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**DECLARATION OF COVENANTS AND RESTRICTIONS OF
BARNES HERITAGE ESTATES TOWNHOMES
PROPERTY OWNERSHIP**

JUN 07 1995
KEY 14-253-1
SAM ORLICH
AUDITOR LAKE COUNTY
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THIS DECLARATION made this 31 day of May, 1995, by Louis R. Barnes and Marilyn J. Barnes, husband and wife (hereinafter called "Declarant")

WITNESSETH:

WHEREAS, Declarant is the sole owner in fee simple title to the following described real estate located in Lake County, Indiana, to-wit:

BEING RESUBDIVISION OF PART OF LOT ONE IN THE CORRECTED PLAT OF HERITAGE ESTATES. UNIT SIX TO THE TOWN OF DYER, LAKE COUNTY, INDIANA AS RECORDED IN PLAT BOOK 43, PAGE 146, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, COMMENCING AT THE NORTHWEST CORNER OF SAID LOT ONE: THENCE SOUTH 89' 13' 13" EAST. ALONG THE NORTH LINE OF SAID LOT ONE, A DISTANCE OF 412.34 FEET, TO THE POINT OF BEGINNING, THENCE CONTINUING SOUTH 89' 13' 13" EAST. A DISTANCE OF 113.01 FEET TO THE NORTHEAST CORNER OF THE AFORESAID LOT ONE (SAID POINT ALSO BEING ON THE WEST RIGHT OF WAY LINE OF SHEFFIELD AVENUE), THENCE SOUTH 00' 04' 20" EAST. ALONG THE EAST LINE OF SAID LOT ONE (WEST RIGHT OF WAY LINE OF SHEFFIELD AVENUE), A DISTANCE OF 964.74 FEET TO THE SOUTHEAST CORNER OF SAID LOT ONE, THENCE SOUTH 89' 55' 40" WEST. ALONG THE SOUTH LINE OF THE AFORESAID LOT ONE (NORTH RIGHT OF WAY OF HERITAGE DRIVE). A DISTANCE OF 113.00 FEET, THENCE NORTH 00' 04' 20" WEST. A DISTANCE OF 966.42 FEET. TO THE POINT OF BEGINNING CONTAINING 2.5048 ACRES MORE OR LESS.

WHEREAS, the Developer has formed BARNES HERITAGE ESTATES TOWNHOMES INC., a not-for-profit corporation, for the purpose of providing for the order and proper administration and maintenance of the above-described common area and spaces and for the preservation and enhancement of those portions of the development which are improved by the developer from time to time, and to administer and enforce covenants, conditions and restrictions of this Declaration and to collect and disburse assessments and charges hereinafter created; and

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



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NOW, THEREFORE, Declarant hereby declares that all of the property described on "Exhibit A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the property. These easements, covenants, restrictions and conditions shall run with the property as part of a general plan of development and shall be binding on all parties having or acquiring any right, title or interest in the property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

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

(a) "Articles of Incorporation" means the Articles of Incorporation of the Corporation. The Articles of Incorporation are incorporated herein by reference.

(b) "Assessments" means that portion of the cost of construction, maintaining, repairing and managing the common area as set forth in the Articles of Incorporation and the By-Laws of the Association.

(c) "Corporation" means Barnes Heritage Estates Townhomes, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of units; such Corporation being more particularly described in Paragraph 10.

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

(e) "Barnes Heritage Estates" means the name by which the Tract, which is the subject of this Declaration, and which the Corporation, BARNES HERITAGE ESTATES TOWNHOMES, INC., manages, shall be known.

(f) "Building" means any one of the separated structures which has one Dwelling Unit or two or more attached Dwelling Units.

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

(h) "Common Area" means the ground designated as such upon the recorded Plat of Barnes Heritage Estates or upon a recorded plat, if any, of the Additional Tract or any part thereof.

(i) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area, and all sums lawfully assessed against the Members of the Corporation.

(j) "Declarant" shall mean and refer to the corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(k) "Declaration" means this instrument and any subsequent amendments thereto.

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

(m) "Mortgagee" means the holder of a first mortgage lien on a unit.

