

Joseph K. Beckman

P.O. Box 35
Dier, In 46211

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DECLARATIONS OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS OF
BRIGHTON WOODS

FEB 01 1996
14-259-17032
SAM ORLICH
AUDITOR LAKE COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BRIGHTON WOODS, is made this ___ day of _____, 1994 by MERCANTILE NATIONAL BANK OF INDIANA, as Trustee under a certain Trust Agreement dated the 25th day of June, 1993, and identified as Trust Number 5700, (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of record of the real estate described in Exhibit A attached hereto and made a part hereof and desires to provide for the preservation of the values and amenities in the Development and for the maintenance of the Property and to this end desires to subject the real estate described in Exhibit A to the covenants, conditions, restrictions, charges and liens hereinafter set forth, each and all of which is and are for the benefit of each Lot and each Owner thereof; and

WHEREAS, the Developer intends by this Declaration to impose upon the development mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Brighton Woods made subject to this Declaration (and amendments hereto) by the recording of this Declaration; and

WHEREAS, the Developer desires to provide a flexible and reasonable procedure for the overall development of the Development, and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property subject to this Declaration; and

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LAKE COUNTY
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WHEREAS, as part of the Development, various areas including, without limitation, a retention area, a detention area, the landscaped berms along the retention area and detention area, central signage with landscaping features and median strips are or may be provided for the benefit and enjoyment of persons residing in the Development; and

WHEREAS, the Developer may from time to time declare or cause to be declared that certain additional real estate shall be subject to and encumbered by the terms and provisions of this Declaration; and

NOW, THEREFORE, the Developer hereby declares that all the Development described in Exhibit A shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with, the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Development or any part thereof, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof. Said Declarant has no personal liability, obligation, or responsibility to enforce this Declaration, or any part thereof, detailed herein.

ARTICLE I

DEFINITIONS

The following terms, unless the context requires otherwise, shall have the following meaning when used in this Declaration:

A. "Architectural Control Committee" or "Committee" shall mean the three (3) member committee which shall review all plans, specifications, or other material prepared for the construction, renovations, modification, alteration, or reconstruction of improvements to any real estate subject to this Declaration, and which shall administrate and enforce certain covenants, conditions, and restrictions set forth herein.

B. "Basement" shall mean that portion of the interior area of a Building having its floor area below grade and having more than half its floor-to-ceiling height below grade. For purposes hereof, grade shall be the average level of the ground contiguous to the building front.

C. "Buildable Area" for the purpose of measuring lot width, is defined by, in accordance and compliance with all applicable governmental laws including but not limited to the Town of Dyer building and zoning codes and ordinances.

D. "Building" or "Residential Unit" shall mean a structure situated upon a portion of the Development intended for any type of independent ownership for use and occupancy as a residence by a single family. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of Lake County or other local government entity.

E. "Building Accessory" shall mean a subordinate Building or portion of a principal Building, the use of which is incidental to that of the principal Building on a Lot.

F. "Building Height" and "Density" shall mean that no Building shall exceed three (3) stories in height. Said height is defined by, in accordance and compliance with all applicable governmental laws including but not limited to the Town of Dyer building and zoning codes and ordinances. No Building shall occupy more than thirty (30%) percent of area of the Lot.

G. "Declaration" shall mean this instrument and shall include such amendments, if any, to this instrument as may from time to time be adopted as permitted by the terms hereof. However, if any amendments are adopted after any Lots have already been sold then same lot owners must be notified of, and a majority must consent to, the proposed amendments prior to the filing and recording of any Additional Restrictions which would affect the unsold Lots.

H. "Development" shall mean the Lots, the improvements on the Lots, and all other improvements within the Property.

I. "Dwelling" shall mean a residential Building or portion thereof, but not including rooming houses, tourist homes, mobile homes, trailers, or modular homes.

J. "Family" shall mean one or more persons each related to the other by blood, marriage, or legal adoption, maintaining a common household in a Dwelling.

K. "Lot" shall mean any plot of ground designated as such upon the recorded Plat of this subdivision or upon a recorded plat, if any of the additional tract or any part thereof that is platted and annexed pursuant, and upon which one (1) Building is constructed, is

to be constructed, or has existed. When Lot is used it shall be deemed to include the Building, if any, located thereon.

