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WANDA MARTIN  
MARION COUNTY RECORDER

**HUNTINGTON HEIGHTS HOMEOWNER'S ASSOCIATION, INC.  
Phase II**

**RULES AND REGULATIONS**

**January, 1999**

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**\*Comparison of Rules and Regulations to By-Laws**

## AUTHORIZATION

Whereas, Article V, Section 6 of the Declaration of Covenants, Conditions and Restrictions of the Code of By-Laws states "The Board of Directors shall be the governing body of the Corporation representing all the Owners" and

Whereas, Article V, Section 7 of the Declaration of Covenants, Conditions and Restrictions of the Code of By-Laws states "The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to:"

(c) "to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary and desirable in connection with the business and affairs of the Corporation" and

(g) "to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners".

## DEFINITIONS

<b>GREEN AREAS</b>	All lawns and shrubs
<b>COMMON AREAS</b>	All properties maintained by the Association i.e. exteriors of buildings, lawns, streets, driveways, etc.
<b>CHILDREN'S VEHICLES</b>	Tricycles, skate boards, big wheels, roller skates, scooter, go-karts, and wagons.
<b>UNLICENSED VEHICLES</b>	Mopeds, off-road motorcycles, all-terrain vehicles.
<b>HOMEOWNER</b>	The person who owns the house and property.
<b>RESIDENT</b>	The person or family who currently lives in the house, whether they rent or own.
<b>OPTION</b>	Upgrades to the basic floor plan paid for by the original homeowner.
<b>BETTERMENT/IMPROVEMENT</b>	Addition(s) to unit after original unit is built, paid for by original/subsequent homeowner(s) i.e. decks, fences, additional windows, storm doors, etc.
<b>PERIMETER</b>	Area between the sidewalk and the garage.

## **PREFACE**

### **PURPOSE**

As condominium residents live in close proximity and share in the use of common facilities, the resident's right to do as he or she pleases must yield to the rules and regulations of the condominium society. These rules and regulations serve to inform prospective residents of Huntington Heights II of its facilities, people, way of life, and the restrictions which are designed to preserve and enhance the benefits of condominium residency.

### **HUNTINGTON HEIGHTS FACILITIES**

In 1986, Huntington Heights was completed as a condominium community. Our community consists of 52 townhouses. All buildings are situated on a site of approximately 5.0 acres and have limited green areas in the front and back. There are no designated playgrounds or other areas suitable for children's activities.

### **RULES AND REGULATIONS**

The Board of Directors, under its authority in the Declarations of Property Regime and of Easements, Restrictions, Covenants and By-Laws, adopts the rules and regulations contained herein for the maintenance, conservation, and beautification of the Huntington Heights condominiums and for the health, comfort, safety, and general welfare of its residents effective May 1, 1988. The President and Secretary of the Huntington Heights Homeowner's Association, Inc., shall execute and record with the Marion County, Indiana, Recorder's Office a Notice of Huntington Heights Homeowner's Rules and Regulations. The Board of Directors shall update the rules and regulations by amended notices.

A copy of the rules and regulations and Declaration of Property Regime and of Easement, Restrictions, Covenants, and By-Laws may be obtained from the Management Company.

**These Rules and Regulations were revised and amended December 1, 1998 by the following committee appointed at the annual meeting held December 3, 1997.**

Committee Members: Dianne Boekankamp/Chairman, Don Silas, Jennifer Sparks, Larry Ray, and Nicole Wells.

## **ARTICLE I**

**\*Article XI, page 29**

### **SALE AND LEASING OF HUNTINGTON HEIGHTS II CONDOMINIUM UNITS AND INFORMATION ON OCCUPANCY AND OWNERSHIP**

- A. Signs. "For Sale" signs can be conspicuously placed on the homeowners' property; however, the board reserves the right to regulate the type and location of said sign. No "For Rent" or "For Lease" signs can be displayed outside of the unit.
- B. Statement of Sale. Upon finalizing an agreement with a potential purchaser, any unit owner selling a Huntington Heights unit shall furnish the Association's management company with a statement signed by the prospective purchaser containing the following information:
1. Identifying the unit.
  2. Name(s) of the seller.
  3. Name(s) of the purchaser.
  4. Name(s) and age(s) of all persons who will occupy the unit.
  5. Telephone number of the purchaser.
  6. Whether or not the purchaser will occupy or lease the unit.
  7. Will state that the purchaser has read the rules and regulations and agrees to abide by same.
- C. Statement of Leasing. Before a lessee occupies a unit, the owner shall furnish the Association's management company with a statement signed by the owner and prospective lessee containing the following information:
1. Identifying the unit.
  2. Names of the lessor.
  3. Names of the lessee.
  4. Names and ages of all persons who will occupy the unit.
  5. Telephone number of the lessee.
  6. A copy of the signed lease must be furnished to the Association's Management Company.
  7. Will state that the lessee has read the rules and regulations and agrees to abide by the same.
- a. In order to insure that the residents within Huntington Heights II share the same proprietary interest in and respect of the units and the common areas, no more than ten (10) of the units may be leased or rented to non-owner occupants at any given time. Any existing leased/rented units are hereby grandfathered into this clause. This means there can be no additional units leased/rented until such time as the current number drops below ten (10) through sale, transfer or conveyance of unit. If at any time such number of units are leased or rented, an Owner who wants to

rent or lease his or her unit which is not already rented, shall be placed upon a waiting list by the Board of Directors or the management company upon receipt of written request.

- b. No lessee may sublease any unit.
  - c. The Association shall have the right to evict a tenant on behalf of the owner or in the event of violation of State Law or the condominium Bylaws or the Rules and Guidelines of the Association. The tenant shall abide by the Declaration, Bylaws and Rules and Guidelines of the Association.
  - d. The owner shall be responsible for all attorney fees and costs incurred by the Association as a result of any violation of the condominium Declaration, Bylaws or the Rules and Guidelines by the tenant, irrespective of whether any suit is instituted and the Association may levy a Special Assessment.
  - e. The leasing of a unit shall not relieve an owner from the payment of assessments or other obligations and the owner shall remain personally responsible. In the event a tenant fails to comply with the provisions of the Declaration, Bylaws or Rules and Guidelines then, in addition to all other remedies which it may have, the Association shall notify the owner and demand that the same be remedied through the owner's efforts within thirty (30) days after such notice.
  - f. If such violation(s) is not remedied within thirty (30) days, the owner shall immediately thereafter, at his own cost and expense, institute and prosecute an eviction action against the tenant. If the owner fails or refuses to take appropriate action, the Association may proceed and commence necessary eviction proceedings.
- D. Occupancy and Ownership. Each unit owner or resident is required to inform the Association's management company of any change in name, mailing address, or telephone numbers at work and at home of occupants within the unit. Telephone numbers of owners and residents will only be used in connection with the maintenance and operation of the property and in enforcement of the rules and regulations.

## **ARTICLE II**

**\*Article XIV, page 38 & 39 (c) (f) (g)**

### **CHILDREN**

- A. Adult Responsibility. Homeowners or the lessee are responsible for the conduct and actions of minor children and their children(s) guests.
- B. Children's Vehicles. Children's vehicles are prohibited in the parking areas of Huntington Heights condominiums. These items will not be used in a manner causing a nuisance or danger to residents and should not be left unattended. Bicycles may not be left outside when not in use and should be stored inside the unit. Guest(s) are also subject to these rules. Bicycles will not be ridden or parked in green areas. The privilege to use a two-wheeled bicycle on Huntington Heights property may be revoked by the Board for non-compliance with this rule.