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

(o) "Plat" means the survey of the Tract and Lots and Common Areas thereon prepared by Hardesty Surveying Company, under date of March 9, 1995, and recorded as Document Number 95012782, in the Office of the Recorder of Lake County, Indiana, which is incorporated herein by reference.

(p) "Property" means the Tract and appurtenant easements, Dwelling Units, Buildings, other improvements on and all property of every kind and nature whatsoever, real, personal, or mixed located upon the Tract, and used in connection with the operation, use and enjoyment of the platted real estate.

(q) "Tract" means the real estate described above and such portions of the Additional Tract which have been subject to this Declaration by a Supplemental Declaration as provided herein.

ARTICLE II

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

2. Description. Barnes Heritage Estates Townhomes consists of fifteen (15) residential units located in 5 separate buildings. The units shall be designated as 1, 2 and 3. The Building shall be designated as Buildings A, B, C, D and E, inclusive, together with the Common Area as designated on the

Plat. The Common Area and the size of the units are as designated on the Plat. The legal description for each unit in Barnes Heritage Estates Townhomes shall be as follows:

Unit _____, in Building _____, in Barnes Heritage Estates, a subdivision in the Town of Dyer, Lake County, Indiana, as per plat thereof recorded in Plat Book _____, page _____, in the Office of the Recorder of Lake County, Indiana.

3. Units and Easements. The boundaries of each unit in Barnes Heritage Estates shall be as shown on the Plat, provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the owner of each unit in and to such base line outside the actual boundary line of the unit. In addition to exclusive use of the building unit, each unit Owner shall have exclusive use of a portion of the yard adjacent to said unit and extending twenty feet from the furthest projection on the front of the building, fifteen feet from the furthest projection of the rear of the building, and 10 feet from the furthest projection of the side of the building occupied by the unit. Further, the center unit shall have sole and exclusive use of the courtyard immediately behind and adjacent to his unit.

4. Common Area. Common Area includes all the area designated as such on the recorded Plat of Barnes Heritage Estates, including but not limited to the yards, gardens, driveways, sidewalks, parking areas, and recreational areas, but excluding all Residential Units.

5. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every unit, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, upon approval by a written instrument signed by 2/3rds of all Class A & B Members and by 2/3rds of all first

mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 11.

(c) The Common Area shall be conveyed to or owned by the Corporation at the time of conveyance of the first unit in Barnes Heritage Estates.

6. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside in any unit.

7. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Dwelling Units or in the Common Area and serving his Dwelling Unit.

8. Easements of Ingress and Egress. Each Owner, as well as the lawful residents and Occupants of each Residential Unit, and their agents and contractors shall have and enjoy an easement for ingress and egress to and from their Residential Unit, over and upon the lawn and landscaped areas of all Residential Units within a building which are connected in succession by party walls as provided in this Declaration, for the purpose of providing access to all parts of such Residential Unit for all purposes and activities associated with the normal and reasonable residential use of the Residential Unit, including, but not limited to, the maintenance, repair and replacement of the exterior of the building located on the Residential Unit and all lawn and landscaped areas and sidewalks which are a part of the Residential Unit.

9. Parking Space. The Owner of a unit shall have an easement to and an exclusive right to use two automobile garage parking spaces (Parking Space) which shall be permanently designated for the use of such Owner's unit by the Board of Directors. Such exclusive use shall pass with title to the unit for which the Parking Space is designated even though not expressly mentioned in the document passing title. The Parking Space shall be part of the Common Area and shall be subject to such rules and regulations as the Board of Directors may adopt.

10. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the streets and Common Area in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephone and electricity on the Property provided however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to construct and maintain the necessary equipment on the Property except that all public utilities shall be constructed underground. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Property, without conflicting with the terms of this paragraph. The easements granted herein shall in no way affect any other recorded easement on the Property.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

11. Corporation. In order to provide for the maintenance and repair, replacement, administration, operation and ownership of the Common Area, and to perform such other function as may be designated to it, there is hereby created a not-for-profit corporation which shall be known as Barnes Heritage Estates Townhomes, Inc. Each Owner shall automatically be a Member of the

Corporation, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner; provided, however, any person who holds the interest of an Owner in a unit 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. The Corporation shall have two classes of Members:

(a) Class A. Class A Members shall be all Owners except Declarant and shall be entitled to one vote for each unit owned. All persons holding an interest in any unit shall be Members provided however each unit represented shall have only one vote as the Owners of such unit may determine.