L. "Lot Area" shall mean the area of a horizontal plane, bounded by the vertical planes, through front, side, and rear Lot lines.

M. "Lot Lines, Front" said lot lines are defined by, in accordance and compliance with all applicable governmental laws including but not limited to the Town of Dyer building and zoning codes and ordinances.

N. "Lot Lines, Rear" said lot lines are defined by, in accordance and compliance with all applicable governmental laws including but not limited to the Town of Dyer building and zoning codes and ordinances.

O. "Lot Lines, Side" said lot lines are defined by, in accordance and compliance with all applicable governmental laws including but not limited to the Town of Dyer building and zoning codes and ordinances.

P. "Owner" shall mean a person, firm, corporation, partnership, association, trust, or their legal entity, or any combination thereof, who owns the fee simple title to a Lot which is part of the Development, but excluding any party holding the fee simple title merely as security for the performance of any obligation. Owner shall include the Developer.

Q. "Plats" and "Plans" shall mean those plats of survey of all or any portion of the Development making reference hereto which have been or hereafter may be recorded in the Office of the Recorder of

Lake County, Indiana, as the same may be amended or supplemented by replats or otherwise.

R. "Story/Half" shall mean a space under a sloping roof which has the line of intersection of roof decking and exterior wall not more than three (3) feet above the top floor level, and in which space not more than sixty percent (60%) of the floor area is improved for principal or accessory use.

S. "Story/Level" shall mean that portion of the interior of a Building included between the surface of the ground or any floor and the surface of existing or extended plane of the floor next above; or if there is no floor above, the space between the floor and the surface of existing or extended plane of the ceiling next above. A basement shall not be counted as a story or level.

T. "Structure" shall mean any stationary object erected, constructed or placed on the property or attached to something having a permanent location on or in the ground. A sign or other advertising device, detached or projecting, shall be construed to be a separate Structure.

U. "This Subdivision" shall mean the real estate as more fully described in Exhibit A of this Declaration of Restrictive Covenants.

ARTICLE II

RESIDENTIAL AREA USE AND CONSTRUCTION COVENANTS

A. **Land Use and Building Type.** No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one new detached single

family dwelling not to exceed thirty-eight (38) feet in height from grade line to a point halfway between the ridge and eave lines in case of a gable or hip roof. There shall be no flat roofs.

Garages will be attached and side-loading and shall accommodate no less than two and not more than four vehicles. The garage door(s) must be aesthetically compatible with the entire house. The decision as to compatibility shall be made by the Architectural Control Committee, and such determination shall be final.

B. Construction Approval Prior to Construction and Construction Time Limit. All Residential Units shall be of new construction. No modular or other buildings substantially constructed off-site shall be moved onto any of the Lots. No Residential Unit, and no other structure of any kind, character, or description shall be commenced, erected or maintained on any of the Property until the plans and specifications have been submitted to and approved by the Architectural Control Committee as provided in Article IV. Each Building Unit shall be erected and completed to that extent necessary to obtain a certificate of occupancy from the Town of Dyer within three hundred sixty (360) days from the date of issuance of the building permit for such Building Unit. The aforesaid time limit shall not have been violated if a certificate of occupancy cannot be issued solely due to an act or omission within the control of the Developer. The installation of landscaping (including sodding) and the sprinkler system required herein shall also be completed within said three hundred sixty (360) day period. The construction of any Residential Unit must be commenced within twelve (12) months from the

date of either the signing of a contract to purchase the subject Lot or the conveyance of the title to the Lot to the Lot Owner.

C. Front and Rear Set Back. No Residential Unit shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the subdivision plat and in no event shall a Residential Unit be located on any Lot nearer than forty feet (40') to the front lot line or nearer than twenty feet (20') to any side street line. Rear lot lines, if any, shall be as designated on the subdivision plat.

D. Side Lot Lines. The side lot lines from which Residential Units, driveways, or permitted accessory structures shall be located shall not be less than twenty-five percent (25%) of the width of the Lot with a minimum of ten percent (10%) of the width of the Lot allocated on one side. There shall be a minimum of two feet (2') of yard between each side lot line of a Lot, and the paving material of a driveway.

