

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

EAGLE LAKE, SECTION V

A Subdivision of part of the West Half of the Southeast Quarter of Section 33, Township 32 North, Range 12 East, Allen County, Indiana, Lots numbered 123 through 149, both inclusive.

THIS DECLARATION, made this 14 day of JANUARY, 1994, by OAKMONT DEVELOPMENT COMPANY, an Indiana General Partnership ("Declarant"):

W I T N E S S E T H:

A. Declarant is the owner of the real property described on the Plat, attached hereto, and referred to in Article IX of this Declaration and desires to create thereon a residential community with residential lots, open spaces, and other common facilities for the benefit of the community.

B. Declarant further desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, for such purposes, Declarant desires to subject the real property described on the Plat, attached hereto, and referred to in Article IX, together with such additions as may hereafter be made thereto (as provided in Article IX), to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the said property and each owner thereof.

C. Declarant has caused Eagle Lake Homeowner's Association to be incorporated as a non-profit corporation under the laws of the State of Indiana, to which corporation will be delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges, as hereinafter provided.

NOW THEREFORE, Declarant declares that the real property referred to in Article IX, and such additions thereto as may hereafter be made pursuant to Article IX hereof, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants, Conditions and Restrictions") hereinafter set forth.

## ARTICLE I

### DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

(a) "Association" shall mean and refer to the Eagle Lake Homeowners Association.

(b) "Board" shall mean and refer to the Board of Directors of the Association.

(c) "Properties" shall mean and refer to all such existing properties and additions, thereto, as are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article IX hereof.

(d) "Common Areas" shall mean and refer to (i) those areas of land designated as Common Areas on any recorded subdivision Plat of the Properties and intended to be devoted to the common use and enjoyment of the Members of the Associations, together with any and all improvements that are now or may hereafter be constructed thereon, and (ii) all areas designated as water impoundment areas on any such recorded subdivision Plat.

(e) "Lot" shall mean and be referred to any plot or tract of land shown upon any recorded subdivision map of the Properties which is designated as a lot therein and which is or is to be improved with a residential dwelling.

(f) "Owner" shall mean and refer to the record owner, whether one or more person or entities, of the fee simple title to any Lot but, notwithstanding any applicable theory of mortgage or other security device, shall not mean or refer to any mortgagee or trustee under a Mortgage or Trust Deed unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(g) "Member" shall mean and refer to each Owner as provided herein in Article VII.

(h) "Declarant" shall mean and refer to OAKMONT DEVELOPMENT COMPANY, a partnership, its successors and any assignee, other than an Owner, who shall receive by assignment from the said OAKMONT DEVELOPMENT COMPANY all or a portion, of its rights hereunder as such Declarant, by an instrument expressly assigning such rights as Declarant to such assignee.

(i) "Existing Property" shall mean and refer to the real property which is, and shall be, held, transferred, sold conveyed and occupied subject to this Declaration pursuant to Section II and Article IX.

(j) "Street" shall mean any street, avenue, roadway, cul de sac or boulevard of whatever name which is shown on the recorded Plat and which has been heretofore and is hereby dedicated to the public for the purpose of a public street or for park or boulevard purposes.

## ARTICLE II

### USE OF PROPERTIES AND COMMON AREAS

The Properties (and the improvements situated thereon) and the Common Areas shall be occupied and used as follows:

(a) Each Lot shall be used exclusively for residential purposes, and streets and parking spaces shall be used exclusively for the parking of passenger automobiles.

(b) No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which will result in the cancellation of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Areas.

(c) No animals, livestock or poultry shall be raised, bred or kept in any portion of the Properties, except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance.

(d) Nothing shall (i) be done in any part of the Properties, nor shall (ii) any noxious or offensive activity, be carried on, nor shall (iii) any outside lighting or loudspeakers or other sound producing devices be used, which in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

(e) Each Owner shall be liable to the Association for any damage to the Common Areas caused by the negligence or willful misconduct of the Owner or his family, guests, or invitees.

(f) All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including attorneys' fees.

## ARTICLE III

### AFFIRMATIVE AND PROTECTIVE COVENANTS

Section 1. Single Family Residence and Garages. Each residential structure erected or placed on any Lot shall be designed, intended and used as a residence for a single family only, and not more than one residential structure shall be placed on any Lot. There shall be constructed and maintained with each single family residence an attached garage for not less than two (2) nor more than three (3) automobiles.

Section 2. Side Line and Front Line Set Back Restrictions. No building shall be located on any Lot nearer the front line or the side street line than the minimum building setback lines as shown on the Plat. In any event, no building shall be located nearer than a distance of seven (7) feet to an interior Lot line. No projection of any building shall be permitted to extend into or encroach upon the space between said building line and the street adjacent thereto, except that the steps and platform of the main door may extend over said line not to exceed five (5) feet. No dwelling shall be located on any Lot nearer than twenty-five (25) feet to the rear lot line.

