 NORTH SENATE
AVENUE, Indianapolis, Indiana, and more particularly described as Lot 19 in the Watermark II
Subdivision by deed executed the 35th day of May, 1999 and recorded in the Office
of the Recorder of Marion County, Indiana, as Instrument No. 99-05121, and hereby
consent to the terms and conditions of the foregoing Second Amended and Restated Declaration
of Covenants and Restrictions of Watermark.

DATED: 11/2/99

[Signature]

Printed Name: CLYDE MICHAEL MILLHORN

Signed Name: CATHY SUE MILLHORN

Printed Name: CATHY SUE MILLHORN
STATE OF INDIANA
COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared CLYDE MICHAEL MILLHORN and CATHY SUE MILLHORN, husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 2nd day of NOVEMBER, 1999.

NOTARY PUBLIC:

JENNIFER DUBEANSKY
Notary Public
State of INDIANA
Commission Expires Jan 18, 2007

Printed: JENNIFER DUBEANSKY

My Commission Expires:
1-18-07

My County of Residence:
MARION
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

BANK OF AMERICA ("Mortgagee"), which holds a mortgage encumbering Lot 19 in
Watermark II Subdivision, as executed in its favor CLYDE MICHAEL MILLHORN and
CATHY SUE MILLHORN and recorded June 5, 1999, in the office of the Recorder of
Marion County, Indiana, as Instrument No. 99-03525, hereby consents to
the terms and conditions of the foregoing Second Amended and Restated Declaration of
Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees that
its rights, title and interests in and to the property encumbered by the Mortgage shall be subject
and subordinate to the Amended and Restated Declaration of Covenants and Restrictions of
Watermark and all documents incorporated therein.

DATED: 02/02/2000

MORTGEE:
WA MORTGAGE, LLC (a wholly owned subsidiary of
Bank of America, N.A.) successor in interest by
merger of National Banc Mortgage Corporation

By: /s/ Judy Z. Carter
Printed: Judy Z. Carter
Title: Vice President

STATE OF Kentucky )
COUNTY OF Jefferson )

Before me, a Notary Public in and for said County and State, personally appeared
Judy Z. Carter, who, being first duly sworn by me upon his/her oath, says that
he/she is the Vice President of Bank Of America, and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 2nd day of February 2000.

NOTARY PUBLIC:

Printed: Toi L. McLaurin

My Commission Expires: 

TOI L. MC LAURIN
Notary Public, State at Large
State of Kentucky
My Commission Expires: 4/15/2001

Marion, IN
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Document: AM 2000.67961
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

JAMES L. MACGREGOR and BARBARA J. MACGREGOR, husband and wife, are
the record owners of the real estate commonly known as 312 WEST NORTH STREET,
Indianapolis, Indiana, and more particularly described as Lot 20 in the Watermark II Subdivision
by deed executed the 28th day of FEBRUARY, 1997 and recorded in the Office of the
Recorder of Marion County, Indiana, as Instrument No. 97-5156, and hereby consent to
the terms and conditions of the foregoing Second Amended and Restated Declaration of
Covenants and Restrictions of Watermark.

DATED: 1-7-00

[Signature]
Printed Name: JAMES L. MACGREGOR

[Signature]
Printed Name: BARBARA J. MACGREGOR
STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared
JAMES L. MACGREGOR and BARBARA J. MACGREGOR husband and wife, who
acknowledged the execution of the foregoing instrument as their voluntary act and deed and
who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 1 day of January, 2000.

NOTARY PUBLIC:

[Signature]

Printed: [Name]

My Commission Expires:

10-2001

My County of Residence:

Marion
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATE DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

JOHN MOSES, an individual, is the record owner of the real estate commonly known as
316 WEST NORTH STREET, Indianapolis, Indiana, and more particularly described as Lot 21
in the Watermark II Subdivision by deed executed the 24th day of July, 1992, and
recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 93-
4/2/44, and hereby consents to the terms and conditions of the foregoing Second Amended
and Restated Declaration of Covenants and Restrictions of Watermark.

DATED: 2/1/00

[Signature]

Printed Name: JOHN M. MOSES
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared JOHN MOSES, who acknowledged the execution of the foregoing instrument as his voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 1st day of February 2009.

NOTARY PUBLIC:

__________________________
Nancy L. Webb

Printed: Nancy L. Webb

My Commission Expires:  August 21, 2007
My County of Residence:  Marion
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK

5TH/3RD BANK ("Mortgage"), which holds a mortgage encumbering Lot 21 in
Watermark II Subdivision, as executed in its favor by JOHN MOSES and recorded
7-2-97 , 1997, in the office of the Recorder of Marion County, Indiana, as Instrument
No. 97-04778 , (the "Mortgage"), hereby consents to the terms and conditions of the foregoing
Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, and
Mortgagee further acknowledges and agrees that its rights, title and interests in and to the
property encumbered by the Mortgage shall be subject and subordinate to the Amended and
Restated Declaration of Covenants and Restrictions of Watermark and all documents
incorporated therein.

DATED: 11-4-99

MORTGEE:

FIFTH THIRD BANK

By: ____________________________

Printed: (Terry W. Malone)

Title: Vice President

STATE OF OHIO )
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared
Terry W. Malone, who, being first duly sworn by me upon his/her oath, says that
he/she is the Vice President of FIFTH THIRD BANK, and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 4th day of November, 1999.

NOTARY PUBLIC:

Printed: ____________________________

My Commission Expires:

7-22-03

MARION,IN
Document: AM 2000.67961
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LORAYNE A. SCHAEFER
Notary Public, State of Ohio
My Commission Expires July 22, 2003
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

THOMAS W. JERNSTEDT and KRISTINE LYNN KELLAM-JERNSTEDT,
husband and wife, are the record owners of the real estate commonly known as 322 WEST
NORTH STREET, Indianapolis, Indiana, and more particularly described as Lot 22 in the
Watermark II Subdivision by deed executed the 5th day of August, 1999, and recorded in the
Office of the Recorder of Marion County, Indiana, as Instrument No. 99-0149121, and hereby
consent to the terms and conditions of the foregoing Second Amended and Restated Declaration
of Covenants and Restrictions of Watermark.

DATED: 4/12/00

[Signature]

Printed Name: Thomas W. Jernstedt

[Signature]

Printed Name: Kristine Lynn Jernstedt

MARION, IN
Document: AM 2000.67961
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared THOMAS W. JERNSTEDT and KRISTINE LYNN KELLIAM-JERNSTEDT, husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 17 day of April, 1999.

NOTARY PUBLIC:

ANGELA N. GARVIN  
Notary Public  
State of INDIANA  
Commission Expires Jan 18, 2007

Printed: ANGELA N. GARVIN

My Commission Expires: 1/18/07  
My County of Residence: MARION
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

NICOLE IRENE HUFF AND JUDITH ANN HUFF, daughter and mother, are
the record owners of the real estate commonly known as 326 WEST NORTH STREET,
Indianapolis, Indiana, and more particularly described as Lot 23 in the Watermark II
Subdivision by deed executed the 6th day of NOVEMBER, 1999, and recorded in the
Office of the Recorder of Marion County, Indiana, as Instrument No. 99-118529, and
hereby consent to the terms and conditions of the foregoing Second Amended and
Restated Declaration of Covenants and Restrictions of Watermark.

DATED: 1-11-00

[Signature]

Printed Name: JUDITH HUFF

[Signature]

Printed Name: NICOLE HUFF
STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared
NICOLE IRENE HUFF AND JUDITH ANN HUFF, daughter and mother, who
acknowledged the execution of the foregoing instrument as their voluntary act and deed
and who, having been duly sworn, stated that any representations therein contained are
true.

Witness my hand and Notarial Seal this 11th day of Jan, 1999.

NOTARY PUBLIC:

Printed: TROY A. SHORT
Notary Public, Kent County MI
My Commission Expires Aug 27, 2002

My Commission Expires: My County of Residence:

This instrument was prepared by and please return after recordation to:

John B. Baxter, attorney-at-law
JOHNSON, SMITH, PENCE & HEATH, L.L.P
One Indiana Square, Suite #1800
Indianapolis, IN 46204
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

RANDY N. KORD and KIMBERLY W. KORD, husband and wife, are the record
owners of the real estate commonly known as 330 WEST NORTH STREET, Indianapolis,
Indiana, and more particularly described as Lot 24 in the Watermark II Subdivision by deed
executed the 29TH day of OCTOBER, 1997 and recorded in the Office of the Recorder of
Marion County, Indiana, as Instrument No. 97-16-35891, and hereby consent to the terms and
conditions of the foregoing Second Amended and Restated Declaration of Covenants and
Restrictions of Watermark.