E. Height and Density. No Residential Unit shall exceed three (3) stories in height. No Residential Unit shall occupy more than thirty percent (30%) of area of the Lot.

F. Minimum Floor Area. No Building shall be permitted on any Lot unless at least seventy-five percent (75%) of the front and two sides of the Building, exclusive of doors and windows, is faced with a natural masonry brick, stone, dryvit, or other masonry material previously approved by the Architectural Control Committee in writing. Said area is to be measured from outside to outside of the

exterior walls of the Dwelling, exclusive of attached garages, carports, open terraces, porches, and breezeways and shall be:

1. For any one-story ranch-style dwelling it shall be an area of not less than 3000 square feet.
2. For any two-story dwelling it shall be an area of not less than 3200 square feet, with at least 1600 square feet on the first floor.
3. Roof pitches are to be a minimum of 8/12.

G. **Driveways.** Driveways are to be paved with concrete, cobblestone, paving bricks, or stone. Asphalt driveways, curb etchings and cuts are prohibited however, asphalt driveways with concrete curbs running along side of same driveway are allowed. Driveways of brick, cobblestone, or other materials or a combination of materials may be installed only upon approval of the Architectural Control Committee.

H. **Mailboxes and Outdoor Lights.** The Developer shall select and designate a standard mailbox and post plus an outdoor light for the front of the house for the development, including the designation of design, size, appearance, color and quality of material, which shall be installed and paid for by each Lot Owner. All repairs and replacements to any such mailbox and outdoor light shall be consistent in design, size, appearance, color, and quality of material with the mailbox, post, and outdoor light designated by the Developer. The location and placement of the outdoor light shall be determined by the Developer. The location and placement of mailboxes and posts shall be as determined by the United States Postal Service, the Town of Dyer, or other federal, state, or local agency having authority therefor, and to that end each Lot Owner and its successors

and assignees shall be granted and have an irrevocable license to install a mailbox upon any portion of the Property so determined as appropriate.

I. Landscaping. Each front yard and side yard shall be landscaped with either ground cover, as approved by the Architectural Control Committee, or sod grass. Only the back yard may be seeded. Each Lot Owner shall install an underground sprinkler system to service the sodded areas. Each Lot Owner who has not commenced the construction of a Building Unit on the Owner's Lot within six (6) months from the date of either the signing of a contract to purchase the subject Lot or the conveyance of the title to the Lot Owner shall keep the Lot maintained, mowed and/or trimmed in a manner as required by the ordinances of the Town of Dyer.

Each Lot Owner shall be required either to have and/or to plant in the front or side yard areas of the subject Lot as least six (6) deciduous trees with a minimum diameter of two and one-half inches (2 1/2") in width and a minimum of eight feet (8') in height above grade, and a minimum of ten (10) shrubs. Shorter, ornamental trees may be used to satisfy this requirement upon approval of the Architectural Control Committee.

The following additional requirements shall supplement the foregoing landscaping requirements in this Article II, section I:

1. All deciduous trees must be of a seedless variety (silver maples and box elders, for example, are not permitted).
2. Two (2) of the minimum required seedless deciduous trees shall be shade trees.
3. All hedges located in the front yards of a Lot shall be composed of a variety of shrub that is capable of being

trimmed perpetually to a height not to exceed three feet (3'), and all such hedges shall be trimmed as often as is necessary to insure that same shall never exceed three feet (3') in height.

For purposes of the landscaping requirement provisions of this Declaration, the term "front yard" shall include that yard area of a Lot between the street (both streets in the case of a corner Lot) and a straight line extension to each side of that portion of the front of the Residential Unit thereon, that both faces the street (both streets in the case of a corner Lot), and is the greatest distance from the street, and the term "side yard" shall include that yard area of a Lot between such front yard area, as hereinabove defined, and a straight line extension to each side of that portion of the rear of the Building Unit thereon, that is most nearly parallel to the front of the Building Unit used to define the front yard, and is the greatest distance from the street. Front yards and side yard areas that cannot be determined by reference to the Building Unit in accordance with the foregoing due to the architectural configuration of the Building or for any other reason, shall be established for that Lot by the Architectural Control Committee, and such determination shall be final.