(b) Class B. The Class B Member shall be Declarant and Declarant shall be entitled to five votes for each unit owned, and for each unit under construction. The Class B Membership shall cease and terminate upon the first to occur of (1) the date upon which the written resignation of the Class B Member as such is delivered to the Resident Agent of the Corporation, provided, however, if Declarant, at such time still owns units, such membership shall be converted to a Class A Membership; (2) the date Declarant no longer owns any units; or (3) December 31, 1997. (the applicable date of the above being herein referred to as the "Applicable Date").

The initial Board of Directors shall be as designated in the Articles of Incorporation, and such Directors, notwithstanding any provision in this Declaration or the Articles or the By-Laws to the contrary, shall be Directors until the Applicable Date and in the event of any vacancy or vacancies occurring in the Initial Board for any reason prior to the Applicable Date every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Thereafter, the Corporation shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws. The Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the By-Laws.

The Board of Directors shall be the governing body of the Corporation representing all of the Members and being responsible for the functions and duties of the Corporation including but not limited to the management, maintenance, repair, replacement and upkeep of the Common Area. All of the Common Area shall be owned, operated and managed by the Corporation.

12. Right of Board of Directors to Adopt Rules and Regulations. The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Area, patios, and other areas not covered by the Dwelling Unit, as it may deem necessary from time to time. Such rules as are adopted may be amended by vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered and mailed promptly to all Owners.

13. Management Agreement - Management. The Board of Directors has entered or will hereafter enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such affiliate of Declarant as appropriate) will provide supervision, management and maintenance of the common area, and to the extent the same is not otherwise the responsibility of Owners of individual Dwelling Units, the maintenance of Dwelling Units and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years. Such management agreement is or will be subject to termination by Declarant (or its affiliate as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or its affiliate as appropriate) is 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 Property and perform all the functions of the Corporation.

14. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each unit. In the event that for any year the real estate taxes are not separately assessed and taxed to each unit but are assessed and taxed

on the Tract and Additional Tract or part thereof as a whole, without a breakdown for each unit, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract and Additional Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his unit bears to the total square footage of all the land comprising the Tract and Additional Tract or part thereof assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract and Additional Tract or part thereof assessed as a whole based upon the ratio that the square footage of his unit bears to the total square footage of all units included in the assessment. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and created as a Common Expense.

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

16. Maintenance, Repairs and Replacements. Each Owner shall at his expense be responsible for the maintenance, repairs, decoration and replacement within his own Dwelling Unit except as may otherwise be provided herein. All fixtures and equipment installed within the Dwelling Unit commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Dwelling Unit shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair in his Dwelling Unit, which if neglected, might adversely affect any Dwelling Unit, Common Area or the value of the Property. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, doors, windows, lamps and all other accessories belonging to the Owner and appurtenant to the Dwelling Unit. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of the Common Expense.

In addition to the maintenance of the Common Area, the Corporation shall provide exterior maintenance upon each Lot and Dwelling Unit for the following: paint, repair, replacement and care of all exterior, doors, roofs, gutters,

downspouts, exterior building surfaces, and other exterior improvements excluding however any glass surfaces, screens, window fixtures, other hardware and patios which shall be the sole responsibility of the Owner. The Corporation shall also maintain any trees, shrubs, grass or walks which the Corporation originally planted or installed, exclusive of those areas designated for exclusive use of the unit owner as set forth in Paragraph 4 above.

In the event that the need for maintenance and repair results from the willful or negligent act of the Owner, his family, guests or invitees, and is not covered or paid for by insurance on such unit, the cost of such maintenance or repair shall be borne by the Owner, and shall be added to and become a part of the assessment to which his unit is subject and be subject to the same method of collection as the assessment.

The Board of Directors, or their designated agents, shall have the right at reasonable times, and upon reasonable prior notice (except in cases of emergency in which case no notice will be required) to enter into each individual Dwelling Unit for purposes of inspection of the Common Area appurtenant thereto, and replacement, repair and maintenance of the same.