DATED: 2/13/30

[Signature]

Printed Name: Randay N. Kord

[Signature]

Printed Name: Kimberly W. Kord
STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally appeared RANDY N. KORD and KIMBERLY W. KORD husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 18th day of February, 1999.

NOTARY PUBLIC:

JENNIFER DUBEANSKY
Notary Public
State of INDIANA
Commission Expires Jan 18, 2007

Printed: JENNIFER DUBEANSKY

My Commission Expires: 1/18/07

My County of Residence: MARION
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATE DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK

NATIONAL CITY MORTGAGE ("Mortgagee"), which holds a mortgage
encumbering Lot 24 in Watermark II Subdivision, as executed in its favor by RANDY N.
KORD and KIMBERLY W. KORD and recorded DOC# 97-10698, 1997, in the office of the
Recorder of Marion County, Indiana, as Instrument No. 97-10698, (the "Mortgage"), hereby
consents to the terms and conditions of the foregoing Second Amended and Restated Declaration
of Covenants and Restrictions of Watermark, and Mortgagee further acknowledges and agrees
that its rights, title and interests in and to the property encumbered by the Mortgage shall be
subject and subordinate to the Amended and Restated Declaration of Covenants and Restrictions
of Watermark and all documents incorporated therein.

DATED: 2-3-00

MORTGAGEE:

National City Mortgage

By: Crystal A. Carter

Printed: Crystal A. Carter

Title: Supervisor

STATE OF: Ohio SS:

COUNTY OF: Montgomery

Before me, a Notary Public in and for said County and State, personally appeared
Crystal A. Carter, who, being first duly sworn by me upon her oath, says that
he/she is the Supervisor of CASH RESCUE for NATIONAL CITY MORTGAGE
and he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 3rd day of February, 2000.

NOTARY PUBLIC:

Margaret E. Durham

Printed: Margaret E. Durham

My Commission Expires: May 15, 2004

My County of Residence: Montgomery
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

PATRICIA L. FLYNN, is the record owner of the real estate commonly known as 631
ELLSWORTH, Indianapolis, Indiana, and more particularly described as Lot 25 in the
Watermark II Subdivision by deed executed the 22nd day of July, 1998, and recorded in the
Office of the Recorder of Marion County, Indiana, as Instrument No. 98-125504, and hereby
consents to the terms and conditions of the foregoing Second Amended and Restated Declaration
of Covenants and Restrictions of Watermark.

DATED: 2/10/2000

[Signature]

PRINTED NAME: PATRICIA L. FLYNN
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared PATRICIA L. FLYNN, who acknowledged the execution of the foregoing instrument as her voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 16th day of FEBRUARY 1999.

NOTARY PUBLIC:

JENNIFER DUBEANSKY  
Notary Public  
State of INDIANA  
Commission Expires Jan 19, 2007

My Commission Expires: 1-18-07  
My County of Residence: MARION
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

JEFFREY L. MCCARTY, is the record owner of the real estate commonly known as
659 ELLSWORTH, Indianapolis, Indiana, and more particularly described as Lot 28 in the
Watermark II Subdivision by deed executed the 7th day of ______, 1995, and
recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-
10-075187, and hereby consents to the terms and conditions of the foregoing Second Amended
and Restated Declaration of Covenants and Restrictions of Watermark.

DATED: 12-6-99

[Signature]

Printed Name: JEFFREY L. MCCARTY
STATE OF INDIANA  
COUNTY OF MARION  

Before me, a Notary Public in and for said County and State, personally appeared JEFFREY L. MCCARTY, who acknowledged the execution of the foregoing instrument as her voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 6th day of DECEMBER, 1999.

NOTARY PUBLIC:

JENNIFER DUBEANSKY  
Notary Public  
State of INDIANA  
Commission Expires Jan 18, 2007

My Commission Expires: 1/18/07  
My County of Residence: MARION
CONSENT AND SUBORDINATION OF MORTGAGEE
to Second Amended and Restated Declaration of
Covenants and Restrictions of Watermark

Applex Mortgage Group Inc. ("Mortgagee"), which holds a mortgage
encumbering Lot 28 in Watermark II Subdivision, as executed in its favor by JEFFREY L.
MCCARTY and recorded May 18, 1999, in the office of the Recorder of Marion
County, Indiana, as Instrument No. 95, et seq., (the "Mortgage"), hereby consents to the terms
and conditions of the foregoing Second Amended and Restated Declaration of Covenants
and Restrictions of Watermark, and Mortgagee further acknowledges and agrees that its rights, title
and interests in and to the property encumbered by the Mortgage shall be subject and subordinate
to the Amended and Restated Declaration of Covenants and Restrictions of Watermark and all
documents incorporated therein.

DATED: 2-8-2000

MORTGAGEE:

By:

Printed: Raymond R. Stace, First Vice President
American Mortgage Group, Inc. A
Delaware Corporation Affiliate of
Standard Federal Bank

STATE OF

COUNTY OF

BEFORE me, a Notary Public in and for said County and State, personally appeared

who, being first duly sworn by me upon his/her oath, says that

he/she is the

executive officer or agent of

and

he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this day of February, 1999.

NOTARY PUBLIC:

Printed:

My Commission Expires:

My County of Residence:
CONSENT OF LOT OWNER TO
SECOND AMENDED AND RESTATE DECLARATION
OF COVENANTS AND RESTRICTIONS OF WATERMARK

JOHN R. COLBY, II and PEGGY L. COLBY, husband and wife, are the record owners of the real estate commonly known as 663 ELLSWORTH STREET, Indianapolis, Indiana, and more particularly described as Lot 29 in the Watermark II Subdivision by deed executed the 28th day of July, 1997, and recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-103414, and hereby consent to the terms and conditions of the foregoing Second Amended and Restated Declaration of Covenants and Restrictions of Watermark.

DATED: 10/15/97

[Signature]

Printed Name: John R. Colby, II

[Signature]

Printed Name: Peggy L. Colby

MARION, IN
Printed on 9/23/2014 9:23:30 AM
STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, personally JOHN R. COLBY, II and PEGGY L. COLBY, husband and wife, who acknowledged the execution of the foregoing instrument as their voluntary act and deed and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 24th day of OCTOBER, 1999.

NOTARY PUBLIC:

JENNIFER DUBANECKY
Notary Public
State of INDIANA
Commission Expires Jan 18, 2007

Printed: JENNIFER DUBANECKY

My Commission Expires: 1-18-07

My County of Residence: Marion
CONSENT AND SUBORDINATION OF MORTGAGEE
TO SECOND AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF WATERMARK

CHASE MANHATTAN MORTGAGE CORPORATION ("Mortgagor"), which
holds a mortgage encumbering Lot 29 in Watermark II Subdivision, as executed in its favor
JOHN R. COLBY, II and PEGGY L. COLBY and recorded AUGUST 1ST, 1997, in the office
of the Recorder of Marion County, Indiana, as Instrument No. 97-106646, (the "Mortgage"),
hereby consents to the terms and conditions of the foregoing Second Amended and Restated
Declaration of Covenants and Restrictions of Watermark, and Mortgagor further acknowledges
and agrees that its rights, title and interests in and to the property encumbered by the Mortgage
shall be subject and subordinate to the Amended and Restated Declaration of Covenants and
Restrictions of Watermark and all documents incorporated therein.

DATED: January 13, 2000

MORTGAGEE:

CHASE MANHATTAN MORTGAGE CORPORATION

By: ____________________________
    Tamara M. Aziz
    Title: Assistant Vice President

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

Before me, a Notary Public in and for said County and State, personally appeared
Tamara M. Aziz, who, being first duly sworn by me upon his/her oath, says that
he/she is the Assistant Vice President, Chase Manhattan Mortgage Corporation and
he/she acknowledged execution of the foregoing on its behalf.

Witness my hand and Notarial Seal this 13th day of January, 1999.

