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 1 (the "Subdivision"), recorded September 23rd, 1995, as Instrument No. 95-124/22 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 even date herewith in 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 desires 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
situates 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 supersede 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.

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

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

(xiv) "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.

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

(xvi) "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.

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

(xviii) "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, 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,

(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. Mortgages' Rights. Any Mortgagee 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 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 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 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 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 Mortgagor 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 Mortgagors or a specified percentage thereof as set forth in the Declaration.


(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 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 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 twenty-four (24) attached single-family dwellings. No Unit shall be used for a group home. Declaration 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 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, 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; (viii) all aluminum windows will be permitted and all windows will have an approved thermal break; (ix) all gutters and downspouts in the Subdivision will be factory painted; (x) all roofing in the Subdivision will be of a consistent color scheme and a shingle-type material acceptable to Committee; (xi) all roof pitches will be acceptable to Committee; (xii) no metal, fiberglass or similar type material awnings or patio covers will be permitted in the Subdivision; (xii) no swimming pools will be permitted in the Subdivision; and (xiii) modular-type construction is not permitted in the Subdivision, provided, however, that prefabricated home components such as walls and roof trusses will not be considered modular-type construction.

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

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

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

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

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

(ii) Remove all debris or rubbish;

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

(iv) Cut down and remove dead trees; and

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

A. **Nuisances.** No outside toilets shall be permitted on any Lot or Block (except during a period of construction thereof, 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 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 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 the 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 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 by law, 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 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 i.e., 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 herein.

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

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

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

10. EFFECT OF BECOMING AN OWNER.

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

11. **TITLES.**

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

12. **DURATION AND AMENDMENT.**

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

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

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

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

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

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

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

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

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

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

13. RIGHTS OF MORTGAGEES.

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

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

If to Declarant, 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 Committee may change address for notice purposes by notice to Owners. An Owner may change address for notice purposes by notice to Association.

15. CONDEMNATION.

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

16. CONFLICTING PROVISIONS.

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

17. SEVERABILITY.

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

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

WATERMARK TOWNHOMES, L.L.C.

By: [Signature]

Cornelia M. Alig, Class A Member

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STATE OF INDIANA
COUNTY OF MARION

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

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

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


This instrument was prepared by Bruce R. Karr, attorney-at-law, 700 Market Tower, 10 West
Market Street, Indianapolis, Indiana 46204-2360, telephone (317) 464-8200.
the following described
real estate located in the Northeast Quarter of Section 2, Township 15
North, Range 3 East in Center Township, Marion County, Indiana. Said
real estate being a part of OUTLOT NINE, of the DONATION LANDS to the
City of Indianapolis, Indiana:

Beginning at the intersection of the West right-of-way line of Senate
Avenue and the South right-of-way line of Walnut Street, as said
streets are now located and improved, said intersection being also the
Northeast corner of LOT NUMBER ONE (1) in JAMES BLAKE'S SUBDIVISION
of OUTLOT NINE of the DONATION LANDS to the City of Indianapolis,
Indiana, the plats of which are recorded on pages 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 00
degrees 58 minutes 48 seconds West 120.50 feet; thence South 00
degrees 01 minute 14 seconds West parallel with West right-of-way line of said
Senate Avenue 209.92 feet to the North right-of-way line of North
Street as now located and improved; thence North 00 degrees 00 minutes
00 seconds West on the North right-of-way line of said North Street
209.92 feet to the Southeast corner of a piece of Real Estate described
in Instrument No. 990063546 in said Recorder's Office; thence North 00
degrees 00 minutes 40 seconds East on the Easterly line of said Real Estate
201.76 feet to the Northeast corner of said Real Estate described in
Instrument No. 990063546 to the aforesaid South right-of-way line
of Walnut Street; thence South 09 degrees 48 minutes 23 seconds East
on said South right-of-way line 420.99 feet to the place of beginning,
containing 3.30 acres, more or less.