Bicycles or other vehicles ridden on Huntington Heights streets are at your own risk.

- C. Play Activity. Children may not play on the parking areas or driveways. Children may only play in the green areas directly in front of or directly behind the unit in which they live or are a guest. Climbing over or under fences is prohibited. Children's play shall not involve noise over a conversational level, or any disruption of the sod or landscaping. Disallowed activities in common areas include but are not limited to:
- |            |           |
|------------|-----------|
| horseshoes | baseball  |
| volleyball | softball  |
| badminton  | soccer    |
| lawn darts | football  |
| tennis     | fireworks |
- D. Curfew. All children under 16 years of age and not accompanied by an adult are not allowed on common or green areas after 10:30 PM local time.
- E. Other. Children are subject to all rules and regulations within this document. The Board may prohibit the presence of offending children in the common or green areas.



## ARTICLE III

\*Article XIV, page 39 (k)

### PARKING SPACES AND DRIVES

- A. Resident Parking. Homeowners may park their vehicles in their garage, driveway, at the west end, or east areas as provided on Dedham Drive. Homeowners are encouraged to park their motor vehicles inside their garages.
- B. Guest Parking. Guest(s) will be required to park in any available host or hostess parking space. They may park on the South side of the street, when necessary. **PARKING ON THE NORTH SIDE OF THE STREET IS PROHIBITED.**
- C. Type of Vehicles. Unlicensed vehicles are prohibited in the Huntington Heights common areas. All vehicles parked at Huntington Heights shall be for personal and family use. Vehicles prohibited from parking at Huntington Heights, include but are not limited to:
  - 1. commercial vehicles
  - 2. campers
  - 3. recreational vehicles
  - 4. trailers
  - 5. mobile homes
  - 6. boats
  - 7. catamarans

Moving vehicles engaged in a bona fide move, within a reasonable amount of time, are exempt from this rule. One night or weekend guest(s) is also exempt from this rule as long as guest(s) do not drive unlicensed vehicles.

- D. Operative Vehicles. Only vehicles with current licenses may be parked at Huntington Heights. Inoperative vehicles with flat tires shall not remain on the Huntington Heights premise in that condition for more than 24 hours. Storage of vehicles is not allowed. A stored vehicle is a vehicle that is not used for transportation of a Huntington Heights resident on a frequent basis.
- E. Use and Care of Vehicles. Motor vehicles shall not exceed the 15 m.p.h. speed limit and shall obey all traffic signs on the premise. Horn blowing, rapid acceleration, and screeching of tires are prohibited in all areas of Huntington Heights. Oil changes, flushing of radiators, and other repair work on motor vehicles is prohibited in all outside areas of Huntington Heights. Vehicles shall be intact and free of large areas of rust or improper finish. Vehicles in unsightly condition are prohibited. Motorcycles are to follow the same rules as passenger cars and light trucks. Motorcycles may not be driven on sidewalks, in the green areas, parked on porches or started in garages.
- F. Violation. Should any owner of any vehicle which traverses the common access road of Huntington Heights and parks in any common area or driveway be suspected of violating

Article III, the Board shall have the authority to require said homeowner to prove compliance. Once deemed in violation, the Board reserves the right to have said vehicle towed from any area subject to the jurisdiction of these rules, regulations and covenants without further notice to the owner.

- G. Towing. The Board, its agents, and/or the management company may have any vehicle violating these rules towed from the premises and stored at the expense of the vehicle owner.

## ARTICLE IV

### \*Article XIV, page 38 (e)

## PETS

- A. Permits. No pets may be kept unless authorized by the Board of Directors. The only permissible pets are dogs, cats, gerbils, hamsters, caged birds, and aquarium fish.
- B. Limit. No more than two pets are allowed per unit. If a unit contains two pets, neither pet should weigh over 18 pounds. No pet weighing over 30 pounds is allowed in Huntington Heights. Residents with pets that exceed these limitations at the time the rules are accepted, may keep their pets. But a pet permit must still be obtained, and any pets acquired after the acceptance date must follow the stated rules.
- C. Disturbance or Nuisance. If any pet is creating a nuisance, causing a disturbance, or damages common/green areas, its owner can be ordered by the Board and/or the management company to remove the offending pet from the premises at the owner's expense.
- D. Pets Outside Their Units. Pets shall be on a leash or carried at all times when outside and shall not be left unattended. Pets must not be allowed to wet on any plant life, vehicles, or structure on the property. Pet owners must pick up their pet's feces immediately after deposit by the pet. In no event shall a pet be tied or staked in any green area.
- E. Responsibility. Any resident housing a pet assumes full responsibility and liability for personal injury or property damage caused by the pet. The Association, management company, their agents, and employees are not responsible for any liability arising from allowing the pet to reside or use the common areas within Huntington Heights.
- F. Penalty. If three complaints are received on a pet, the Board and/or the management company will have the right to levy a fine. The fine will be determined on an individual basis by the Board based on the nature of the violation.

## ARTICLE V

\*Article XIV, page 38-39-40 (c) (d) (g) (j) (m)

### OTHER COMMON AREA USE

- A. Passages. Sidewalks, entrances, and driveways are not to be obstructed or used for any other purpose than entering or leaving the premises.
- B. Green Areas. No litter or personal property shall be left in this area. Nothing shall be done in this area which is detrimental to the plant life or sod. Activities prohibited in these areas include but are not limited to:

horseshoes	baseball
volleyball	softball
badminton	soccer
lawn darts	football
tennis	fireworks

Residents should not plant, landscape, fertilize, prune, or alter the green areas without the consent of the Board. However, residents may beautify the perimeters of their own units with flowers, plantings, or shrubs provided that any homeowner within their building does not object. These beautifications are also subject to the approval or disapproval of the Board of Directors. In the event the Board disapproves, the area shall be returned to the state ordered by the Board at the owners expense.

- C. Building Exterior. No articles may be shaken or hung from patios, fences or windows and no clotheslines are permitted. No person or pet shall climb over, dig under, sit upon, or damage any fence or wall in Huntington Heights. Additions to the exterior of a building are not allowed without the written consent of the Board of Directors. Additions include but are not limited to:

alterations	extensions
fencing	enclosure of patios
antennae	awning
decks	shutter
canopy	storm windows
storm doors	

The Board of Directors will adopt guidelines and standards for such additions.

Firewood must be stacked on patio or deck areas, not on green areas. Any other method of stacking wood must be approved by the Board.

No storage shed/building is allowed anywhere on the property.

Only a satellite dish 18" in diameter or smaller can be installed on the property. It must be placed somewhere on the rear, preferably the patio area, of the homeowner's unit.