NOTARY PUBLIC:

__________________________________________
    Margaret J. Saussler

My Commission Expires: July 21, 2001

My County of Residence: Hillsborough County, Florida

MARION,IN

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Document: AM 2000.67961

Printed on 9/23/2014 9:23:31 AM
This instrument was prepared by and please return after recordation to:

John B. Baxter, attorney-at-law
JOHNSON, SMITH, PENCE & HEATH, LLP
One Indiana Square, Suite #1800
Indianapolis, IN 46204
Exhibit A

Legal Description

A parcel of land lying within the Northeast Quarter of Section 2, Township 15 North, Range 3 East, Second Principal Meridian, Center Township, Marion County, Indiana, said parcel being more particularly described as follows:

BEGINNING at the intersection of the South right-of-way line of Walnut Street and the West right-of-way line of Senate Avenue as said street and said avenue are shown on the plat of WATERMARK I, a subdivision in Indianapolis, Indiana, the plat of which is recorded as Instrument Number 9500124125 in the Office of the Recorder of Marion County, Indiana; thence South 00 degrees 01 minute 14 seconds West (plat bearing) 389.71 feet on the West right-of-way line of said Senate Avenue to the North right-of-way line of North Street as said street is shown on the plat of said WATERMARK I; thence North 90 degrees 00 minutes 00 seconds West 421.49 feet on the North right-of-way line of said North Street to the Southwest corner of Block "A" in said WATERMARK I; thence North 00 degrees 05 minutes 40 seconds East 391.37 feet on the West line of said Block "A" to the Northwest corner thereof, being on the South line of said Walnut Street; thence South 89 degrees 46 minutes 23 seconds East 420.99 feet on the South line of said Walnut Street to the BEGINNING POINT, containing 3.777 acres, more or less.

This subdivision consists of 29 LOTS, numbered 1 through 29 inclusive, and nine BLOCKS, designated alphabetically as "A", "B", "C", "D", "E", "F", "G", "H" and "I."
Exhibit B

Legal Description

Beginning at a point on the West line of BLOCK "A" in the plot of WATERMARK II, as per plat thereof recorded as Instrument Number 9700082146 in the Office of the Recorder of Marion County, Indiana, said point being 74.69 feet measured South 00 degrees 05 minutes 40 seconds East (assumed bearing) on the West line of said BLOCK "A" from the Northwest corner of said BLOCK "A"; thence continuing South 00 degrees 05 minutes 40 seconds East on said West line 316.68 feet to the Southwest corner of said BLOCK "A", said corner being on the North right of way line of North Street, as said right of way was vacated March 12, 1997 by Declaratory Resolution No. 97-VAC-8; thence North 90 degrees 00 minutes 00 seconds East on said North Street right of way prior to the vacated thereof, and the South line of said BLOCK "A," a distance of 85.74 feet to the Southeast corner of said BLOCK "A"; thence North 00 degrees 01 minute 14 seconds East on the East line of said BLOCK "A," a total distance of 316.51 feet to a point that is 74.52 feet South of the Northeast corner of said BLOCK "A"; thence North 89 degrees 53 minutes 15 seconds West 85.33 feet to the place of beginning. Subject to all legal easements and rights of way. This subdivision consists of nine lots, numbered 30 through 38.
Cross Reference Instrument No. 95-124125

DECLARATION OF RESTRICTIVE COVENANT FOR PART OF BLOCK “A” IN WATERMARK I SUBDIVISION

922056489

THIS DECLARATION OF RESTRICTIVE COVENANT FOR PART OF BLOCK “A” IN WATERMARK I SUBDIVISION (the “Declaration”) is made this 1st day of December, 2005, by WATERMARK REGIME ASSOCIATION, INC., an Indiana nonprofit corporation organized and existing under the laws of the State of Indiana, having its principal office and place of business at 700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204-2960 (the “Declarant”),

WITNESSETH: That

WHEREAS Declarant is the owner of the Common Areas as defined in the Declaration of Watermark Horizontal Property Regime dated October 30, 1996 and recorded October 30, 1996 as Instrument No. 960153647 in the Office of the Recorder of Marion County, Indiana, as amended and supplemented from time to time, of real property described in Exhibit A attached hereto and made a part hereof (the “Real Estate”); and

WHEREAS Declarant, as the owner of the Real Estate, hereby declares that such Real Estate shall be held, sold, and conveyed subject to the following restrictive covenant which shall run with the Real Estate and shall be binding on all parties having any right, title, or interest in the Real Estate or any part thereof, their heirs, successor, successors-in-title, and assigns.

“No vertical structures, buildings or improvements shall be constructed within three (3) feet of the south line of the Real Estate.”

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the day and year first above written.
WATERMARK REGIME ASSOCIATION, INC., an Indiana non-profit corporation

By: Heidi Neuburger
Printed: Heidi Neuburger
Title: President

STATE OF INDIANA )
) SS:
COUNTY OF MARION )

Before me, a Notary Public in and for said county and state, personally appeared Heidi Neuburger, who being first duly sworn by me upon his oath, stated that he is the President of WATERMARK REGIME ASSOCIATION, INC., an Indiana nonprofit corporation, that he is duly authorized to execute the foregoing on behalf of such entity, that any statements or representations of fact contained therein are true and he acknowledged execution of the foregoing on behalf of said entity.

Witness my hand and Notarial Seal this 1st day of August, 2005.

NOTARY PUBLIC:

Printed: Debi C. Myers

My Commission Expires: Oct. 16, 2009

My County of Residence: Marion

This instrument prepared by John B. Baxter, Attorney At Law, BARNES & THORNBURG LLP, 11 South Meridian, Indianapolis, Indiana 46204.
EXHIBIT A

REAL ESTATE
(Watermark Horizontal Property Regime)

WATERMARK Horizontal Property Regime - PHASE I (Building No. 6)

A part of Block "A" in Watermark I, a subdivision in the City of Indianapolis, Indiana, as per plat thereof, recorded September 27, 1995 as Instrument No. 95-124125 in the Office of the Recorder of Marion County, Indiana more particularly described as follows:

BEGINNING at the Northwest corner of Block "A" of Watermark I, as per plat thereof recorded September 27, 1995, as Instrument No. 95-124125 in the Office of the Recorder of Marion County, Indiana; thence South 89 degrees 46 minutes 23 seconds East (assumed bearing) along the North line of Block "A" 65.23 feet to the Northeast corner thereof; thence South 00 degrees 01 minutes 14 seconds West along the East line of Block "A" 72.63 feet; thence North 89 degrees 46 minutes 23 seconds West 85.33 feet to the West line of said Block "A"; thence North 00 degrees 05 minutes 40 seconds East along the West line of Block "A" 72.63 feet to the Northwest corner thereof and the point of beginning, containing 0.14 acres, more or less.
Prescribed by the
State Board of Accounts
(2005)

County Form 170

Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5-5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers;

2. I have redacted, to the extent permitted by law, each Social Security number in the attached document.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.

[Signature of Declarant]

[Printed Name of Declarant]
THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK

THIS THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF WATERMARK (the "Declaration") is made this 12th day of April, 2011, by WATERMARK HOMEOWNERS ASSOCIATION, INC., an Indiana not for profit corporation ("Association").

RECITALS:

A. Watermark Townhomes LLC, as Declarant, was the owner in fee simple of that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate"), laid off, platted and subdivided the Real Estate into lots and blocks in accordance with the Final Plat of Watermark I (the "Original Plat"), recorded September 27, 1995, and re-recorded October 3, 1995, as Instrument No. 95-124128, in the Office of the Recorder of Marion County, Indiana.

B. Declarant further subjected the Real Estate to certain covenants, conditions and restrictions in accordance with the Declaration of Covenants and Restrictions of Watermark (the "Original Declaration") recorded on October 3, 1995, as Instrument No. 95-124128 and the Plat Restrictions for Watermark Subdivision (the "Original Restrictions") recorded on October 3, 1995, as Instrument No. 95-124127.

C. Pursuant to that certain Consent to Vacation, Replat and Amendment of Plat Restrictions and Declaration of Covenants and Restrictions of Watermark I Subdivision (the "Watermark II Consent"), recorded on June 13, 1997, as Instrument No. 97-82145, Declarant vacated the Original Plat and replatted the Real Estate as a residential subdivision (the "Subdivision") in accordance with that certain Final Plat of Watermark II, recorded June 13, 1997, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-82146 (the "Watermark II Plat"). Declarant amended and restated the Original Restrictions pursuant to that certain Amended and Restated Plat Restrictions for the Subdivision, recorded June 13, 1997, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 97-008214 (the "Watermark II Restrictions"), and Declarant amended and restated the Original Declaration pursuant to that certain Amended and Restated Declaration of Covenants and Restrictions of Watermark.

D. Pursuant to the Watermark II Plat, the Subdivision consists of twenty-nine (29) lots, numbered 1 through 29, inclusive, known and designated as residential lots, and nine (9) blocks, designated alphabetically as "A," "B," "C," "D," "E," "F," "G," "H," and "I".