J. Fencing. All fencing other than that constructed by the Developer as a part of the Common Areas shall be deemed to be structures subject to the approval of the Architectural Control Committee under Article IV of this Declaration, provided, nevertheless, that no fencing shall be approved by the Architectural Control Committee which:

1. is a chain link type of fence;

2. is greater than either five feet (5') in height from grade or six feet (6') in height if surrounding an in-ground swimming pool;
3. is proposed to be located on any earthen berm constructed by Developer or located adjacent to and abutting any retention pond area;
4. is not proposed to be architecturally integrated into a formal landscape design; or
5. does not meet the standards for approval under Article IV.

K. Satellite Dishes, Antennae, Pools and Basketball Backboards.

No above-ground pools shall be permitted on any part of the Property or the Lots. The location of any satellite dishes, television and/or radio antennae plus basketball backboards on the Lot shall be established by the Architectural Control Committee so that same dish, antennae and backboard is not visible from the public right of way. The placement and determination of the Architectural Control Committee shall be final.

L. Signs. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on any Lot or other portion of the Property. No business activities of any kind whatsoever shall be conducted in any Building or on any portion of the Property; provided, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of the Developer, its agents and assigns, during the construction and sale of Lots.

M. Underground Utilities. No lines or wires for communication or the transmission of electric current or power or gas shall be constructed, placed, or permitted to be placed anywhere on the Property other than within the buildings or structures or attached to

their walls unless the same shall be contained in conduits or approved cables constructed, placed, and maintained underground.

N. Excess Building Material plus Garbage, Trash, Storage and Other Refuse Disposal. Lot owners who are depositing excess material are responsible to level out material. No building debris or concrete is to be put on any lot other than the lot they are working on at present time. During construction builders are responsible for any and all erosion control plus maintaining curbing, normal wear and tear excepted, along their lot lines for appearance and structural damage. All infrastructures are to be the responsibility of the builder/lot owner until Town of Dyer accepts the subdivision. Owners, whether legal or reserve, are to maintain lot from debris, mowing and erosion.

All equipment, garbage cans, woodpiles, or storage piles shall be kept screened to or stored so as to conceal them from the view of neighboring Lots, streets and/or public right of ways. All rubbish, trash or garbage shall be regularly removed from all Lots and shall not be allowed to accumulate on the Lots. No owner of a Lot shall burn or permit the burning of garbage or other refuse. No Lot Owner, or builder or contractor for such Lot Owner, shall dump construction debris, dirt, sand, trash or rubbish on any Lot, street, or other area on the Property. Each Lot Owner shall be responsible for the appropriate removal of all such construction debris, dirt, sand, trash, and rubbish, and neither Declarant nor the Developer shall have any liability or responsibility therefor.

O. Pets. No horses, cattle or any other livestock shall be kept

or maintained on any part of the Property. Dogs and cats shall not be left unattended by a Lot Owner outside of a Building. Pets shall not be kept, bred, or maintained for any commercial purposes. Pets shall not be allowed in any dedicated public area or on any other Lot except on a leash or lead. The Lot Owner shall be responsible for removing all offal immediately from all parts of the Property including such Owner's Lot.

P. **State and Local Laws.** The use and construction restrictions and conditions set out herein shall be in addition to and not in place of all use and construction restrictions and conditions established by town, county, state, and/or federal ordinances, statutes, and/or regulations. All Lots, Buildings, and other buildings constructed on the Property shall conform to all town, county, state, and/or federal ordinances, statutes, and/or regulations in addition to the covenants, conditions and restrictions set out herein.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

A. **Composition and Control of Architectural Control Committee.** An Architectural Control Committee is hereby established, and shall be composed of that person or those persons designated and appointed from time to time to serve as or on the Architectural Control Committee by the Developer. The Architectural Control Committee shall be and remain at all times under the control and governance of the Developer, in the sole discretion of the Developer, subject only

to the further provisions of this Article III, until such time as Developer shall have conveyed title by deed to the last Lot.