## ARTICLE VI

\*Article XIV page 36 - 39

### MISCELLANEOUS CONDUCT

- A. Noises or Disturbances. No resident or his/her affiliates shall make any noise which may disturb or annoy other residents of the condominium or permit actions that interfere with the rights, comforts, or convenience of other residents. Residents may not operate any sound producing instrument (radio, stereo, television, musical instrument, vehicle radio or stereo) above conversational level outdoors or indoors at a volume that can be heard through common or outside walls. No resident may give vocal or instrumental lessons within Huntington Heights.
- B. Business. No business enterprise, for profit venture, or trade activity of commercial, service, or retail nature, shall be allowed to operate from within any structure or on any common property within the Huntington Heights II boundaries. The Huntington Heights II Board of Directors reserves the right to determine the nature of any questionable activity. Garage sales or other such activity of a limited nature shall be exempted by the board.
- C. Pass Key and Alarms. If burglar alarms are installed, at least one neighbor must be given a key and instructions on turning the alarm off. The Board can request the removal of any alarms that repeatedly sound off. Burglar alarms must be registered with the management company.
- D. Cleanliness. Every resident must keep his or her unit, lawn, patio, driveway, entryway, and perimeter of the unit clean, neat, sanitary and free from weeds, brush and unsightly vegetation. No resident shall do anything which detracts from the cleanliness or sanitation of the common or green areas. Littering is **not** permitted at Huntington Heights.
- E. Complaints or Suggestions. Complaints or suggestions should be made in writing and mailed to the supervisory staff of the management company with a copy sent to the President of the Association. The Board shall collaborate with the management company to resolve or act upon any complaints or suggestions.
- F. Declaration and By-Laws. These rules and regulations are supplemental to those contained in the Declaration and By-Laws. If there is a conflict between the Declaration and By-Laws and the Rules and Regulations, the Board has the authority to determine which document has precedence.
- G. Guest(s). All residents are responsible for the actions of their guests and have the duty to see that guest(s) obey these rules and regulations, including parking regulations.

- H. Trash Pick-Up. Trash is collected once a week and the day is subject to change. Residents should place their refuse in strong plastic bags, at least 3 mil. thickness, with ties and set them by the driveway. Boxes, newspapers, and drink containers should be bundled or placed in appropriate container. Trash may be set out in the evening after 5 PM of the day prior to the scheduled pickup. Trash containers must be kept inside unit/garage.

It is the responsibility of each resident to make sure his or her trash is properly collected and disposed. If the trash collector fails to gather all of an individual's trash, such individual is responsible for clean-up and removal of trash. Such trash shall not be permitted to remain at the trash pickup site.

## **ARTICLE VII**

**\*Article XII, page 35, section 5**

### **INSURANCE**

- A. All buildings are insured under a group master policy in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage, destruction, loss by fire, or certain other hazards. This also includes a broad form of public liability, covering all common areas and damage or injury caused by the negligence of the Association or any of its agents.
- B. Premiums for all such insurance, excluding individual condominiums, shall be common expense.
- C. **This insurance covers only the exterior of the units. Each owner is responsible for personal contents insurance, personal liability insurance and any other coverage which the owner may deem appropriate or desirable.**

**Owners are responsible for all maintenance and repairs within their own condominium. Such repairs and upkeep include, but are not limited to internal water lines, sump pumps, plumbing, electrical lines, appliances, gas lines, telephones, air conditioning/heating units, storm doors, door locks/hardware, patio door glass & screen, window glass & screens and all other accessories, damages that may result from exterior problems (i.e. shingle problems, sump pump discharges, water spigots, etc), and betterments/improvements belonging to the owner.**

**The owner should have sufficient insurance to cover any damage to the interior of their condominium unit.**

## **ARTICLE VIII**

**\*Article X, page 21-27**

### **LATE ASSESSMENT FEE PROCEDURE**

The Board of Directors has established a policy regarding Late Payments. The following procedures will be implemented in the collection of homeowners' regular assessments beginning April 1, 1988.

1. Assessment fees are due in the office of the Management Company on the first day of each month.
2. Late notices will be sent on the 10th day of the month. A \$10.00 charge (amended 4-1-89 from \$25.00) will be added to the account the 15th day of the month and on the 15th day of each month thereafter until the account is in compliance.
3. When a maintenance fee becomes 60 days past due, a claim will be filed in Small Claims Court, and all filing fees and any Court costs will be charged to the delinquent Owners.
4. There will be a \$25.00 charge for checks returned as a result of non-sufficient funds.

## ARTICLE IX

### AMENDMENTS

These amendments to the rules and regulations have been adopted by the Huntington Heights Homeowner's Association Board of Directors on January 25, 1999.

Dianne Boekankamp  
Dianne Boekankamp  
President

Don Silas  
Don Silas  
Vice President

Jennifer Sparks  
Jennifer Sparks  
Secretary/Treasurer

Veronica McGowan  
Veronica McGowan  
Member-at-Large

Laura Beck  
Laura Beck  
Member-at-Large

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

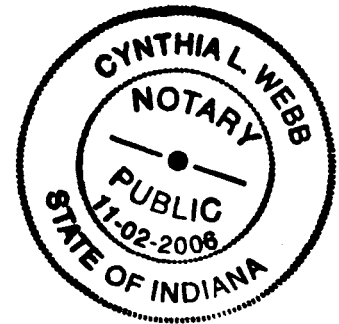
Before me, a Notary Public in and for said County and State personally appeared Dianne Boekankamp, Don Silas, Jennifer Sparks, Veronica McGowan, and Laura Beck who acknowledged the execution of the foregoing "Huntington Heights Homeowner's Association, Inc. Rules and Regulations", and who having been duly sworn, under the penalties of perjury, stated that the facts and matters therein set forth are true and correct.

Witness my hand and Notary Seal this 26<sup>th</sup> day of Feb  
1999.

Cynthia L Webb  
Notary Public

My Commission Expires:  
11-2-2006

My County of Residence: Marion



(#4790)  
83-69125

HUNTINGTON HEIGHTS PLAZA  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

September 20, 1983  
DECLARANT: DONALD A. REED



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9-20-83  
(#4790)

DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS OF  
HUNTINGTON HEIGHTS PLAZA

This Declaration (hereinafter referred to as "the Declaration" or "this Declaration"), made this 20th day of September, 1983, by Donald A. Reed (hereinafter referred to as "Declarant"),

W I T N E S S E I H:

WHEREAS, Declarant is the owner of certain real estate in Marion County, State of Indiana, more particularly described in Exhibit "A: attached hereto and by this reference made a part hereof (hereinafter referred to as the "Real Estate").

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with private streets, private sanitary sewer mains, private storm sewers, private watermains, and private street signs and monuments; and

WHEREAS, Declarant wishes to make a provision for the maintenance of lawns, for the maintenance of building exteriors, for snow removal and certain other services for the common benefit of the residents; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common facilities therein contained, and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community and for the provision of services as set forth herein, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering any common facilities located on the Real Estate, providing the services set forth herein, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of Huntington Heights Homeowners Association, Inc., or a similar name, as such agency for the purpose of exercising such functions;

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easement, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

## ARTICLE I

### Definitions

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

- (a) **"Act"** shall mean and refer to the Indiana Not-For-Profit Corporation Action of 1971, as amended.
- (b) **"Applicable Date"** shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration.
- (c) **"Architectural Review Board"** shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated.
- (d) **"Articles"** shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time.
- (e) **"Board"** or **"Board of Directors"** shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws and this Declaration.
- (f) **"Building"** shall mean and refer to a structure having more than one "Dwelling Unit".
- (g) **"By-Laws"** shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time.
- (h) **"Common Expenses"** shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Properties, and all sums lawfully assessed against the Owners by the Corporation, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