E. All of Block A was to be developed as and for twenty-four (24) condominiums (individually, a "Condominium"; collectively, the "Condominiums"), however only three (3) Condominiums were developed.
F. Declarant as the owner in fee simple of that certain portion of Block A, more particularly described on Exhibit B, attached hereto and made a part hereof (Parcel 2 of Block A), laid off, platted and subdivided Parcel 2 of Block A into nine (9) lots, numbered 30 through 38, inclusive, known and designated as residential lots, in accordance with the Final Replat of Watermark II (Panel 2 of Block A), recorded October 5, 1999, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 99-0204065 (the "Parcel 2 of Block A Plat") (the Watermark II Plat and the Parcel 2 of Block A Plat are hereinafter referred to together as the "Plat"), and is subjecting Parcel 2 of Block A to certain covenants, conditions and restrictions in accordance with the Plat Restrictions for Amendment of Watermark II, Block A to be recorded in the Office of the Recorder of Marion County, Indiana (the "Parcel 2 of Block A Restrictions") (the Watermark II Restrictions and the Parcel 2 of Block A Restrictions are hereinafter referred to collectively as the "Restrictions").

G. Declarant, as the Owner of Parcel 2 of Block A and additional portions of the Real Estate and having obtained the consent of all the Owners and Mortgagors (as such terms are hereinafter defined) pursuant to each Consent to Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, amended and restated the Amended Declaration pursuant to the Second Amended and Restated Declaration of Covenants and Restrictions of Watermark, recorded on May 3, 2000 in the Office of the Marion County Recorder as Instrument No. 2000-0067961. ("Second Amended Declaration")

H. Declarant as the owner in fee simple of that certain portion of land, more particularly described on Exhibit C, attached hereto and made a part hereof, laid off, platted and subdivided into two (2) lots, numbered 1 and 2, inclusive, known and designated as residential lots, in accordance with the Final Plat of Watermark III, recorded October 24, 2002, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 020204632, (the Watermark III Plat), and subject the Watermark III Plat to the Second Amended Declaration in accordance with the Plat Restrictions for Watermark III.

I. The Association desires to provide for maintenance of the Common Area (as hereinafter defined) that is of common benefit to owners of Lots and Condominiums, and to that end desires to establish certain obligations of such owners and a system of assessments and charges upon such owners for certain maintenance and other costs in connection with operation and maintenance of the Subdivision,

DECLARATION:

NOW, THEREFORE, the Association, having obtained the required consent of the Unit Owners and Mortgagors, hereby declares that all of the Real Estate is and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the Plat, the Restrictions, and the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for improvement and sale of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole, and each Lot and Condominium situated therein. All of the following covenants and restrictions shall run with the Real Estate; shall be binding upon Declarant, and all parties having or acquiring any right, title or interest, legal or equitable, in and
to the Real Estate or any part thereof; and shall inure to the benefit of all successors in title to the Real Estate or any part thereof.

1. DEFINITIONS

Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Plat and the Restrictions. In addition, the following are definitions of terms as they are used herein (which, for purposes hereof, shall supersede any different definition of such terms in the Plat or the Restrictions):

(i) “Additional Real Estate” is defined in paragraph 11.

(ii) “Assessment” shall mean the share of Common Expenses imposed upon each Unit, as determined and levied pursuant to paragraph 4, and shall include annual and special assessments.

(iii) “Association” shall mean Watermark Home Owners Association, Inc., which has been created as an Indiana nonprofit corporation and membership of which shall consist of all Owners, and their successors and assigns.

(iv) “Block” shall mean each of blocks set forth in Recital D and any part of the Additional Real Estate the Declarant has heretofore designated as a block.

(v) “By-Laws” shall mean Association’s code of by-laws.

(vi) “Board” shall mean Association’s board of directors.

(vii) Intentionally Omitted.

(viii) Intentionally Omitted.

(ix) “Commission” is defined in Paragraph 9.B.

(x) “Committee” shall mean the Watermark Development Control Committee, comprising three (3) members (who need not be Association members) appointed by Board and subject to removal by Board at any time with or without cause. Any vacancies existing from time to time shall be filled by Board

(xi) “Common Area” shall mean Blocks B, C, D, E, F, G, H and I (including any improvements thereto) and such real estate (including the Additional Real Estate) as the Declarant has designated as common area, which shall be owned by Association for common use and enjoyment of Owners. For purposes of maintenance only, the Common Area shall include all perimeter fences installed by the Declarant or by the Association and all wooden Unit boundary fences installed by the Declarant or installed by an Owner with the approval of the Board. The Common Area does not include the area between Units, or any improvements in that area between Units.
(xiii) "Common Expenses" shall mean the actual and estimated cost to Association for maintenance, management, operation, repair, improvement and replacement of Common Area, snow removal (to the extent, if any, provided by Association), taxes assessed against any Common Area, and any other cost or expense incurred by Association for the benefit of Common Area or the Subdivision generally, and shall also include the costs of insurance as required herein.

(xiv) "Declaration" shall mean the Plat, the Restrictions and this Declaration, collectively.

(xv) "Declarant" shall mean Watermark Townhomes, L.L.C., an Indiana limited liability company, or any other person that succeeds to its interest as a matter of law or as evidenced by a written instrument of transfer to such effect recorded in the Office of the Recorder of Marion County, Indiana.

(xvi) "Lot" shall mean each of the lots set forth in Recital D and Recital F and any part of the Additional Real Estate the Declarant has herefore designated as a lot.

(xvii) "Mortgagee" shall mean a holder, insuror or guarantor of a first mortgage on a Unit.

(xviii) "Owner" shall mean a person that owns the fee simple interest in and to a Unit, but excluding those persons having such interest merely as security for performance of an obligation.

(xix) "Pro-Rata Share" is defined in paragraph 4.B.

(xx) "Unit" shall mean a Condominium or a Lot.

2. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

A. Membership. Every Owner shall be a member of Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

B. Classes of Membership. Association shall have one class of voting membership, which members shall be all Owners and each member shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by the person that the collective members with respect to such Unit unanimously designate in writing to Association. In no event shall such Vote be split into fractional votes and in no event shall more than one (1) vote be cast with respect to any Unit. Each vote cast with respect to a Unit shall presumptively be valid, but if such vote is questioned by any member holding any interest in such Unit and if all members holding an interest in such Unit are not in agreement as to the validity of the vote for such Unit that is
questioned, then such vote shall not be counted.

C. Board of Directors. The members shall elect the Board as prescribed by the By-Laws. Board shall manage Association’s affairs.

D. Professional Management. No contract or agreement of Association for professional management of Association shall be for a term in excess of three (3) years. Any such contract or agreement shall provide for termination by either party with or without cause, and without any termination fee, by ninety (90) days’ written notice.

E. Responsibilities of Association. Association is hereby authorized to act and shall act on behalf, and in the name, place and stead, of the individual Owners in all matters pertaining to maintenance, repair and replacement of Common Area, determination of Common Expenses, collection of annual and special Assessments, and granting of any approvals called for by the Declaration for the common benefit of all Owners. Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Declaration. Neither Association, nor its directors, officers, employees or agents, shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration. Association shall, to the extent deemed necessary by Board, procure and maintain casualty insurance for Common Area, liability insurance (including directors’ and officers’ insurance), and such other insurance as it deems necessary or advisable. Association may contract for such services as management, snow removal and security control, and such other services as Association deems necessary or advisable.

F. Mortgagors’ Rights. Any Mortgagor shall have the right, but not the obligation, to pay any overdue premiums on hazard insurance policies required to be maintained by Association, or to secure new hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagor making any payment pursuant to this paragraph shall be entitled to reimbursement from Association promptly upon written demand therefor to Association.

G. Primary Responsibility. Subject to the limitations set forth in the Declaration, Association shall be primarily responsible for keeping Common Area in a clean, orderly and well groomed condition, and Association and its agents shall have the right to enter upon Common Area at all reasonable times in order to fulfill this primary responsibility.

3. INSURANCE AND BONDS.

A. Association shall maintain in force such insurance protecting Association against liability for property damage and personal injury occurring on or in connection with Common Area as Board may deem appropriate.

B. A professional management firm shall be required to maintain in force such insurance as Board may determine and must submit evidence of such coverage to Association as required by Board.
C. Except as otherwise provided in any declaration of horizontal property regime governing the Condominium, each Owner shall be solely responsible for loss, of or damage to the improvements and personal property located in or on its Unit, however caused, and shall be solely responsible for obtaining its own insurance to cover any loss and risk.

D. Association shall obtain a fidelity bond in an amount adjusted from time to time to be equal to 200% of the annual estimated Common Expenses and reserves, which bond shall cover acts of dishonesty or fraud of any member, employee or agent of Association that handles Association’s funds. A third party management company shall also be required to obtain such bond to the extent it handles Association’s funds.