17. Alterations, Additions and Improvements. No owner may make any alterations, additions, improvements, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or Dwelling Unit located thereon from its natural or improved state existing on the date such unit was first conveyed by Declarant to the Owner without the prior written approval of the Board of Directors, except as otherwise expressly provided in this Declaration.

18. Assessments. Assessments and payment of assessments shall be as follows:

(a) Annual Accounting. Annually after the close of each calendar year of the Corporation and prior to the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared and furnished each Member a financial statement prepared by a certified public accounting firm then serving the Corporation, which statement shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

(b) Proposed Annual Budget. Annually before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnishing a copy of such proposed budget to each Member at least two weeks prior to the annual meeting. The annual budget shall be submitted to the Members 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 ensuing or current fiscal year. At the annual meeting of the Members, the budget shall be approved in whole or in part or may be amended in whole or in part by a majority of the votes cast, provided however, in no event shall the annual meeting be adjourned without or until the annual budget is approved at such meeting, either the proposed annual budget or the proposed annual budget as amended.

The annual budget, the Regular Assessment and all 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 Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and of Dwelling Units to the extent such capital expenditure for repair and replacement thereof is the obligation of the Corporation, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area. Such replacement reserve fund for capital expenditures and replacement repair of the Common Area shall be deposited in one or more banks or savings and loan associations authorized to conduct business in Lake County, Indiana, selected from time to time by the Board of Directors.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release in any manner of the obligations of the Owner to pay the Common Expenses as herein provided whenever determined.

(c) Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain the proposed assessment against each unit which shall be the same for each unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his unit (herein called the "Regular Assessment"). 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 the reserve fund as hereinabove provided. The Regular Assessment against each unit shall be paid in advance in equal monthly installments, commencing on the first day of February of such calendar year and on the first day of each calendar month thereafter through and including the following January 1. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or as otherwise directed by the Board of Directors. The Regular Assessment for the year shall become a lien on each separate unit as of February 1 of each calendar year.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may be deemed necessary by the Board of Directors. In such event the Board of Directors shall be authorized to adopt a resolution to make such expenditures and shall have the full right, power and authority to make a special assessment of equal amount upon each unit which shall become a lien on such unit, upon approval of such resolution by two-thirds of the votes of Class A Members and all of the Class B Members at a special meeting of Members duly called in accordance with the By-Laws for the purpose of approving or rejecting such resolution (herein called "Special Assessment").

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is constructing Dwelling Units within the Tract or any Additional Tract, it is difficult to accurately allocate the Common Expenses to the individual units. The purpose of this section is to provide the method for the payment of the Common Expenses during the

period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the initial Board without any meeting or concurrence of the Owners, provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 19(e).

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) (hereinafter referred to as "Management Agent or Managing Agent") in accordance with the provisions of Paragraph 14 of this Declaration.

So long as such management agreement remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Management Agent shall guarantee that until the earlier of (1) the termination of said management agreement or (2) December 31, 1996, the monthly Regular Assessment shall not exceed \$35.00, plus a prorated portion of the common area real estate taxes (the "Guaranteed Charge") after December 31, 1996 (assuming that said management agreement has not been terminated).

Payment of the Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit shall commence on the date of conveyance by Declarant to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 14 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common

Area or by abandonment of the unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments and 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 Dwelling unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving 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 Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate then being charged by Merchants National Bank and Trust Company of Indianapolis to its largest and best corporate customers (or if said bank is no longer in existence then such rate charged by another national bank in Marion County, Indiana selected by the Board of Directors).

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a 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 a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance, provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the 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 therefore. 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 unit from which it arose).

(h) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular or Special Assessments against the unit, which statement shall be binding upon the Corporation and the Members and any Mortgagee or grantee of the unit shall not be liable for nor shall the unit conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement. Any prior mortgagee and his purchaser or assignee shall take free of assessments accruing before transfer to such purchaser or assignee.