(i) "Common Properties" shall mean and refer to--

- (i) All portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not Lots (or Blocks which are to be divided into Lots), whether such plat is heretofore or hereafter recorded.
  - (ii) To the extent hereinafter established, such portions of the Real Estate as are herein declared to be Common Properties even though located on or constituting part of one or more Lots and such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Properties whether located, installed or established entirely or partially on Lots or portions of the Real Estate which are not Lots, or both, including but not limited to sanitary sewer mains, storm sewers, water mains, and street signs and monuments (sanitary sewers and water lines serving more than one Lot are mains); PROVIDED, HOWEVER, that the streets shown, or to be shown, on a subdivision plat of the Real Estate as Dedham Drive and Harwich Drive and noted, or to be noted, on such plat as "Common Properties" shall, for all purposes, be considered a part of the Common Properties.
  - (iii) Items deemed Common Properties for purposes of maintenance only.
- (j) "Corporation" shall mean and refer to Huntington Heights Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused to be incorporated under said name or a similar name, its successors and assigns.
- (k) "Declarant" shall mean and refer to Donald A. Reed, and any successors and assigns of his whom he designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any builder or builders who purchase more than one Lot for the purpose of the erection of buildings and the resale of Dwelling Units to owners, and any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
- (l) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family, whether such Dwelling Unit is detached or attached to another Dwelling Unit.
- (m) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit, as designated by Declarant by its deed of the same to another Person. For purposes of this Declaration, a "Lot" shall be any single numbered parcel of land identified as a lot on a recorded subdivision plat of the Real Estate. The plat or plats will be initially recorded reflecting units described on the

plat as "Blocks" and the plats of said areas will be amended and rerecorded to define specific Lot lines.

- (n) **"Mortgagee"** shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit.
- (o) **"Owner"** shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an owner.
- (p) **"Person"** shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- (q) **"Plat"** shall mean and refer to the subdivision plat or plats of the Real Estate (and any additional real estate annexed to the Real Estate) recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.
- (r) **"Real Estate"** shall mean and refer to the parcel of real estate in Marion County, Indiana described in the first recital clause of this Declaration, and defined therein as the Real Estate.
- (s) **"Restrictions"** shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

## ARTICLE II

### Declaration; Common Properties and Rights Therein; Easements

**Section 1. Declaration.** Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Lot--

- (i) By acceptance of a deed conveying title thereto, or the execution of a contract for the purpose thereof, whether from Declarant or a subsequent Owner of such Lot, or
- (ii) By the act of occupancy of any Lot, shall accept such deed or execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners and subsequent Owner of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

**Section 2. Easement to Owner.** Declarant hereby grants a nonexclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. Without limiting the generality of the foregoing, each Owner, his tenants, invitees and guests, shall have and is hereby granted a nonexclusive easement and right of ingress to, egress from and access between his Lot and an off-site easement which provides access to a public street, for pedestrian and vehicular traffic, upon, over and across the private streets shown, or to be shown, on the Subdivision Plat of the Real Estate. The real estate upon which said private street or streets is, or is to be, located is more particularly described in Exhibit "B" attached to this Declaration and incorporated herein by reference. It is intended that the areas described in Exhibit "B" and shown on the Subdivision Plat shall be a private street or streets and not for public use. In addition to the Owners, their tenants, invitees and guests, all public and quasi-public vehicles, including but not limited to, police, fire and other emergency vehicles, trash and garbage collection vehicles, post office vehicles and privately owned delivery trucks shall have the right to enter upon and use said private street or streets for ingress to, egress from and access between the Lots and public streets in the performance of their duties.

**Section 3. Easement to Corporation.** Declarant hereby grants a nonexclusive easement in favor of the Corporation for the maintenance of the Common Properties (including items deemed Common Properties for maintenance only which includes but is not limited to lawns). Said easement shall permit the Board or its agents to enter onto any Lot to make emergency repairs or to do other work reasonably necessary for the proper maintenance or operation of the subdivision and to enter onto any Lot for the purpose of reconstruction

and restoration in the event of casualty. Maintenance shall include but not be limited to maintenance of utilities which serve more than one Dwelling Unit and utilities, if any, owned and utilized by the Corporation.

Section 4. Encroachment Easements. If any portion of the Common Properties encroaches on any Dwelling Unit or any Dwelling Unit encroaches upon the Common Properties or another Dwelling Unit or Lot as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Corporation or to the Owner of the encroaching Lot or improvement for the encroachment and for the maintenance thereof so long as said encroachment exists.



## ARTICLE III

### Obligations of Declarant as to Common Properties

**Section 1. Construction and Conveyance of Streets.** Declarant has constructed or will construct a private street or streets within the real estate described in Exhibit "B" incorporated herein, and prior to the conveyance of any Lot, Declarant covenants that it will convey said private street or streets to the Corporation by a special warranty deed free and clear of all liens and encumbrances except the lien of current real estate taxes and assessments, legal highways and rights-of-way, and all easements, covenants, conditions, restrictions and other matters of record.

**Section 2. Agreement to Construct and Convey Other Common Properties.** Declarant has constructed or provided for, or will construct or provide for, the Common Properties (in addition to the private street or streets) consisting of the following items:

- (a) Sanitary sewer mains.
- (b) Storm sewers.
- (c) Water mains.
- (d) Street signs and monuments.

Upon final construction or provision of the Common Properties described in this Section 2, Declarant covenants to convey and does hereby convey all of his right, title and interest in and to said Common Properties together with an easement for their ownership and maintenance to the Corporation and all such right, title and interest in and to said items (whether owned in fee, by leasehold or in the nature of an easement or license) shall then be the property of the corporation, whether or not the same may be located entirely or partially on any one or more of the Lots. As to any of such items of and constituting the Common Properties located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only nonexclusive easement rights therein, as described in Article II, Section 2 of this Declaration.

## ARTICLE IV

### Corporation; Membership; Voting Functions

**Section 1. Membership in Corporation.** Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Corporation and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Corporation.

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

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

(b) **Class B.** Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon the applicable date which is the first to occur of--

(i) The total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or--

(ii) December 31, 1988 (the applicable date being herein referred to as the "Applicable Date").

**Section 3. Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties, and to perform such other functions as may be designated for it to perform under this Declaration.

## ARTICLE V

### Board of Directors

**Section 1. Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this declaration to be, an Owner, including a person appointed by Declarant as provided in Section 2 of this Article V.

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Richard N. Kleisley, Matthew Cullen and James Burton (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation no an Owner of a Lot for any other purpose (unless he is actually the owner of a Lot and thereby a member of the Corporation).

**Section 3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 4. Term of Office and Vacancy.** Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and reelected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be

filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 5. Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) Maintenance, repair, replacement and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance).
- (b) Protection, surveillance and replacement of the Common Properties, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished.
- (c) Maintenance of utilities used in connection with the Lots and Dwelling Units.
- (d) Removal of trash and waste from the Real Estate on a basis of not less than weekly, provided further that only the Board or managing Agent shall contract for such service and no Owner shall contract for such service.
- (e) Snow removal from the Common Properties (streets, sidewalks, and driveways).
- (f) Surfacing, paving, and maintaining private streets.

- (g) Assessment and collection from the owners of the owners' respective share of the Common Expenses.
- (h) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered.
- (i) Preparing and delivering annually to the owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year.
- (j) Keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours.
- (k) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable.
- (l) Paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties.
- (m) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the Subdivision and the books, records and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.
- (n) Making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial statement for the immediately preceding fiscal year free of charge to the party making such request.

Section 7. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after said date any such agreement shall be subject to termination by either party without cause and without payment of a termination fee upon ninety (90) days written notice to the other party.

- (b) To purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors.
- (c) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation.
- (d) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties.
- (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 name of the Corporation.
- (g) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered to all Owners.