B. Approval Required by Architectural Control Committee. No Residential Unit, building, fence, wall, deck, improvement or other structure shall be commenced, erected, or maintained on the Property or on any Lot, nor shall any exterior addition, change, or alteration therein be made, nor shall any restoration or reconstruction of any Residential Unit, building, fence wall, deck, improvement, or other structure commence after casualty, damage, or otherwise, until the plans and specifications, plot lay-out, exterior elevations, landscaping plan, and grading plan, which shall show the nature, kind, shape, height, materials, color scheme, and location on Lot of the improvement(s) to be made shall have been submitted to and approved in writing as to the harmony of external design and location in relationship to the surrounding structures, topography, and lot lines by the Architectural Control Committee.

All plans and specifications, plot lay-out, exterior elevations, grading plans, landscaping plans, and other material shall be filed in the office of the Developer for referral to the Architectural Control Committee. A report in writing setting forth the decisions of the Architectural Control Committee and the reasons therefor shall be transmitted to the applicant by the Architectural Control Committee within thirty (30) days after the date of filing the required material by the applicant. In the event (a) the Architectural Control Committee fails to approve or disapprove within thirty (30) days after submission of the final plans, specifications,

and other material as required in this Declaration; or (b) no suit to enjoin construction has been filed within thirty (30) days after commencement of such construction, approval shall not be required and the related requirements of this Declaration shall be deemed to be complied with.

C. Repainting or Rebuilding in Accordance with Original Plan.

No permission or approval from the Architectural Control Committee shall be required to repaint the exterior of a Residential Unit in accordance with an originally approved color scheme, or to rebuild or reconstruct in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Residential Unit, or to paint the interior of his or her Residential Unit any color desired.

Notwithstanding any provision of this Declaration to the contrary, Developer shall not be required to receive approval or permission from the Architectural Control Committee in connection with the original improvement of the Property.

D. Power of Disapproval. The Architectural Control Committee shall have the right in its sole discretion, to refuse to approve any part or all of the required materials submitted pursuant to Article III, section B hereof. Without limiting its right to refuse to grant approvals based upon other conditions, the Architectural Control Committee required under this Article when any one of the following conditions are present:

1. The plans, specifications, drawings, or other materials submitted either demonstrate that the proposed improvement

does not otherwise comply with this Declaration, or is insufficient for the Architectural Control Committee to determine whether the proposed improvement otherwise complies with this Declaration.

2. The overall design or color scheme of a proposed improvement, repainting, or modification is not in harmony with the aesthetics and materials of the Development. The standard of aesthetics shall be judged by objective considerations such as (1) the harmony of the proposed colors with those of existing improvements; (2) the harmony of a proposed landscaping plan with those already existing; and (3) the harmony of the style of a proposed improvement or modification with the general style of improvements already existing. Specific requirements and guidelines regarding design, color scheme and materials used in proposed improvements include, without limitation, the following:
 - a. a flat roof shall not be incorporated into the design or construction of any improvement or modification.
 - b. non-masonry siding shall be cedar or redwood, except that vinyl or aluminum material may be used for soffit and fascia only. Laminated wood or pressed wood siding may not be used.
 - c. at least sixty percent (60%) of the entire Residential Unit, whether before or after modification, must be masonry. The sixty percent (60%) figure shall be in relation to all sides of an improvement. The term "masonry" as used herein shall mean brick of a minimum depth of three inches (3").
 - d. chimneys must be all masonry, if and to the extent that any part thereof protrudes from or is external to the fact of an exterior wall of the Residential Unit. Chimneys which are visible only as a protrusion through the roof of a Residential Unit may be constructed of and faced with either masonry or brick veneer, which are otherwise acceptable to the Architectural Control Committee as to the design and color scheme. The term "masonry" as used herein shall mean brick of a minimum depth of three inches (3").
 - e. darker colors that blend with existing surroundings (improvements and landscapes) are aesthetically more desirable than lighter colors. When a lighter color stands in marked contrast to the color scheme used by the nearest existing improvement, a darker color must be employed. Accent colors are subject to the preceding color rules.

The Architectural Control Committee shall determine compliance with the foregoing standards in its sole discretion. The Architectural Control Committee may only waive compliance with the foregoing standards in cases in which such compliance is or would be inconsistent with the general style or design of the proposed improvement (for example, by way of illustration, the sixty percent (60%) brick siding standard described in subparagraph c above may be inconsistent with the general design and style of a Victorian home and may be waived by the Architectural Control Committee. This discretion of the Architectural Control Committee to waive compliance with the standards shall be limited to such determinations.