E. Neither Association or Board, nor any member, director, officer, employee or any of the foregoing, shall be held liable or otherwise subject to any claim for damages if discretion to obtain insurance permitted by the Declaration is exercised or not exercised.

F. All proceeds of casualty insurance shall be used for restoration of the casualty.

4. MAINTENANCE ASSESSMENTS.

A. Purpose of Assessments. Assessments levied by Association shall be used exclusively for the purpose of preserving the value of Units, and promoting health, safety and welfare of Owners, users and occupants of the same, and, in particular, for improvement, repair, replacement, operation and maintenance of Common Area, including, but not limited to, payment of taxes and insurance thereon, if any, for cost of labor, equipment, material and management furnished with respect to Common Area, and for any and all other Common Expenses. Each Owner shall pay to Association:

(i) A Pro-Rata Share of annual Assessments fixed, established and determined from time to time as hereinafter provided; and

(ii) A Pro-Rata Share of any Special Assessments fixed, established and determined from time to time as hereinafter provided.

B. Pro-Rata Share. The Pro-Rata Share of each Owner for purposes of this paragraph shall be the percentage obtained by dividing one hundred percent (100%) by the total number of Units.

C. Liability for Assessments. Each Assessment, together with any interest or late fees assessed thereon and costs of collection thereof including attorneys’ fees shall be the personal liability of each Owner, shall be a charge on each Unit, and shall constitute a lien upon each Unit from and after the due date thereof in Association’s favor. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee under any first mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve any Unit from liability for any Assessments thereafter becoming due or from the lien thereof nor shall any sale or transfer relieve any Owner of the personal liability imposed hereby. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.
D. **Basis of Annual Assessments:**

(i) Board shall propose and Owners shall approve an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for such fiscal year, together with a reasonable allowance for contingencies and reserves as Board deems appropriate. A copy of such budget shall be delivered to each Owner at least thirty (30) days prior to the beginning of such fiscal year.

(ii) In the event that the Owners do not approve an annual budget, the Board may adopt a temporary budget in an amount not to exceed one hundred twelve percent (112%) of the last approved budget. The temporary budget shall be the basis of the annual assessments until such time as the Owners approve a budget. If the budget as approved is greater or less than the amount of the temporary budget, the annual assessments shall be adjusted so that the annual assessments collected for the remainder of the fiscal year properly fund the approved budget.

E. **Basis of Special Assessments.** Should Board at any time during a fiscal year determine that Assessments levied for such year may be insufficient to pay Common Expenses for such year, Board shall call a special meeting of Association to consider imposing such special Assessments as may be necessary to meet Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners present or represented at such meeting, and shall be due and payable on the date(s) determined by such Owners or, if not so determined, by Board.

F. **Fiscal Years, Date of Commencement of Assessments, Due Dates.** Association’s fiscal year shall be the calendar year and may be changed from time to time by Board. Annual Assessments shall be due and payable monthly on the first day of each calendar month, except that Board may from time to time by resolution authorize and require payment of annual Assessments in quarterly, semi-annual or annual installments.

G. **Duties of Association.**

(i) Board shall cause proper books and records of levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth each Unit and each Assessment applicable thereto, which books and records shall be kept in Association’s office and shall be available for inspection and copying by each Owner (or a duly authorized representative of any Owner) during Association’s regular business hours. Except as otherwise provided in the By-Laws, Association shall cause financial statements to be prepared at least annually for each fiscal year of Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. Board shall cause written notice of all Assessments levied by Association to be mailed to Owners or their designated representatives. Notices of amounts of annual Assessments and amounts of installments thereof shall be sent annually within thirty (30) days following determination thereof. Notices of amounts of special Assessments shall be sent as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. If such notice is mailed less than thirty
(30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(ii) Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company or Mortgagee a certificate in writing signed by any officer or agent of Association, setting forth the extent to which Assessments have been levied and paid with respect to any Unit in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(iii) Association shall notify any Mortgagee from which it has received a written request for notice: (a) of any default in performance of any obligation under the Declaration by any Owner that is not cured within sixty (60) days; (b) of any condemnation or casualty loss that affects either a material portion of the Subdivision or the Unit securing its loan; and (c) of any proposed action that requires consent of Mortgagees or a specified percentage thereof as set forth in the Declaration.

H. Nonpayment of Assessments; Remedies of Association.

(i) If any Assessment is not paid by the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest or late fees assessed thereon and costs of collection thereof, including attorneys’ fees, become a continuing lien on the Unit against which such Assessment was made, and such lien shall be enforceable against the interest of such Owner, and all successors and assigns of such Owner; in such Unit; provided, however, that such lien shall be subordinate to any first mortgage on such Unit recorded prior to the date such Assessment becomes due.

(ii) If any Assessment upon any Unit is not paid within thirty (30) days after the due date, such Assessment and all late fees and costs of collection thereof, including attorneys’ fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum, and Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and or to foreclose the lien against such Owner’s Unit, and there shall be added to the amount of such Assessment and late fees all costs of such action, including Association’s attorneys’ fees, and, if a judgment is obtained, such judgment shall include such interest, fees, costs and attorney’s fees.

I. Adjustments. If amounts actually expended by Association for Common Expenses in any fiscal year exceed amounts budgeted and assessed for Common Expenses for such fiscal year, the amount of such deficit may be recouped either by inclusion in the budget for annual Assessments for the following fiscal year or by making one or more special Assessments for such purpose, at Association’s option. If amounts budgeted and assessed for Common Expenses in any fiscal year exceed amounts actually expended by the Association for Common Expenses for such fiscal year, each Owner’s Pro-Rata Share of such excess shall be a credit against Assessments due from such Owner for the next fiscal year.
J. Notice and Quorum for Imposition of Special Assessments. Written notice of any meeting called for the purpose of imposing Special Assessments shall be sent to all Owners not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners entitled to cast fifty percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

K. Subordination of Lien to Mortgages. The lien of Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the Assessment lien and shall not relieve the Owner of such Unit from liability for any Assessments becoming due prior to such sale or transfer, provided, however, that sale or transfer of any Unit pursuant to foreclosure of any first mortgage on such Unit (without the necessity of joining Association in such foreclosure action), or any proceedings or deed in lieu thereof, shall extinguish the lien of all Assessments first becoming due prior to the date of such sale or transfer.

5. CHARACTER OF SUBDIVISION.

A. In General. No structure or other improvement shall be erected, altered, placed or permitted to remain upon any Lot, other than one detached single-family dwelling and residential accessory buildings, and three (3) attached single family dwellings on Block A, subject to the limitations in the Restrictions. No Unit shall be used for a group home.

B. Accessory Outbuilding Prohibited. Except as may otherwise be provided in the Restrictions, no accessory outbuilding shall be erected on any Lot or Block.

C. Occupancy or Residential Use of Partially Completed Dwellings Prohibited. No dwelling constructed on any Lot or Block shall be occupied or used for residential purposes or human habitation until it has been substantially completed for occupancy in accordance with the approved building plan. The determination whether a dwelling has been substantially completed in accordance with the approved building plan shall be made by Committee and such decision shall be binding on all parties.

D. Other Restrictions. The Real Estate shall be subject to all easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Real Estate.

E. Fences, Light Fixtures, Etc. Any deck, patio, exterior light fixture, basketball goal, hot tub, other exterior structure or other improvement must be approved in advance and in writing by Committee as to size, location, height and composition.

F. Landscaping or Exterior Construction. Any proposed landscaping on any Lot or Block; or construction on or alteration of any Lot or Block, or any building thereon, must be approved in advance and in writing by Committee as set forth in paragraph 7. The following requirements
shall be applicable unless Committee shall approve otherwise: (i) all utility facilities in the Subdivision will be underground, except where required to be placed above ground by the individual utility supplier; (ii) each driveway in the Subdivision will be of concrete material; (iii) no additional parking will be permitted on a Lot or Block other than in the existing driveway(s); (iv) all garage doors in the Subdivision will be of a hardboard, metal or wood material; (v) whenever possible, all utility meters and HVAC units in the Subdivision will be located in places unseen or screened from the fronts of the dwellings; (vi) no outside fuel storage tanks will be permitted and no gasoline storage will be permitted above or below ground in the Subdivision; (vii) all windows in the Subdivision will be factory or on the job painted, no raw aluminum windows will be permitted and all windows will have an approved thermal break; (viii) all gutters and downspouts in the Subdivision will be factory painted; (ix) all roofing in the Subdivision will be of a consistent color scheme and a shingle-type material acceptable to Committee; (x) all roof pitches will be acceptable to Committee; (xi) no metal, fiberglass or similar type material awnings or patio covers will be permitted in the Subdivision; (xii) no swimming pools will be permitted in the Subdivision; and (xiii) modular-type construction is not permitted in the Subdivision, provided, however, that prefabricated home components such as walls and roof trusses will not be considered modular-type construction.