**Section 8. Limitation on Board Action.** The Boards powers are subject to the following limitations:

- (a) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.
  - (i) Contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received.
  - (ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting.
  - (iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (b) The Board shall not, without the prior written approval of at least sixty-seven percent (67%) of the owners (other than Declarant) and Mortgagees (whose mortgage interests have been made known to the

Board of Directors) holding mortgages on Lots which have at least Sixty-Seven percent (67%) of the votes of Lots which are subject to mortgages:

- (i) By act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause).
- (ii) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns in the subdivision.
- (iii) Fail to maintain fire and extended coverage insurance on Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs.
- (iv) Use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or reconstruction of Common Properties.

**Section 9. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 10. Nonliability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

**Section 11. Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of

settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 12. Bond.** The Board of Directors shall provide surety bonds and shall require the managing Agent (if any), the treasurer of the Corporation, and such other officers as the board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protections for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the Board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Corporation or its management agent at any given time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all units plus reserve funds.

**Section 13. Initial Management.** The Initial Board has entered, or will hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than December 31, 1988, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporations.



## ARTICLE VI

### Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Properties shall be paid by the Corporation and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Corporation.

## ARTICLE VII

### Maintenance, Repairs and Replacements

**Section 1. By Owners.** Except as provided in Section 2(b) of this Article, each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefore arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except (a) for such portions thereof as may, in accordance with the terms of this Declaration, be designated as part of the Common Properties for purposes of maintenance only and (b) lawn maintenance as provided in Section 2 below. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant (constituting a legal accompaniment) to his Dwelling Unit or Lot.

**Section 2. Common Properties and Exteriors of Dwelling Units and lawns By the Corporation.**

- (a) Maintenance, repairs, replacements and upkeep of the Common Properties shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.
- (b) In addition to maintenance of Common Properties, the Corporation, as part of its duties, and as part of the Common Expenses, shall provide for--
  - (i) Maintenance, repairs, replacement and upkeep of the exteriors of each Dwelling Unit. Such exteriors including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of interior maintenance) and exterior walls shall be considered part of the Common Properties for purposes of maintenance only.
  - (ii) Maintenance of the lawns, which shall be considered part of the Common Properties for purposes of maintenance only. Maintenance of lawns shall include but shall not be limited to the fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Declarant. It shall not include watering of lawns, which shall be the obligation of lot Owners, nor the care and maintenance of shrubs, trees which were not planted by Declarant, flowers or other plants on any Lot.

*1/5/95: p/c  
Baptist Turner  
incl. garage  
doors, tracks  
springs, but  
not opener.  
incl. door hinges  
& hardware but  
not lock change.*

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties (or items deemed Common Properties for purposes of maintenance only) as it deems necessary.

- (c) Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or items deemed as such for purposes of maintenance only), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation (the assumption by a third party of another's legal right to collect a debt or damages) clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.
- (d) The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Properties and items deemed as Common Properties for purposes of maintenance only, including, but not limited to, access to any easements reserved by any subdivision plat of any portion of the Real Estate for such purposes.

## ARTICLE VIII

### Architectural Control

**Section 1. The Architectural Review Board.** As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

**Section 2. Purposes.** The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to reserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

**Section 3. Conditions.** No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit on a Lot whether such construction occurs before or after the Applicable Date.

**Section 4. Procedures.** In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

## ARTICLE IX

### Party Walls

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of any Dwelling Unit upon the Real Estate and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

**Section 3. Destruction of Fire or Other Casualty.** If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability or negligent, intentional or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten days after written request therefor from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.)

## ARTICLE X

### Assessments

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget.** Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy; provided further, however that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of two replacement reserve funds for capital expenditures and replacement and repair of the Common Properties (one replacement reserve fund shall be for capital expenditures and replacement and repair of Common Properties owned by the Corporation and not deemed Common Properties for purposes of maintenance only and the other replacement reserve fund shall be for capital expenditures and replacement and repair of those items deemed Common Properties for purposes of maintenance only as defined in Article VI, Section 2(b)), which replacement reserve funds shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve funds for capital expenditures and replacement and repair of the Common Properties shall be maintained by the Corporation in separate interest bearing accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana, selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved

budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3 Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be computed as follows: All estimated Common Expenses except the estimated cost of the master casualty insurance policy provided for in Article XII, Section 1 shall be divided by the total number of Lots in the subdivision to determine quotient A; the estimated costs of said master casualty insurance policy shall be divided on a pro-rata basis for each Dwelling Unit based upon the square feet of living area in each Dwelling Unit, including garages but excluding basement to determine quotient B; Quotients A and B shall be added together and the sum shall be the Regular Assessment for each Lot. The portion of the Regular Assessment attributable to the replacement reserve funds shall be computed in the same manner as set forth above for the computation for quotient A.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget--

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

or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that Date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Section 2 of Article XI hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

Each Owner shall prepay to the Corporation at the time his Lot is conveyed to such Owner an amount equal to thirteen (13) monthly installments of the amount required to pay for the Lot Owner's pro-rata portion of the master casualty insurance policy based upon the budget for the current fiscal year and the Owner shall maintain such prepayment account at all times. The Corporation shall hold such prepaid funds in a separate escrow account for the purchase of insurance as provided in Article XII, Section 1.

**Section 4. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated, that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the



extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

**Section 5. Failure of Owner to Pay Assessments.**

- (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments were due, until paid, at a rate equal to the "prime interest rate" then being charged by Indiana National Bank to its largest and best corporate customers (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana, selected by the Board).
- (b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage

foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date, the Regular Assessments are and shall be established as follows:

- (a) From the date of the first conveyance of a Lot by Declarant to any other Person until the earlier of the Applicable Date or December 31, 1984--
  - (i) The Regular Assessment shall be Twenty-eight Dollars (\$28.00) per month on each Lot owned by some other than Declarant, pro-rated on a daily basis for any period of time less than a month (the amount required to fund the insurance escrow shall be in addition to the Regular Assessment), and
  - (ii) The Regular Assessment shall be twenty-five percent (25%) of the amount of the Regular Assessment for each Lot owned by Declarant until sixty (60) days after completion of a Dwelling Unit on a Lot at which time the regular Assessment for that Lot shall be raised to the full amount set forth in subparagraph (i).
- (b) After December 31, 1984, (if the Applicable Date has not then occurred) and for each year thereafter until the Applicable Date, the Regular Assessment upon each Lot may be increased by the Board by an amount not greater than an amount equal to the same percentage of the Regular Assessment provided under subparagraph (a) above as the percentage increases, if any, in the Consumer Price Index between the Index figure for the month of July 1983 and the Index figure for the last month of the year preceding the year for which such increase is to be effective. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the

Applicable Date. As used herein, "Consumer Price Index" means the "Consumer Price Index for all Urban Consumers, U.S. City Average of all items (CPI-U, reference base of 1967=100.)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such event, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by the Corporation shall be substituted for said Consumer Price Index and used for making such computations.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date (whether before or after December 31, 1984), the Regular Assessment to be paid by Declarant for each Lot owned by Declarant shall be twenty-five percent (25%) of the Regular Assessment for Owners (other than Declarant) of Single Family Lots until sixty (60) days after completion of a Dwelling Unit on a Lot at which time the Regular Assessment for that Lot shall be raised to one hundred percent (100%) of the Regular Assessment.