Section 3. Fences, Walls, Hedges, and Shrubs. No fence, wall, hedge or shrub which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 20 feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply to any Lot within 10 feet of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No screen planting over 30 inches high nor any fence shall be permitted between the street right-of-way and the building setback line.

Section 4. Further Subdivision of Lots. The further dividing of any Lot or combination of Lots after approval by the Allen County Plan Commission is prohibited unless and until the Allen County Plan Commission has reviewed and approved the change. This restriction will not prohibit utilizing a portion or all of an adjoining Lot to change the size of a Lot, so long as no Lot shall have a width of less than seventy-five (75) feet at the building line.

Section 5. Pre-Inhabitation. Before any house or building or any Lot shall be used or occupied as a dwelling, the Owner of said Lot shall install all improvements serving the Lot as provided in the development plans and specifications for the Properties filed with the Board of Commissioners of Allen County. Before any Lot may be used or occupied, the Owner of such Lot shall first obtain from the Zoning Administration the improvement location permit and certificate of occupancy required by the Allen County Zoning Ordinance.

Section 6. Signs. No sign of any kind shall be displayed to the public view on a Lot except one professional sign of not more than six (6) square feet, advertising the Lot for sale, or signs used by a builder to advertise the Lot during the construction and sale period. The provision of this Section 6 shall be applicable to signs used by Declarant.

Section 7. Waste. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers which are not visible from the front of any residence. All Equipment for the storage and disposal for such material shall be kept in a clean and sanitary condition.

Section 8. Antennae. Unless otherwise approved in writing by Declarant, no radio or television or other type of antennae or supporting structure may rise more than six (6) feet above the highest point of the roof of any building. Such antennae must be attached to the main dwelling. No towers will be permitted unless otherwise approved in writing by Declarant.

Section 9. Boats, Trailers, Etc. No boats, trailers, campers, recreational vehicles, or other vehicles of whatever kind or character other than operational automobiles shall be parked or permitted to remain on the street or on any Lot unless housed completely in a garage.

Section 10. Yard Light. Each dwelling will cause a yard light or other illuminating device to be installed in the front yard fifteen (15) feet (plus or minus one (1) foot) from the street curb. Such yard light or illuminating device will be of such design and construction as shall be approved by the Architectural Control Committee; said Committee shall also have the authority to approve a change in the location of said yard light or illuminating device. The Owners of said dwelling upon which said yard light or other illuminating device to be illuminated at all times other than daylight hours. Owner, other than declarant, will supply at his expense said lights and equip same with sun electric cells.

Section 11. No Prefabricated Construction. All residences and other structures constructed or erected upon any Lot shall be new construction, and in no event shall any prefabricated or existing residences or garages be moved onto any lot.

Section 12. Communication Equipment. No communication receiving or transmitting device or equipment shall be used on any lot which interferes with the television reception on any other Lot without the prior written consent of the Architectural Control Committee, which consent may be withheld or, once given, revoked for any reason.

Section 13. Vegetable Gardens. No vegetable gardens shall be placed on any Lot except behind the residence situated on such Lot.

Section 14. Maximum Building Coverage. The total habitable floor area of the residence on each Lot shall have the following square footage restrictions which are exclusive of porches and garages:

(A) All one story structures shall have a minimum of 1,600 square feet. (b) All one and one-half story structures shall have a minimum of 2,200 square feet. (c) All two story structures shall have a minimum of 2,200 square feet. (d) All structures, exterior colors and design must be approved by the Architectural Control Committee.

Section 15. Temporary Structures. No temporary structures of any kind shall be erected or placed on any Lot and in no instance shall more than one dwelling or residence be erected or placed on any one Lot as the same is shown on the Plat. Any garage and/or servants quarters erected more than one hundred twenty (120) days prior to the connection of the main dwelling or residence shall be considered temporary structures. In no event shall any residential dwelling upon any lot be occupied until it has been fully completed in accordance with plans approved the Architectural Control Committee. No trailer, basement, tent, shack, or garage erected or placed on any Lot shall at any time be used as a residence temporarily or permanently, nor shall any structure or a temporary character be used as a residence.

Section 16. Drives and Storage Tanks. All driveways from the street to the garage shall be concrete surface and not less than sixteen 16 feet in width. All oil or fuel storage tanks shall be installed underground or concealed within the main structure of the dwelling house, basement or attached garage.

Section 17. Fences. All fences shall be of wood construction. No aluminum or steel will be allowed.

Section 18. Storage Sheds. Storage sheds will be allowed if architectural style matches the house. They must be constructed of wood and must have the shingles and colors that match the house. No aluminum or vinyl will be allowed. Minimum size is to be 10' x 10' and maximum size is 12' x 14'. All structure must be approved by the Architectural Control Committee.