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

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

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

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

(i) Mow and care for the lawn at such times as may reasonably be required in order to prevent untidy growth of vegetation and weeds;

(ii) Remove all debris or rubbish;

(iii) Prevent existence of any other condition that reasonably tends to detract from or diminish aesthetic appearance of the Subdivision;

(iv) Cut down and remove dead trees; and

(v) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
6. **MISCELLANEOUS PROVISIONS AND PROHIBITIONS**

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

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

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

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

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

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

G. **Temporary Structures.** No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot or Block, except such temporary structures
as the Committee shall approve in advance and in writing. No overnight camping shall be permitted on any Lot or Block.

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

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

J. Antennas. Except as otherwise provided by law, exposed antennae and satellite dishes shall be not permitted in the Subdivision. A single satellite dish of less than one (1) meter may be attached to the eaves of a dwelling, without prior approval of the Committee. The Owner shall install the satellite dish so that it is as unobtrusive as feasible, without interfering with reception.

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

7. DEVELOPMENT CONTROL COMMITTEE.

A. Powers of Committee.

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

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

(a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show, the proposed improvement to be in violation of the Declaration;
(b) the design, color scheme or use of materials it not in harmony with the Subdivision; or

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

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

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

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

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

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

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

   A. **In General.** Any party to the benefit of which the Declaration inures, including Association or any Owner, may proceed at law or in equity to prevent occurrence or continuation of any violation of the Declaration, but Association shall not be liable for damages of any kind to any person for failing to abide by, enforce or carry out any of the terms and provisions hereof.

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

   C. **Delay or Failure to Enforce.** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any provision of the Declaration shall be held to be a waiver by such party of (or an estoppel of such party to assert) any right available to it upon occurrence, reoccurrence or continuation of such violation.

   D. **Required Notice of Violation.** Before the Association may seek foreclosure, file suit, charge any fee (including attorney fees), limit common area use, or take other action against an Owner for violation of governing documents, except for an emergency action as provided in Section I or except for the collection of delinquent assessments, the Association must, in addition to compliance with other law and governing documents, do the following:

   1. Provide notice to the Owner at the address of the Unit, unless the Owner has provided a different address, twice (the second of which must be by certified mail or personal hand-delivery), at least 21 days apart, that:
      a. describes the basis for the claim, including how the Owner allegedly violated quoted terms of the governing documents;
      b. states any amount the Association claims is due, describes how the Owner can remedy the violation, confirms the right to comply without waiving the right to dispute the violation, and (where applicable) gives notice of the right to request an installment plan for payments;
      c. states the Owner has a reasonable period to cure of at least 21 days after the second notice, unless the Owner had an opportunity to cure a similar violation within the past six months, and that during the cure period the homeowner can obtain a hearing as provided in Section E, without incurring any attorney fees charged by the Association; and

   E. **Right to a Hearing.** After notice, as provided in Section D(1), Owners have the right at no cost to a hearing to verify facts and seek resolution with the directors or a committee.
designated by the directors. If the directors use a committee, any agreement must be enforceable, to be ratified by the directors unless it conflicts with law or the governing documents, and the Owner must be allowed to appeal to the directors. In addition:

1. the Association shall hold the hearing within 30 days after the Association receives the Owner's request and shall provide notice of the date, time, and place at least 10 days before the hearing; the Owner may request postponement, which shall be granted if for not longer than ten days; additional postponements may be granted by written agreement of the parties; the Owner may record the meeting; and the committee (and, on any appeal, the directors) shall issue a written decision; and

2. the Association shall extend the period to cure under Section D(1)(c) until 15 days after notice of the written decision by the committee or directors, whichever is later.

F. Right to Extend Time to Cure. During the period to cure as provided in Section D, as extended in Section E, the Association shall not incur attorney fees chargeable to the Owner, and shall not take any enforcement action except for emergency action allowed by Section I.

G. No Lawsuit Without Directors Voting. The Association may not sue an Owner without an authorizing vote by a majority of all directors, in compliance with applicable law and governing documents that may set super-majority vote or other requirements.

H. Notice before Litigation. Except for emergency action allowed by Section I, the Association must provide distinct notice at least 15 days before filing suit against an Owner, that:

1. describes the basis for the suit, including how the Owner allegedly violated specified terms of the governing documents; and

2. states any amount the Association claims is then due, describes how the Owner can cure the violation, and (where applicable) gives notice of the right to request an installment plan for assessments.

I. Exception for Emergencies. Nothing precludes the Association from seeking a temporary injunction, or taking temporary enforcement action (such as suspension of rights to use a common property), in a good faith response to an emergency. An emergency is a situation that could not have been reasonably foreseen, poses a significant and immediate threat of harm to the common-interest community or the Common Area or another Unit, and makes compliance with the preceding paragraphs impractical. Any temporary enforcement action entitles the Owner to immediate notice and the related rights above, provided enforcement action may remain in place pending (a) the final determination of Owner rights or (b) the end of the conditions resulting in the immediate and significant threat, whichever comes sooner.

J. No Additional Charges, but Additional Options Allowed. The Association may not charge an Owner for exercise of the foregoing rights, but the Association may offer additional options for alternative dispute resolution (ADR); provided the Association may not require binding ADR or otherwise require an Owner to waive the right to go to court. In any litigation, if
a party moves to compel nonbinding ADR, the court may consider the extent to which the parties already have pursued ADR.

K. Compliance Under Protest. Owner compliance with the Association’s demand for action, or demand to cease action, including (but not limited to) any demand to pay assessments or attorney fees, does not waive Owner’s rights to challenge such demand.

L. Limited Association Rights to Attorney Fees. In any case brought by the Association, the Association shall be awarded reasonable attorney fees and costs to the extent that the Association prevails. Attorney fees shall reflect counsel’s reasonable hourly rate and time worked, limited by the amount the Association actually paid.

10. EFFECT OF BECOMING AN OWNER.

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

11. ANNEXATION OF ADDITIONAL REAL ESTATE.

Intentionally Omitted.

12. TITLES.

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

13. DURATION AND AMENDMENT.

A. The Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both Owners of at least ninety percent (90%) of the Units and Mortgagors of at least ninety percent (90%) of the mortgaged Units vote to terminate the Declaration, in which case the Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by the Declaration shall be perpetual unless otherwise expressly indicated.

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

C. Intentionally Omitted.

D. Subject to the other requirements of this paragraph 13, unless Mortgagees of at least two-thirds (2/3) of the mortgaged Units and Owners of at least two-thirds (2/3) of the Units have given their prior written approval, Association shall not be entitled to:

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

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

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

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

14. RIGHTS OF MORTGAGEES.

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

15. NOTICES.

All notices shall be in writing and shall be deemed given on the date such notices are hand delivered or deposited in the U.S. Mail, first class postage prepaid, addressed as follow:

Notices to the Association or the Committee shall be sent to the Managing Agent for the Association.

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Notices to an Owner shall be sent to the address provided by such Owner to Association or to such Owner’s Unit, Association and Committee may change address for notice purposes by notice to Owners may change address for notice purposes by notice to Association.

16. CONDEMNATION

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

17. CONFLICTING PROVISIONS

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

18. SEVERABILITY

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

WATERMARK HOMEOWNERS ASSOCIATION, INC.

By: 

President

JOHN M. HOBS

Printed

ATTEST:

Heidi Neuburger

Secretary

Printed

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STATE OF INDIANA  )
 ) SS:
COUNTY OF MARION  )

Before me appeared Heidi Neuburger and John Moses, respectively the President and Secretary of the Watermark Homeowners Association, Inc. and acknowledged that they signed and delivered the Third Amended and Restated Covenants and Restrictions of Watermark as their own free and voluntary act, and as the free and voluntary act of said corporation for the uses and purposes therein set forth this 2nd day of June, 2011.

Jeffrey C. Anie
Printed

My county of residence is Marion, County, Indiana

My Commission Expires: 9/30/16

AFFIDAVIT OF MAILING
NOTICE TO FIRST MORTGAGEES

STATE OF INDIANA  )
 ) SS:
COUNTY OF MARION  )

After being first duly sworn under oath, Heidi Neuburger, the Secretary of the Watermark Homeowners Association, Inc., hereby deposes and says said Secretary has mailed a copy of the foregoing Third Amended and Restated Declaration and Restrictions of Watermark by United States mail to all holders of first mortgages of record entitled to such notice on this 3rd day of June, 2011.