## ARTICLE XI

### Mortgages

**Section 1. Notice to Corporation.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

**Section 2. Notice of Certain Actions or Conditions.** The Corporation shall, upon request of a Mortgagee (or insurer or guarantor) who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee (or insurer or guarantor) with written notice of--

- (i) Any condemnation loss or any casualty loss which affects a material portion of the subdivision or any Dwelling Unit on which there is a first mortgage.
- (ii) Any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.
- (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation.
- (iv) Any proposed action which would require the consent or approval of Mortgagees.

**Section 3. Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth

in such Statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article X hereof.

**Section 4. Unpaid Taxes and Insurance.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Common Properties (excluding items deemed Common Properties for maintenance only), and the Mortgagees making such payments shall be owed immediate reimbursement therefor by the Corporation.

## ARTICLE XII

### Insurance

#### Section 1. Casualty Insurance.

- (a) The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each Dwelling Unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the Dwelling Units, excluding all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on any Lot or elsewhere. If the Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each such Owner.
- (b) The Corporation shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" affording fire and extended coverage insurance insuring all Common Properties owned by the Corporation including, but not limited to, streets, utilities and recreational equipment in an amount consonant with the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts it shall also obtain "all risk" coverage for said improvements. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.
- (c) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Properties resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in

connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners of the Corporation. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such Casualty insurance policies, and "all risk" coverages if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer--

- (a) Waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests.
- (b) Waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms--
  - (i) That the insurer shall not be entitled to contribution against casualty insurance which may be purchased by the individual Owners.
  - (ii) That notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

**Section 2. Public Liability Insurance.** The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time; provided, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Corporation, the board of Directors, any committee or organ of the corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

**Section 3. Other Insurance.** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover across liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the

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

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Lot.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

**Section 5. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation.



## ARTICLE XIII

### Casualty and Restoration; Condemnation; Termination

**Section 1. Casualty and Restoration.** In the event of damage to or destruction of the structure or exterior of any Building or Dwelling Unit or in the event of damage to or destruction of any of the Common Properties due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds,--

- (i) The costs for restoring the damage and repairing and reconstructing a Building or Dwelling Unit so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares.
- (ii) The cost for restoring the damage and repairing and reconstructing any Common Properties (excluding items deemed Common Properties for maintenance only) so damaged or destroyed (or the costs thereof in excess of insurance proceed received, if any) shall be assessed by the Corporation against all of the Owners in equal shares.

Any such amounts assessed against the owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Building so damaged or destroyed to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any lot which may be created as a result of such reconstruction or repair of any Building shall not constitute a claim or basis of a proceeding or action for the owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the original plans and specifications or as the Building was originally constructed.

**Section 2. Total or Partial Condemnation.**

- (a) In the event of the condemnation of all or any part of the Common Properties or of all or any part of any Building, Dwelling Unit or Lot, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties, Buildings or Dwelling Units. For the purpose of such negotiation and/or of contest of such award to the Board as to Buildings and Dwelling Units and Lots, the Board is hereby declared to be the agent and attorney-in-fact of any owner affected by the condemnation. This appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.
- (b) Awards for the taking of all or part of a Building, Dwelling Unit or Lot shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

**Section 3. Termination.** In the event of condemnation of two-thirds (2/3) or more of the Dwelling Units in the subdivision, the remaining Owners may, by a majority vote terminate this Declaration and dissolve the Corporation, provided, however, that the restrictions set forth in the subdivision Plat and in Article XIV shall remain in full force and effect in accordance with the terms of the Plat and Article XVIII of this Declaration.

## ARTICLE XIV

### Restrictions, Covenants and Regulations

**Section 1. Restrictions on Use.** The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Properties shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenant and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

- (a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.
- (b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Properties which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or place on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior consent of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Properties, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under lease or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any area outside an Owner's fenced Lot does not constitute "attended." The Board may adopt such other rules and

regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.

- (f) Nothing shall be done or permitted in any Dwelling Unit or on any Lot which will impair the structural integrity of any of the Common Properties or which would structurally change any of the Common Properties. No Dwelling Unit or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Dwelling Units or neighboring property, including without limiting the generality of the foregoing, noise by television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.
- (g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Properties or any public street. The Common Properties shall be kept free and clear of rubbish, debris and other unsightly materials.
- (h) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.
- (i) No "for sale," "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate, any Lot or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant (including a Builder) and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Lots and Dwelling Units and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant (including a Builder) in the marketing, advertising or sale of Lots or Dwelling Units as a part of the development of this subdivision.

- (j) All Owners and members of their families, their quests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.
- (k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.
- (l) No Owner shall remove any tree planted by Declarant for a period of two years after first occupancy of a Dwelling Unit without the written approval of the Board.
- (m) Each owner shall keep his Lot in good order, condition and repair and free of debris including, but not limited to, the pruning, trimming and cutting of all trees and shrubbery, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to so maintain his Lot, the Corporation after notice to the Owner and approval by two-thirds (2/3) vote of all owners, shall have the right to enter upon said Lot to correct, repair, maintain and restore the Lot. All costs incurred by the Corporation related to such correction, repair, maintenance or restoration shall be and constitute a Special Assessment against such Lot, payable by the Owner upon demand by the Corporation.
- (n) All garbage, trash and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.
- (o) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Lots and Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Dwell Units and Lot owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or

necessary in its sole discretion to aid in the construction and sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

## ARTICLE XV

### ~~Amendment~~ of Declaration

**Section 1. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
- (c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) **Adoption.** Any proposed amendment to this Declaration must be approved during the first twenty years by a vote of the Owners to which not less than ninety percent (90%) of the votes of the Corporation are allocated and thereafter by seventy-five percent (75%) of such owners. The instrument of amendment must be signed by such Owners and recorded. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (e) **Special Amendments. Sixty-Seven percent of Mortgagees required.** No amendment to this Declaration shall be adopted which changes the provisions hereof which establish, provide for, govern or regulate--
  - (1) The applicable share of an Owner's liability for the Common Expenses, or the method of determining same.
  - (2) Article XII of this Declaration with respect to casualty insurance to be maintained by the Corporation.
  - (3) Article XIII of this Declaration with respect to reconstruction or repair of the Common Properties or Dwelling Units in the event of fire or any other casualty or disaster.
  - (4) Establishment of the Architectural Review Board and its functions.
  - (5) Voting rights.
  - (6) Assessments, Assessment liens or subordination of such liens.

- (7) Reserves for maintenance, repair and replacement of the Common Properties.
- (8) Insurance and fidelity bonds.
- (9) Rights to use of the Common Properties.
- (10) Responsibility for maintenance and repair of Common Properties and the Dwelling Units.
- (11) Boundaries of any Lot or of the Common Properties.
- (12) The interests of Owners in the Common Properties.
- (13) The leasing of Dwelling Units.
- (14) Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey such Lot.
- (15) The rights of mortgagees or insurers or guarantors of first mortgages on Lots.

without, in each and any of such circumstances the approval of mortgagees (whose mortgage interests have been made known to the Board of Directors) holding mortgages on Lots which have at least sixty-seven percent (67%) of the votes of Lots which are subject to mortgages, provided, a Mortgagee who receives written notice of a proposed amendment and does not deliver or mail a negative response to the Secretary of the Board of Directors within thirty (30) days of said notice shall be deemed to have approved the proposed amendment.

- (f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made--

- (a) To comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities.