Section 19. Side Walks. Each owner shall provide a concrete public sidewalk across the front of each property prior to occupancy.

Section 20. Architectural Control Committee. Anything contained in the foregoing Sections of this Article to the contrary notwithstanding, no erection of building or exterior additions or alterations to any building situated upon any Lot, no erection or changes or additions in fences, Lot grades, hedges, walls and other structures shall be commenced, erected, or maintained, until (i) a preliminary sketch showing the basic plan and general specifications of same shall have been submitted to and approved by the Developer; provided, however, that the provisions of this Section 15 shall not apply to buildings, structures, additions and alterations commenced, erected or maintained by Declarant. A copy of the approved plans and drawings shall be furnished by Owner to the Developer and retained by the Developer. In the event the Developer, or its designated representatives, fail to approve or disapprove such improvements or other matters within thirty (30) days after the said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection, addition, alteration or change has been commenced prior to the completion thereof, approval will not be required, and this Article will be deemed to have been duly complied with. Neither the Developer nor its designated representatives shall be entitled to compensation for, or liable for damages, claims or causes of action arising out of services performed pursuant to this Article.

Section 21. Flood Protection Grades. In order to minimize potential damages from surface water, flood protection grades are hereby established as set forth below. All dwellings shall be constructed at or above the minimum elevation of the lowest point of entry at which water may enter the structure. The flood protection grades shall be Mean Sea Level Datum and shall be as follows: Lots Numbered 127, 128, 132, 133, 134, 135, 136, 137, 138, 139 and 140 - \_\_\_\_\_ feet. The foregoing Flood Protection Grades are also shown boxed on the face of the Plat.

## ARTICLE IV

### EASEMENTS

#### Section 1. Easements Reserved by Declarant.

Easements for the installation, maintenance, repair and removal of public and/or quasi-public utilities and sewer and drainage facilities, and floodway easements are reserved by Declarant over, under and across the Properties, as shown on the recorded Plat thereof. Full ingress and egress shall be had by Declarant at all times over the Properties for the installation, operations, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easements, or with the use, maintenance, operation or installation of such utility. The grade of the land in any such easement shall not be changed or altered by any Owner of any Lot, after the said grade has been established. All utility easements as dedicated on the Plat shall be left free from all permanent structures and the removal of any obstructions, whether temporary or permanent, shall be subject to the paramount right of the utility and/or sewer installation. Declarant shall have the right to assign and transfer the easements and rights herein reserved to or for the benefit of any public or quasi-public utility.

Section 2. Surface Drainage Easements. Surface drainage easements as shown in the Plat are intended for either periodic or occasional use as conductors for the flow or surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the Association or a proper public authority having jurisdiction over storm drainage shall have the right to repair and maintain such easements, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 3. Surface Water. No rain or storm water runoff shall at any time be discharged or permitted to flow into the sanitary sewage system, which shall be a separate sewerage system from the storm water and surface water runoff outlets. No individuals water supply system or individual sewage disposal system shall be installed, maintained or used on any Lot except that any individual water system may be used for the purpose of a swimming pool or lawn irrigation.

Section 4. Overhead Facilities. No Owner of any Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for



electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables.

## ARTICLE V

### PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Easements of Enjoyment. Subject to the provision of Section 3 of this Article, the following persons shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot:

(i) Each member and each individual in his family residing with him on his Lot.

(ii) Each tenant and contract purchaser or each Member (and each individual in the respective families of each such tenant and contract purchaser residing with each of them) who resides on the Lot owned by such member; provided, that such tenant or contract purchaser, as the case may be, shall have a right and easements of enjoyment in and to the Common Areas in lieu of such Member of his family.

Section 2. Title to the Common Areas. The Declarant may retain the legal title to the Common Areas until such time as it has completed such improvements thereon as it may elect to make and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Areas to the Association not later than January 1, 1994.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Areas (including limiting the number of guests of members);

(b) The right of the Declarant, and of the Association in accordance with its Articles of By-Laws, to borrow money for the purpose of improving the Common Areas and

facilities and in aid thereof to mortgage the Common Areas, and the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the homeowners hereunder;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(d) The right of the Association, as provided in its Articles and By-Laws, to suspend the voting rights of any member and to suspend the right of any individual to use any of the Common Areas and/or common facilities for any period during which any assessment against a Lot resided upon by such individual remains unpaid, and for any period not to exceed thirty (30) days for an infraction or its rules and regulations;

(e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities of the Common Areas; and

(f) Subject to approval by the affirmative vote of the Association's Members, as provided in Section 3 of Article VII, the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and upon such conditions as may be agreed to by the Members.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), for each Lot owned by any such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) annual assessments or charges, to be paid on June 1 of each year (hereinafter called "Annual Payment Dates") or in such other installments as the Board of Directors of the Association may elect. The annual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment became due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the care, perservation, supervision, improvement and maintenance of the Common Areas and of the improvements situated thereon including, but not limited to, (i) the payment of taxes on and insurance in connection with the Common Areas and the repair, replacement and making of additions thereto; (ii) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management, supervision, maintenance and repair of, the Common Areas, including without limitation, the storm water detention basin and control structures, and of any existing and future recreational lakes together with any outlet and water level control structures and of the park area and improvements situated thereon, (iii) carrying out the duties of the Board of Directors of the Association as set forth in Article VIII hereafter; and (iv) carrying out the purposes of the Association as stated in its Articles of Incorporation.