Heidi Neuburger
Secretary
Printed
Before me, a Notary Public for the above County and State, personally appeared
Heidi Metzger, the Secretary of the Watermark Homeowners Association, Inc., and
after being duly sworn under oath, acknowledged the execution of the foregoing Affidavit of
Mailing Notice to First Mortgagors and stated the statements in said Affidavit are true.

Witness my hand and Notarial Seal this 22nd day of June, 2011.

Jeffrey L. Acri
Printed

My county of residence is Marion, County, Indiana

My Commission Expires: 9/30/16

I affirm, under the penalties for perjury, that I have taken reasonable care to redact
each Social Security number in this document, unless required by law.

Stephen R. Buschmann
Printed

Return copies of this document to: Stephen R. Buschmann,
Thresher Buschmann & Voelkel, P.C., 151 N. Delaware Street,
Suite 1900 Indianapolis, Indiana 46204.

This instrument prepared by: Stephen R. Buschmann, Thresher Buschmann & Voelkel, P.C.,
151 N. Delaware Street, Suite 1900, Indianapolis, IN 46220

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EXHIBIT A

EXHIBIT I

Part of the donation lands of the City of Indianapolis, Indiana as recorded in the Office of the Marion County Recorder of July 5, 1831, described as follows:

Beginning at the northwest corner of square 9 of said donation lands; thence north 01 degrees 50 minutes 56 seconds west a distance of 90.17 feet to the southwest corner of said 9; also being a point on the north platted right-of-way line of North Street (50 feet wide); thence south 88 degrees 22 minutes 31 seconds east along the north line of said square 9 a distance of 290.47 feet; thence south 01 degrees 39 minutes 43 seconds west parallel with the east line of said square 9 a distance of 90.00 feet to the north line of square 9, also being a point on the south right-of-way line of North Street; thence north 88 degrees 22 minutes 31 seconds west along the north line of said square 9 a distance of 295.00 feet to the point of beginning.

EXHIBIT II

Part of Square 9 of the Donation Lands of the City of Indianapolis, Indiana including part of the Indianapolis and Cincinnati Railroad Company's Subdivision of said Square 9 per plat thereof recorded in Plat Book 1, page 338 in the Office of the Recorder of Marion County; Indiana, being more particularly described as follows:

BEGINNING at the Northwest corner of said Square 9; thence South 88 degrees 22 minutes 31 seconds East (basis of bearings) on said line of said Square 9 a distance of 285.00 feet to the Northeast corner of Lot 15 of said Indianapolis and Cincinnati Railroad Company's Subdivision; thence South 01 degrees 39 minutes 43 seconds West on and along the East line of said Lot 15 a distance of 10.00 feet; thence North 88 degrees 22 minutes 31 seconds West parallel with and 10.00 South of the North line of said Square 9 a distance of 283.00 feet to the East line of the Central Canal (formerly Missouri Street per plat); thence North 01 degrees 39 minutes 43 seconds East on and along said East line 10.00 feet to the point of beginning.
EXHIBIT D

Lot 11

Part of Section 9 of the Donation Lands of the City of Indianapolis, Indiana including part of the Indianapolis and Cincinnati Railroad Company's Subdivision of part of said Section 9, part as shown recorded in Plat Book 1, page 338 in the Office of the Recorder of Marion County, Indiana, being more particularly described as follows:

BEGINNING at the Northwest corner of said Section 9, thence South 88 degrees 22 minutes 31 seconds East (based on bearing) one and along the North line of said Section 9 a distance of 285.00 feet to the Northeast corner of Lot 1 of said Indianapolis and Cincinnati Railroad Company's Subdivision; thence South 01 degrees 39 minutes 43 seconds West, and along the East line of said Lot 15 a distance of 18.00 feet; thence North 88 degrees 22 minutes 31 seconds West parallel with and 10.00 South of the North line of said Section 9 a distance of 285.00 feet to the East line of the Central Canal (formerly Manual Street per plans); thence North 01 degree 39 minutes 43 seconds East on and along said East line 10.00 feet to the point of beginning.
WATERMARK III

Port of the Northwest Quarter of Section 2, Township 13 North, Range 3 East of the Second Principal Meridian and located in Center Township, Marion County, Indiana, being more particularly described as follows:

Port of vacated North Street per Descriptive Description 97-VIC-8 recorded as Instrument F97-54557 in the Office of the Recorder of Marion County, Indiana and Court of Square 9 of the Donation Lands of the City of Indianapolis, Indiana as recorded July 5, 1931 in said Recorder's Office, being part of the Indianapolis and Cincinnati Railroad Company's Subdivision of part of said Square 9 per plat thereof recorded in Plat Book 1, page 206 in said Recorder's Office, being more particularly described as follows:

BEGINNING at the Northwest corner of said Square 9; thence North 01 degrees 36 minutes 18 seconds East on and along the West line of said vacated North Street 66.40 feet; thence South 89 degrees 22 minutes 31 seconds East parallel with the North line of Square 9 of said Donation Lands 54.31 feet to Southly extension of the West line of Elmwood Street as per the Plat of Watermark I (Plat No. 2 of Book A), a subdivision in the City of Indianapolis, Indiana as per plat thereof recorded as Instrument F97-54557 in said Recorder's Office, thence South 01 degrees 36 minutes 43 seconds West on and along the Southly extension of the West line of Elmwood Street and Elmwood Street, 70.40 feet to a point, said point being 10.20 feet South of the North line of Square 9 of said Donation Lands thence North 89 degrees 22 minutes 31 seconds West (Bears of Meridian) parallel with and 10.00 feet South of the north line of said Square 9 a distance of 84.57 feet to the East line of the Library Grove (formerly Beam Street per plat) thence North 01 degrees 38 minutes 42 seconds East on and along said East line 10.00 feet to the point of beginning, containing 0.135 acres, more or less.

The subdivison consists of 2 LOTS, numbered 1 and 2. The site of the lots is shown in figure locating feet and decimal parts thereof.

Witnes my signature this 21st day of October, 2002.

[Signature]

A. E. Walker, Reg. L.B. - Indiana 13388
PLAT RESTRICTIONS FOR PLAT OF WATERMARK III

The undersigned WATERMARK TOWNHOMES, L.L.C., an Indiana limited liability company ("Declarant"), as the owner of the real estate located within that certain parcel of land located in Marion County, Indiana, and more particularly described in Exhibit A, attached hereto and made a part hereof (the "Real Estate"), certifies that it has laid off, platted and subdivided the Real Estate into two (2) lots, numbered 1 and 2 (individually, a "Lot"; collectively, the "Lots"), in accordance with the Final Plat of Watermark III, recorded October 24, 2002, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 020204632 (the "Plat"), and does hereby subject the Real Estate to the following covenants, conditions and restrictions:

1. DEFINITIONS.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Second Amended and Restated Declaration of Covenants and Restrictions of Watermark (the "Declaration") recorded on March 30, 2000, in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2000-0067961.

2. EASEMENTS FOR UTILITIES.

Portions of the Lots are subject to perpetual nonexclusive utility easements, which are created and established for use of local utility companies for purposes of installation and maintenance of utilities to serve the Subdivision. Each Lot owner shall connect with any utility or amenity service (which shall include cable television) Declarat may deem necessary. Each Lot owner shall take title subject to the rights with respect to such utility easements of other Lot owners and local utility companies. All utility easements created or reserved on the Plat shall include the right of ingress, egress and access over adjacent property as may reasonably be necessary properly to install or maintain the utility facilities located within such easement areas.
3. **ZERO LOT LINE EASEMENTS.**

There is hereby imposed upon each Lot a perpetual easement for support, construction, reconstruction, maintenance and repair of any "zero lot line" wall of a dwelling or garage built on an abutting Lot. To the extent building improvements such as footings, utilities and cornice overhangs encroach on an abutting Lot, there is hereby imposed upon the abutting Lot a perpetual easement for the purpose of permitting such encroachment to be maintained; provided, however, that in no event shall any easement for underground footings or utilities, or inadvertent encroachments, exceed two (2) feet onto the servient Lot. Exercise of the easement rights imposed by this paragraph 3 must not result in damage or injury to another owner's improvements, and must not unreasonably interfere with or interrupt use or enjoyment of the servient Lot. Additionally, the owner of a dominant Lot benefiting from the easement rights imposed by this paragraph 3 shall, at its sole expense, promptly repair, replace or restore any and all improvements on the servient Lot that may be damaged by such Lot owner in the exercise of such easement rights. The owner of a servient Lot shall be held harmless from all loss, liability, cost or expense incurred in connection with exercise of any easement rights imposed by this paragraph 3 unless occasioned by such owner's negligence or willful misconduct.