- (b) To induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units.
- (c) To bring this Declaration into compliance with any statutory requirements.
- (d) To correct clerical or typographical errors in this Declaration or any Exhibit hereto or any suppliment or amendment thereto.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 on behalf of each owner as Proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

## ARTICLE XVI

### Acceptance and Ratification

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the By-Laws and the rules and regulations as adopted by the Board of Directors, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the By-Laws and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in a Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

## **ARTICLE XVII**

### **Negligence**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or Dwelling Unit or its appurtenances or of the Common Properties.

## ARTICLE XVIII

### Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Marion County, Indiana, and expiring July 1, 2013, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the Restrictions in whole or in part, or to terminate the same.

In the event of a violation, or threatened violation, of any of the covenants, conditions or restrictions set forth in this Declaration, Declarant (so long as Declarant remains an owner of any part of the Real Estate), the Board, or any owner shall have the right to enforce the covenants, conditions and restrictions contained herein and to pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof. The failure or delay at any time of Declarant, the Corporation, the Owners, or any other Person entitled to enforce this Declaration and the Restrictions, to enforce any of the same shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

## **ARTICLE XIX**

### **Annexations**

No additional real estate may be annexed to the Real Estate by the Declarant or made subject to this Declaration of Covenants, Conditions and Restrictions at any time.

## **ARTICLE XX**

### **FHA and VA Approval**

As long as there is a Class B membership in the Corporation, amendments of this Declarations pursuant to Article XV and conveyance of Common Properties pursuant to Article III must receive the prior written approval of FHA and VA.

## ARTICLE XXI

### Miscellaneous

**Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an owner to make any payments required by this Declaration, the Articles or the By-Laws, or to comply with any provision of this Declaration, the Articles, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

**Section 2. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Properties or by abandonment of his Lot or Dwelling Unit.

**Section 3. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration, the ARTicles or the By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the By-Laws and each shall be enforceable to the greatest extent permitted by law.

**Section 4. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

IN WITNESS WHEREOF, DONALD A. REED, Declarant has .....

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting:

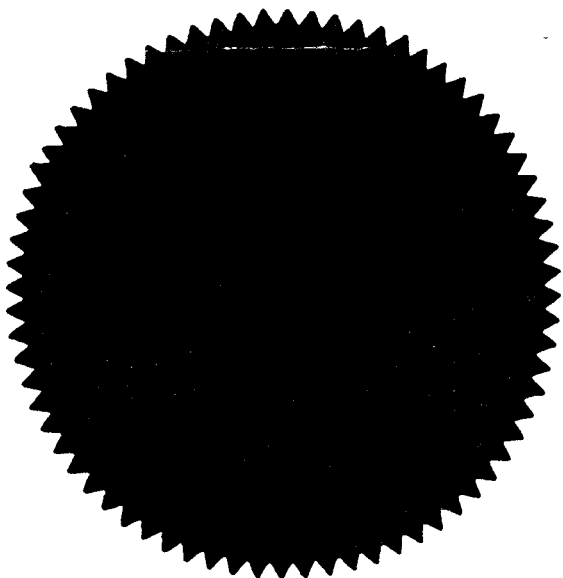
CERTIFICATE OF INCORPORATION

HUNTINGTON HEIGHTS HOMEOWNERS ASSOCIATION, INC.

8309-168  
(49)

I, EDWIN J. SIMCOX, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above not-for-profit corporation, in the form prescribed by this Office, prepared and signed in duplicate by the Incorporator(s) and acknowledged and verified by the same before a Notary Public, have been presented to me at this office accompanied by the fees prescribed by law; that I have found such Articles conform to law; that I have endorsed my approval upon the duplicate copies of such Articles; that all fees have been paid as required by law; that one copy of such Articles has been filed in this office; and that the remaining copy(ies) of such Articles bearing the endorsement of my approval and filing has (have) been returned by me to the incorporator(s) or his (their) representatives; all as prescribed by the Indiana Not-For-Profit Corporation Act of 1971.

NOW, THEREFORE, I hereby issue to such Corporation this Certificate of Incorporation, and further certify that its corporate existence has begun.



In Witness Whereof, I have hereunto set my hand and affixed  
the seal of the State of Indiana, at the City of Indianapolis, this

8th

day of

September

19 83

EDWIN J. SIMCOX, Secretary of State

By

Deputy

#4804/9-7A88  
**APPROVED**  
**FILED**  
**SEP 08 1983**

ARTICLES OF INCORPORATION

OF

HUNTINGTON HEIGHTS HOMEOWNERS ASSOCIATION, INC.

*Edwin J. Simon*  
SECRETARY OF STATE OF INDIANA

The undersigned incorporator or incorporators, desiring to form a corporation (hereinafter referred to as the "Corporation"), pursuant to the provisions of the Indiana Not-For-Profit Corporation Act of 1971 (hereinafter referred to as the "Act"), execute the following Articles of Incorporation.

ARTICLE I

Name

The name of the Corporation is Huntington Heights Homeowners Association, Inc.

ARTICLE II

Adoption

These Articles of Incorporation creating Huntington Heights Homeowners Association, Inc. and the Code of By-Laws corresponding thereto, are adopted in accordance with the Act.

ARTICLE III

Purposes

The purpose of the corporation shall be to provide for and promote the health, safety and welfare of the members with respect to the Real Estate described in Exhibit "A" and in accordance with these Articles, corresponding By-Laws and a Declaration of Covenant, Conditions and Restrictions (hereinafter "Declaration") recorded, or to be recorded, by Donald A. Reed (hereinafter "Declarant") by providing (1) for the ownership and maintenance of certain common properties as defined in the Declaration (2) for trash removal, (3) for snow removal from private and public streets and (4) for the performance of such other functions as may be designated to it by the Declaration and to:

(a) Exercise all of the powers and privileges and perform all of the duties and obligations of the Corporation as set forth in these Articles, corresponding By-Laws and the Declaration of Covenants, Conditions and Restrictions of Woodcreek Development, Inc. as amended from time to time.



(b) Establish, levy, collect and enforce payment of any charges, dues, assessments or membership fees made against Members or others pursuant to the terms of these Articles, the By-Laws and the Declaration of Covenants, Conditions and Restrictions; to pay all expenses in connection with such collection and all office and other expenses incident to the conduct of the business of the Corporation, including any license fees, taxes or other governmental charges levied or imposed against the property of the Corporation;

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Corporation;

(d) Enter into agreements with other entities for the maintenance of off-site streets, water mains, sanitary sewer mains and/or storm sewers or drainage ditches or ways.

(e) Borrow money and pledge, deed in trust, mortgage or hypothecate any and all of its real or personal property as security for money borrowed or debts incurred;

(f) Merge and consolidate with other non-profit corporations organized for the same purposes.

(g) Have and exercise any and all powers, rights and privileges which a corporation organized under the Not-For-Profit Corporation Act of the State of Indiana by law may now or hereafter have or exercise.

#### ARTICLE IV

##### Period of Existence

The period during which the Corporation shall continue is perpetual.

#### ARTICLE V

##### Resident Agent and Principal Office

Section 1. Resident Agent. The name and address of the Resident Agent in charge of the Corporation's principal office is Richard N. Kleisley, Ryan Homes, Inc., 4000 E. Southport Road, Indianapolis, IN 46237

Section 2. Rights, Preferences, Limitations and Restrictions of Classes. All Members of each Class shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other Members of such Class. All Members shall abide by the Articles of Incorporation, the Code of By-Laws, and the rules and regulations adopted by the Board of Directors.

## ARTICLE VII

### Directors

Section 1. Number of Directors. The initial Board of Directors shall be composed of three (3) members. The number of Directors of the Corporation shall be fixed by the Code of By-Laws of the Corporation, but in no event shall the Code of By-Laws fix the number of Directors at less than three (3) nor more than nine (9).