19. Insurance. Each Owner shall be required to obtain at such Owner's own expense fire and extended coverage insurance insuring his individual Dwelling Unit in an amount equal to the full replacement cost thereof and furnish evidence of such insurance to the Board of Directors. Such insurance coverage shall be for the benefit of each Owner, and if applicable the Owner's Mortgagee, provided however, in the event of damage or destruction by fire or other casualty to any Dwelling Unit, the Owner and Mortgagee thereof shall use such insurance proceeds to cause the Dwelling Unit to be promptly repaired and restored. In the event for any reason an Owner does not obtain such insurance coverage,

the Corporation shall obtain insurance for such Owner and add the cost thereof to such Owner's assessment, to be collected in the same manner as the assessment.

The Corporation, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring all improvements in the Common Area, in an amount equal to the full replacement cost thereof. The Corporation shall also obtain comprehensive public liability in such limits as the Board of Directors shall deem appropriate together with workmen's compensation and other liability insurance if deemed necessary and appropriate by the Board of Directors. Such insurance shall also cover any liability claims of any Member of the Corporation. The premium for the insurance obtained by the Corporation shall be paid by the Corporation as part of the Common Expenses.

Each Owner shall have the right to purchase at his own expense any additional insurance he may deem necessary, and each Owner shall be solely responsible for homeowner's liability insurance and for the insurance on the contents of his Dwelling Unit and for the insurance on the contents of any other property where on the Property. All insurance obtained, whether obtained by the Corporation or the Owners, including but not limited to insurance on the individual Dwelling Units, insurance on improvements in the Common Area and liability insurance, shall provide that the insurance company providing such insurance waives its right of subrogation, if any, against the Owners, the Corporation and their agents.

20. Casualty and Restoration. In the event of damage or destruction of any Dwelling Unit by fire or other casualty the Owner thereof shall cause such Dwelling Unit to be promptly repaired and restored. The proceeds of insurance carried for the benefit of the Owner and Mortgagee for such purpose shall be applied to the cost of such restoration. In the event insurance proceeds are inadequate to cover the costs of reconstruction or in the event there are no proceeds, the Owners of the Dwelling Units directly affected by the damage shall pay the cost for restoring the Dwelling Unit. If any Owner fails or refuses to reconstruct his Dwelling Unit when required, the Corporation may pursue whatever legal means are available to cause such restoration, including but not limited to the Corporation completing the restoration and paying the cost thereof, with the cost attributable to the Owner or Owners

who refuse or fail to make the restoration when required becoming a lien on such defaulting Owner's unit and subject to foreclosure in the same manner as provided for a lien for common expenses. All improvements in the Common Area which are damaged or destroyed shall be restored by the Corporation unless two-thirds of the Corporation and two-thirds of all first Mortgagees decide not to make such restoration or to make such restoration in a different manner.

In the event the Corporation has insurance proceeds which are to be used for the benefit of the Owners, no distribution of such insurance proceeds shall 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 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 method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or other casualty or disaster, and the insurance proceeds, if any, received by the Corporation as a result of such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged and destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Corporation through a special assessment of the Owners with each Owner being assessed an equal amount. Such Special Assessment shall constitute a lien from the time of assessment as provided herein.

21. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Common Area and Property 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, by the Corporation, its successors or assigns. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries

resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation:

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

(b) No additional buildings shall be erected or located on the Property other than as otherwise shown on the Plat except as originally constructed by Declarant or as approved in writing by the Board of Directors.

(c) Nothing shall be done or kept in any Dwelling Unit or in the Common Area which will cause an increase in the rate of insurance on any building or the contents thereof. No Owner shall permit anything to be done or kept in his Dwelling Unit or in the Common Area which will result in the cancellation of insurance on any building or contents thereof, or which would be in violation of any law or ordinance.

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

(e) No advertising signs (except one "for sale" or one "for rent" sign per parcel of not more than five square feet), unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot, or Common Area, nor shall any Lot or Common Area be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Dwelling Unit or any resident thereof. Notwithstanding any provision in this paragraph or elsewhere in this Declaration the Articles or By-Laws, Declarant or the Builder of the Dwelling Units may maintain on the Property during the period of construction

and sale of the Dwelling Units such facilities as Declarant in its sole discretion deems necessary to the construction and sale of the Dwelling Units including but not limited to a business office, storage area, construction yards, signs, model units, construction office sales office, management offices, and business offices. At no time shall such facilities so used and maintained by Declarant or Builder be or become part of the Common Area unless so designated by Declarant and Declarant shall have the right to remove the same from the Property at any time.