4. **LANDSCAPING PLAN.**

Any landscaping provided on any Lot shall be subject to the Committee's prior written approval in accordance with the Declaration.

5. **DWELLING SIZE AND USE.**

All Lots shall be known and designated as residential lots. No business building shall be erected on any Lot; no business shall be conducted on any Lot, other than home occupations permitted by the Dwelling Districts Zoning Ordinance of Marion County, Indiana; and no Lot shall be used for a group home. No structure or other improvement shall be erected, altered, placed or permitted to remain on any Lot, other than one (1) detached single-family dwelling, not to exceed three (3) stories in height, and residential accessory buildings. Any garage or other residential accessory building erected on any Lot shall be of a permanent type of construction and shall conform to the general architecture and appearance of the dwelling erected on such Lot. Each dwelling erected on a Lot shall have (i) more than one story, and (ii) a minimum square footage of living space of 1,500 square feet with not less than 700 square feet of living space on the first floor. The square footage of living space is exclusive of porches, terraces, garages, carports, accessory buildings and basements.

6. **SITE VISIBILITY AND FENCING.**

No fence, wall, hedge or shrub planting, that obstructs sight lines at elevations between 2 and 6 feet above a street, shall be placed or permitted to remain on any Lot unless originally placed by Declarant or approved in advance by the Committee in accordance with the Declaration.
7. **SETBACK REQUIREMENTS.**

   a. **In General - No dwelling, other above-grade structure or other improvement shall be erected or placed on any Lot, except as provided herein.**

   b. **Definitions** - "Front Line" means the west lines of such Lots. "Rear Line" means the east lines of such Lots. "Side Line" means the north and south lines of such Lots.

   c. **Front Yards** - The front building setback line shall be the Front Line. The front of each dwelling erected on a Lot shall be on the Front Line, unless otherwise approved by the Development Control Committee (as defined in the Declaration).

   d. **Rear Yards** - The rear building setback line shall be nineteen (19) feet from the Rear Line.

   e. **Side Yards** - The side building setback lines shall be an aggregate of three (3) feet from the Side Lines.

8. **PLANS, SPECIFICATIONS AND LOCATION OF BUILDINGS.**

   No structure or other improvement of any kind, including additions, alterations, fences, screens and walls, shall be erected, altered, placed or permitted to remain on any Lot unless and until plans and specifications therefor, specifically including, but not limited to, a plot plan, in detail and to scale, have been submitted to and approved by the Committee in accordance with the Declaration. The plans and specifications for and location of all construction shall be in compliance with all applicable regulatory rules, codes and orders, specifically including, but not limited to, building, plumbing and electrical requirements.

   Any required landscaping, sidewalk and driveway shall be completed at the time of completion of the dwelling, or as soon as weather permits. Sidewalks shall be installed in a manner so as to be uniform throughout the Subdivision.

   All areas not covered by structures, paved parking facilities or sidewalks shall be maintained by the Owner as landscaped areas to the pavement edge of any abutting streets.

9. **GARAGES AND DRIVEWAYS.**

   Each dwelling constructed upon a Lot shall include an attached garage, and the means of ingress and egress to such garage shall be over a driveway of concrete material.
10. **CONSTRUCTION METHODS.**

a. No Lot owner shall undertake or permit any work on the exterior or outside of the dwelling on such Lot without first obtaining the Committee's prior written approval, specifically including, but not limited to, the Committee's prior written approval of storage of materials or parking of construction vehicles within the Subdivision.

b. No work by or on behalf of a Lot owner shall interfere with or impair work by Declarant in the Subdivision.

c. Any damage caused by a Lot owner or its constructors during the course of construction, specifically including, but not limited to, damage to drainage courses, streets or curbs, shall be repaired immediately by such owner at its sole cost and expense.

11. **CONTROLLING DOCUMENTS.**

The foregoing covenants, conditions and restrictions supplement the Plat, and are to be read and interpreted in conjunction with the Plat and the Declaration. In the event of a conflict, the more or most restrictive provision shall control.

12. **DURATION.**

The foregoing covenants, conditions and restrictions shall run with the Real Estate, and be binding upon all Lot owners and all persons claiming thereunder for the duration of the Declaration. Notwithstanding the foregoing, all easements created or reserved herein or in the Plat shall be perpetual unless otherwise expressly indicated herein or therein.

13. **ENFORCEMENT.**

The right of enforcement of each of the foregoing covenants, conditions and restrictions by injunction, together with the right to cause removal by due process of law of structures erected or maintained in violation thereof, is reserved to Declarant, the Association and Lot owners, and their respective legal representatives, successors and assigns, as more fully set out in the Declaration. The Commission shall have no right, power or authority to enforce any covenant, condition, restriction or other limitation contained herein or in the Plat, other than those covenants, conditions, restrictions or limitations that expressly run in the Commission's favor; provided, however, that nothing herein shall be construed to prevent the Commission from enforcing any provision of the Subdivision Control Ordinance, 58-AO-3, as amended, or any condition to approval of the Plat by the Plat Committee.
14. **SEVERABILITY.**

Each of the foregoing covenants, conditions and restrictions is hereby declared to be independent of or severable from the rest thereof, and of and from every other one thereof and of and from every combination thereof. Therefore, if any provision hereof is held to be invalid or unenforceable, or to lack the quality of running with the Real Estate, such holding shall be without effect upon the validity, enforceability or "running" quality of any other provision hereof.

15. **RECORDING.**

These Plat Restrictions shall be recorded by Declarant in the Office of the Recorder of Marion County, Indiana.

Dated: November 27, 2002.

WATERMARK TOWNHOMES, L.L.C.,
an Indiana limited liability company

By: [Signature]

Jeffery L. Pape, Authorized Signatory
STATE OF INDIANA  

COUNTY OF Hamilton  

Before me, a Notary Public in and for said County and State, personally appeared Jeffery L. Paepke, known to me to be an Authorized Signatory of Declarant, and acknowledged the execution of the foregoing for an on behalf of said limited liability company.

Witness my hand and Notarial Seal this 27 day of November, 2002.

CATHIE D. REAMER  
NOTARY PUBLIC STATE OF INDIANA  
HAMILTON COUNTY  
MY COMMISSION EXP. FEB. 1, 2007

Notary Public - Signature  

Notary Public - Printed

My Commission Expires:

My County of Residence:

2-1-07  

HAMILTON

This instrument was prepared by and please return after recordation to: John B. Baxter, Attorney-At-Law, BARNES & THORNBURG, 11 South Meridian Street, Indianapolis, IN 46204
EXHIBIT A

Land Description

Part of the Northeast Quarter of Section 2, Township 15 North, Range 3 East of the Second Principal Meridian and situated in Center Township, Marion County, Indiana, being more particularly described as follows:

Part of vacated North Street per Declaratory Resolution 97-VAC-8 recorded as Instrument #97-64557 in the Office of the Recorder of Marion County, Indiana and part of Square 9 of the Donation Lands of the City of Indianapolis, Indiana as recorded July 5, 1831 in said Recorder’s Office including part of the Indianapolis and Cincinnati Railroad Company’s Subdivision of part of said Square 9 per plat thereof recorded in Plat Book 1, page 338 in said Recorder’s Office, being more particularly described as follows:

BEGINNING at the Northwest corner of said Square 9; thence North 01 degrees 36 minutes 16 seconds East on and along the West Line of said vacated North Street 60.40 feet; thence South 88 degrees 22 minutes 31 seconds East parallel with the North Line of Square 9 of said Donation Lands 84.31 feet to Southerly extension of the West line of Ellsworth Street as per the Replat of Watermark II (Parcel 2 of Block A), a subdivision in the City of Indianapolis, Indiana as per plat thereof recorded as Instrument #99-304065 in said Recorder’s Office; thence South 01 degrees 38 minutes 43 seconds West on and along the Southerly extension of the West line of said Ellsworth Street 70.40 feet to a point, said point being 10.00 feet South of the North line of Square 9 of said Donation Lands; thence North 88 degrees 22 minutes 31 seconds West (Basis of Bearings) parallel with and 10.00 South of the North line of said Square 9 a distance of 84.27 feet to the East line of the Central Canal (formerly Missouri Street per plat); thence North 01 degrees 39 minutes 42 seconds East on and along said East line 10.00 feet to the point of beginning, containing 0.136 acres, more or less.

Subject to all legal easements and rights of way.