Section 2. Names and Post Office Addresses of the Directors. The names and post office addresses of the initial Board of Directors are:

<u>Name</u>	<u>Number and Street or Building</u>	<u>City</u>	<u>State &amp; Zip Code</u>
Richard N. Kleisley	4000 E. Southport Rd.	Indianapolis	IN 46237
Matthew Cullen	4000 E. Southport Rd.	Indianapolis	IN 46237
James Burton	4000 E. Southport Rd.	Indianapolis	IN 46237

## ARTICLE VIII

### Incorporators

Section 1. Names and Post office Addresses. The name and post office address of the incorporator of the Corporation is as follows:

<u>Name</u>	<u>Number and Street or Building</u>	<u>City</u>	<u>State &amp; Zip Code</u>
James W. Beatty	400 Union Federal Building	Indianapolis	IN 46204

ARTICLE IX

Statement of Property and  
Estimate of the Value Thereof

Section 1. Property. At the time of the incorporation, the Corporation has no property.

ARTICLE X

Provisions for the Regulation and  
Conduct of the Affairs of the Corporation

Section 1. Liability of Members. Neither the individual Members of the Corporation nor their individual property shall be subject to any liability for any debts of the Corporation.

Section 2. Code of By-Laws. The power to make, alter, amend or repeal the Code of By-Laws and the rules and regulations for the conduct of the affairs of the Corporation shall be vested in the Board of Directors of the Corporation; provided, however, that no acts of the Board of Directors shall be inconsistent with or contradictory to these Articles of Incorporation, the Declaration or any provision of law; and provided further that the Federal Housing Administration (FHA) and the Veterans Administration (VA) shall have the right to veto amendments while there is a Class "B" membership.

Section 3. Dissolution and Mergers. The Corporation may be dissolved or merged only with the written consent of not less than sixty-seven percent (67%) of the votes of each Class of Members; provided, that such dissolution or merger must also receive the prior written approval of FHA and VA as long as there is a Class "B" membership.

Section 4. Amendment of Articles of Incorporation. Amendment to the Articles of Incorporation shall require the consent of at least a majority of the vote of the Class "A" Members.

Section 5. No Private Benefit. No money or property received or held by the Corporation shall ever inure, directly

or indirectly, to the private benefit of any Member, Director, or officer of the Corporation or any other person whomsoever except for reasonable compensation for services actually rendered to the Corporation.

Section 6. Distribution of Earnings and Assets. On dissolution of this Corporation, any assets remaining after payment of its debts and obligations shall be transferred or distributed to the agency or corporation who shall take over the functions of the Corporation or shall be used to improve or add to the Common Properties owned by the Corporation prior to such dissolution. No assets of the Corporation shall be distributed upon dissolution or otherwise to any incorporator, member, donor, officer or employee.

Section 7. Non-Liability of Directors. The Directors shall not be liable to the Members or the Corporation for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Articles of Incorporation or Code of By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation and that in all matters the Board is acting for and on behalf of the Corporation as its agent. Every contract made by the Board or the Managing Agent on behalf of the Corporation shall provide that the Board of Directors and the Managing Agent, as the case may be, is acting as agent for the Corporation and shall have no personal liability thereunder.

Section 8. Additional Indemnity of Directors. The Corporation shall indemnify any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director, officer or employee of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement or of judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the committee composed of the Directors not involved in the

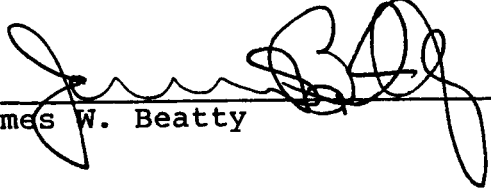
matter in controversy (whether or not a quorum) in their judgment reasonably exercised that such Director, officer or employee was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, officer or employee, no Director, officer or employee shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director, officer or employee relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent of the Corporation's property or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

The rights of indemnification and reimbursement set forth above shall not be deemed exclusive of any other rights to which such officers, Directors or employees may be entitled apart from the provisions of this Article.

Section 9. Reliance by Directors on Books of Account, Etc. Each Director of the Corporation shall be fully protected in relying in good faith upon (a) the books of account of the Corporation, or (b) statements prepared by any of its officers and employees as to the value and amount of the assets, liabilities and receipts of the Corporation, or any of such items, or (c) statements or advice made by or prepared by any officer or employee of the Corporation or any accountant, attorney, other person or firm, employed by the Corporation to render advice or service.

The undersigned, being one or more persons, do hereby adopt these Articles of Incorporation, representing beforehand to the Secretary of State of the State of Indiana and all persons whom it may concern that a membership list or lists of the above-named Corporation for which a Certificate of Incorporation is hereby applied for, have heretofore been opened in accordance with law and that at least three (3) persons have signed such membership list.


IN WITNESS WHEREOF, I, the undersigned, do hereby execute these Articles of Incorporation and certify to the truth of the facts herein stated, this 8th day of September, 1983.

  
James W. Beatty

STATE OF INDIANA     )  
                              ) SS:  
COUNTY OF MARION    )

I, the undersigned, a Notary Public duly commissioned to take acknowledgements and administer oaths in the State of Indiana, certify that James W. Beatty, being the incorporator referred to in Article VIII of the foregoing Articles of Incorporation, personally appeared before me, acknowledged the execution thereof, and swore to the truth of the facts therein stated.

Witness my hand and Notarial Seal this 8th day of September, 1983.

  
Printed MARILYN S. REES  
Notary Public - HANCOCK County

My Commission Expires:

5-24-85

This instrument was prepared by James W. Beatty, Attorney at Law, 400 Union Federal Building, Indianapolis, Indiana 46204, (317) 632-3030.

### LEGAL DESCRIPTION

Part of the Northwest Quarter of Section 28, Township 16 North, Range 5 East in Marion County, State of Indiana, being more particularly described as follows:

Commencing at the northwest corner of the aforementioned quarter section; running thence South 00°01'20" West (assumed bearing being the datum for all subsequent bearings) upon and along the west line thereof a distance of 1606.360 feet; thence running thence North 90°00'00" East a distance of 250.000 feet; thence running North 00°01'20" East a distance of 52.195 feet; thence running North 90°00'00" East a distance of 52.753 feet, the point of beginning of the real estate described herein; thence continuing North 90°00'00" East a distance of 836.000 feet; running thence North 00°00'00" East a distance of 26.258 feet; thence North 90°00'00" East a distance of 199.361 feet, to a point on the east line of the west half of the aforementioned quarter section; running thence South 00°07'07" West upon and along the east line thereof a distance of 173.000 feet; running thence South 90°00'00" West a distance of 186.002 feet; running thence South 00°00'00" West a distance of 110.000 feet; running thence South 90°00'00" West a distance of 431.290 feet; running thence North 00°00'00" East a distance of 56.077 feet; running thence South 90°00'00" West a distance of 11.710 feet; running thence North 00°00'00" East a distance of 65.000 feet; running thence South 90°00'00" West a distance of 140.000 feet; running thence South 00°00'00" West a distance of 133.000 feet; running thence South 90°00'00" West a distance of 145.000 feet; running thence North 00°00'00" East a distance of 133.000 feet; running thence South 90°00'00" West a distance of 121.000 feet; running thence North 00°00'00" East a distance of 135.665 feet to the point of beginning.

Exhibit "A"