E. Liability and Responsibility. Neither the Developer nor the Architectural Control Committee, nor any member thereof, shall be liable for any damage, loss or prejudice suffered or claimed by any Lot Owner or contractor who submits such plans and other materials required by this Article on account of (a) any defects in any plans or specifications submitted, revised, or approved in accordance with the foregoing provisions; (b) any structural or other defects in any work done according to such plans and specifications; (c) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (d) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, and (e) the development of any real estate within the Development. Any person submitting plans to the Architectural Control Committee shall hold the Developer, the Architectural Control Committee, and any member thereof, harmless from all damage, loss, or prejudice suffered or claimed by any third party, including costs, expenses, and attorney's fees incurred.

ARTICLE IV
GENERAL PROVISIONS

A. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect or invalidate any of the other provisions, which other provisions shall remain in full force and effect.

B. Enforcement. Any Lot Owner, shall have the right to enforce any provisions of this Declaration by any proceeding at law or in equity. Any Lot Owner found to be in violation by a court of competent jurisdiction of any provision of this Declaration shall also be liable for reasonable court costs, expenses, and attorney's fees incurred by any Lot Owner, in prosecuting such action. Failure by any Owner to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. Neither Developer, nor the Architectural Control Committee shall be liable for damages of any kind to any person for failing either to abide by or carry out any of the covenants, conditions, restrictions, and regulations created by this Declaration.

C. No Dedication to Public Use. Nothing contained in this Declaration shall be construed or deemed to constitute a dedication, express or implied, of any part of the Property to or for any public use or purpose whatsoever.

D. Developer's Rights. Any or all of the special rights and obligations of the Developer may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided

further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the Official Records of Lake County, Indiana.

E. Limitation on Developer's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and/or Residential Unit and becoming an Owner acknowledges and agrees, that neither Developer (including without limitation any assignee of interest of Developer hereunder) nor any partner, director, officer or shareholder of Developer (or any partner, officer, director, or shareholder in any such assignee) shall have any personal liability to any Owner or other person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of Developer (or its assignee) to the extent of its interest in the Property; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

ARTICLE V

DEVELOPER'S RESERVED EASEMENTS

A. Notwithstanding any provisions contained in the Declaration to the contrary, Developer hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, for the benefit of Developer, its successors, and

assigns over, under, in, and/or on the Development, without obligation and without charge to Developer, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment and/or otherwise dealing with the Development. The reserved easement shall constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

1. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in all or any portion of the Development; and the right to tie into any portion of the Development with driveways, parking areas, streets, drainage systems, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development; and
2. The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices, and business offices as, in the sole opinion of Developer, may be required, convenient, or incidental to the construction and sale by Developer of residences in all or any portion of the Development.
3. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property within the Development, but shall be held independent of such title, and not such right, privilege, or easement shall be surrendered, conveyed, or releasee unless and until and except by delivery of a quitclaim deed from Developer releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development.

This Article V may not be amended without the advance written consent of Developer.

ARTICLE VI

TRUSTEE'S EXECUTION

This instrument is executed by the undersigned, Mercantile National Bank of Indiana, as Trustee, not personally but solely as Trustee under the terms of that certain agreement dated June 25, 1993, creating trust number 5700, and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations, and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by Mercantile National Bank, of Indiana, as Trustee, solely in the exercise of the powers conferred upon it as such Trustee under said Agreement, and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against Mercantile National Bank of Indiana, on account hereof, or on account of any covenant, undertaking, representation or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder thereof.

IN WITNESS WHEREOF, the undersigned has caused these Declarations of Restrictive Covenants to be executed the day and year first above written.

**MERCANTILE NATIONAL BANK of
Indiana**

By SEE SIGNATURE PAGE ATTACHED

This instrument prepared by and after recording should be returned to: Joseph M. Skozen, Attorney, LUCAS, HOLCOMB & MEDREA, Easton Court, 300 East 90th Drive, Merrillville, IN 46410.