(f) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed from any Dwelling Unit where such would be viewable from any part of the Common Area, nor shall any such items be hung out or exposed on any part of the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

(g) No industry, trade or any commercial or religious activity, educational or otherwise designed for profit, alterism, or otherwise, shall be conducted, practiced or permitted on the Property, provided however, that this shall not apply to the business activities, if any, of Declarant, his agents or assigns during the construction and sale period.

(h) All Owners and members of their families, guests or invitees, and all occupants of any Dwelling Unit or any other persons entitled to use the same and to use and enjoy the Common Area 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 operating, use and enjoyment of the Common Area.

(i) No boats, campers, trailers of any kind, buses, mobile homes, trucks or any other unconventional vehicles of any description shall be permitted parked, or stored anywhere within

the Property except as otherwise designated by the Board, provided however, nothing herein shall prevent the parking and storage of such vehicles completely enclosed within a garage.

(j) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area except with express permission from the Board, or as otherwise provided in this Declaration.

22. Sale or Lease of Unit by Owner. For the purpose of maintaining the congenial and residential character of the Tract and for the protection of the Owners with regard to financially responsible residents, sale or lease of a Unit by an Owner other than Declarant shall be subject to the following conditions and restrictions:

(a) Lease. It is in the best interest of all the Owners that all persons residing in Dwelling Units have similar proprietary interests in their Units. Therefore, no Owner shall lease his Unit in any residential or letting arrangement for his Unit without the prior written consent of the Board of Directors. Such consent shall not be unreasonably withheld. Any Owner desiring to enter into a lease for his Unit shall make written application to the Board of Directors which application shall state the reasons why the applicant wishes to lease the Unit, the name of the proposed tenant, and financial references of the proposed tenant. Within ten (10) days following the receipt of the application, the Board of Directors shall issue its written approval or disapproval to the Owner. In the event the Board of Directors fails to issue written approval or disapproval within such period, the application shall for all purposes be deemed approved.

(b) Sale. The Corporation shall have the right of first refusal to purchase any Unit which an Owner wishes to sell. Any Owner wishing to sell who receives a bona fide offer to purchase shall promptly give written notice to the Board of Directors of his desire to sell, together with the name and address of the intended purchaser, and the terms and conditions of such offer.

Within seven (7) days after the receipt of such notice, the Board of Directors shall determine if it should recommend exercise of the right to purchase or waive the right to purchase. In the event the Board of Directors elects to waive the right to purchase, a certificate in recordable form, executed by the President or Secretary of the Corporation, certifying that the Corporation, through its Board of Directors, has waived its right to purchase, shall be delivered to the Owner, who may then proceed to sell and convey his Unit to that person and upon the same terms and conditions as set forth in the Owner's notice to the Board of Directors. In the event the sale is not completed within ninety (90) days following the date of such certificate, then the Unit shall again become subject to the Corporation's right of first refusal as herein provided.

Any sale or attempted sale, or any lease or attempted lease by an Owner of his Unit, except as to agree with the provisions of this paragraph 22, shall be void, provided however, that any certificate waiving the Corporation's right to purchase executed by the Corporation and delivered to an Owner as provided by this paragraph may be relied upon by any purchaser or mortgagee and shall, with respect to such purchaser or mortgagee, be absolutely binding upon the Corporation and the Owners unless such purchaser or mortgagee has actual knowledge that the certificate was procured fraudulently or by reason of a misrepresentation of a material fact.

(c) Limitations to Mortgagee. With respect to a Mortgagee that is a bank, life insurance company, savings and loan association or other institutional lender who is acquiring title by foreclosure or deed in lieu thereof or in selling a Unit that has been acquired, the provisions of subparagraphs (a) and (b) shall not be applicable. Also the provisions of sub-paragraphs (a) and (b) shall not be applicable to the sale of a Unit at a foreclosure sale even if the purchaser is someone other than a Mortgagee.

Under no circumstances may the provisions of this subparagraph (c) be amended.

23. Amendment of Declaration. 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 the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by a majority of the votes cast by the Members.

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

(d) Adoption. Any proposed amendment to this Declaration must be approved by not less than seventy-five percent (75%) of the votes cast. If this document 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.

(e) Special Amendment. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's Expenses, or (2) the provisions of Article 19 of this Declaration with respect to casualty insurance to be maintained by the Corporation, or (3) provisions of Article 20 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, or (4) changes in the provisions of Paragraph 18 of this Declaration with respect to the commencement of assessments on any Unit, without in each and any of such circumstances, the unanimous approval of all Owners, all Mortgagees and Declarant.

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

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the By-Laws, Declarant shall have the right 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 from time to time if (1) such amendment is necessary 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, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, or quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entity, (2) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Dwelling Units, or (3) to bring this Declaration into compliance with any statutory requirements, or (4) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto.

24. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended 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 Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal

entities who may occupy, use, enjoy or control a Unit or any part of the Property in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

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

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

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

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

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

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

31. The Plat. The plat of BARNES HERITAGE ESTATES is incorporated into this Declaration by reference and has been filed in the office of the Recorder of Lake County, Indiana, as of the 9th day of March, 1995, as Document No. 95012782.

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

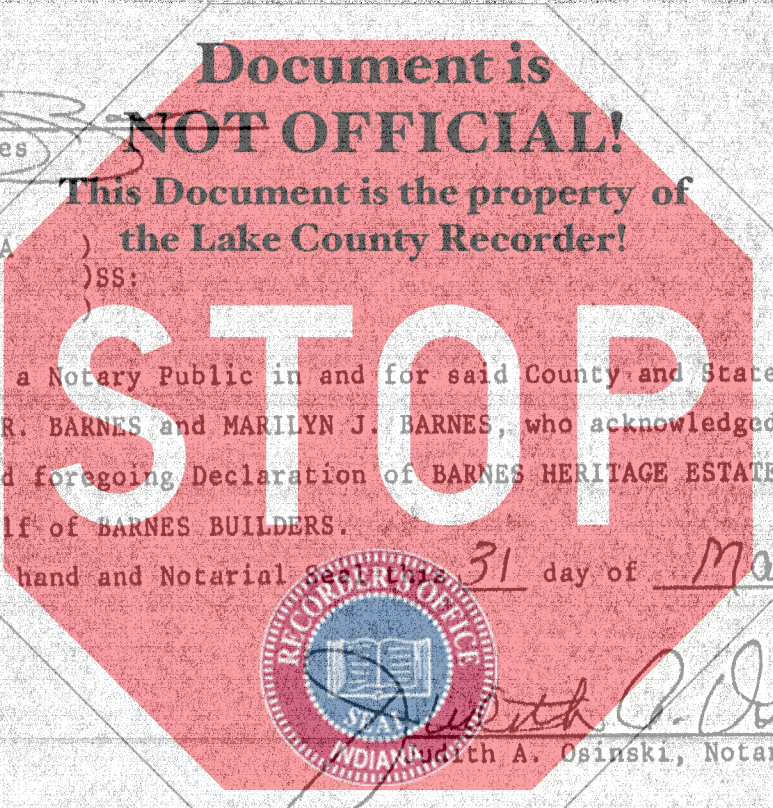
BARNES BUILDERS

By *Louis R. Barnes*
LOUIS R. BARNES

ATTEST:

Marilyn J. Barnes
Marilyn J. Barnes

STATE OF INDIANA)
COUNTY OF LAKE)



SS: Before me, a Notary Public in and for said County and State, personally appeared LOUIS R. BARNES and MARILYN J. BARNES, who acknowledged the execution of the above and foregoing Declaration of BARNES HERITAGE ESTATES TOWNHOMES, for and on behalf of BARNES BUILDERS.

WITNESS my hand and Notarial Seal this 31 day of May, 1995.

Judith A. Osinski
Judith A. Osinski, Notary Public

My Commission Expires:
3/20/96

This Instrument Prepared by Thomas L. Kirsch, Attorney at Law.

131 Ridge Rd.
-25-
Munster 46321
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