Section 3. Improvement and Maintenance of the Common Areas Prior to Conveyance to the Association. Until such time as the Declarant has conveyed all of the Common Areas to the Association (and thereafter as additional Common Areas are added hereunder and not conveyed to the Association), the Declarant shall have, at its election, the sole responsibility and duty of improving and maintaining the Common Areas (or such portion thereof that has not been conveyed to the Association), including but not limited to, the payment of taxes on and insurance in connection with the Common Areas (or the portion thereof that has not been conveyed to the Association) and the costs of repairs, replacements and additions thereto, and for paying the costs of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Areas. In this regard, and during such period, all assessments, both annual and special, collected by the Association shall be forthwith paid by the Association to Declarant, to the extent that such assessments are required by Declarant to improve and maintain the Common Areas as set forth in this paragraph. The Association shall rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to improve and maintain the Common Areas hereunder. Any sums required by Declarant to improve and maintain the Common Areas, in excess of the assessments collected by the Association, shall be borne and paid exclusively by Declarant.

After Declarant has conveyed all of the Common Areas each Lot owner agrees to pay to the Association, the annual assessment chargeable to each lot on or before March 15, 1995.

The annual assessment shall be a charge on the land, commencing with the year ending December 31, 1995, and shall be a continuing lien upon each lot against which each such assessment is made. The Assessment so levied by the Association shall be available for use for the care, preservation, supervision, improvement and maintenance and the operation by the Association of the storm water drainage system, and of any existing and future recreational lakes or Storm Water Detention Basins together with any outlet and water level control structures, and of the park area and improvements situated thereon, including but not limited to: (1) the payment of taxes and insurance in connection therewith; (2) the repair, replacement and making additions thereto; (3) the payment of costs of labor and equipment and materials required, and management, supervision, maintenance and repair, and may also be used for such other community purposes as the Association may properly determine. The improvements shall be deemed accepted when fully installed and operational.

The Association shall be obligated to maintain, repair and/or replace, if necessary, the storm water drainage and any future Storm Water Detention Basins together with any outlet and water level control structures, the cost of which shall be borne by the Association.

The owner of any lot in this section, or any future section, of Eagle Lake, and/or the Allen County Drainage Board, or its successor agency, shall have the right to order the Association to carry out its obligation to maintain, repair and/or replace the storm water drainage system and any recreational lakes or Storm Water Detention System Improvements, as above provided, and to assess the Association Members with the cost thereof.

#### Section 4. Basis and Amount of Annual Assessments.

(a) Until the year beginning January 1, 1997, there shall be no annual assessment.

(b) Commencing with the year beginning January 1, 1997, and each year thereafter, the Board of Directors, at its annual meeting next preceding such January 1, 1997 and each January 1 thereafter, shall set the amount of the annual assessment for the following year for each Lot, taking into consideration the current maintenance costs and the future needs of the Association, provided that the annual assessment shall never be less than \$60.00.

Section 5. Capital Improvements. In the event any annual assessment includes an amount for the purpose of defraying, in whole or in part, the cost of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, that portion of any such assessment relating to the capital improvement(s) must have the assent of the Members entitled to cast a majority of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose, as provided in Section 3 of Article VII.

Section 6. Uniform Rate of Assessment. Subject to the provision of Section II of this Article VI, both annual and special assessments must be fixed at a uniform rate for all Lots.

Section 7. Date of Commencement of Assessments: Due Dates.

(a) The initial annual assessment provided for in Section 4 of this Article VI shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement, and shall be payable annually, in advance, on each Annual Payment Date thereafter; provided, however, that if the date of commencement falls on other than the first day of a month, the assessment for such month shall be prorated by the number of days remaining in the month.

(b) The due date or dates, if it is to be paid in installments, of any special assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors with Respect to Assessments.

(a) The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(c) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment had been paid. Such certificate shall be conclusive evidence of payment of any

assessment therein stated to have been paid. A reasonable charge may be made by the Board of the issuance of such certificates.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of the Association.

(a) If any assessment or any part thereof is not paid on the date(s) when due (being the dates specified in Section 7 of this Article), then the unpaid amount of such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Then lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Areas or abandonment of his Lot.

(b) If any assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the maximum legal rate of interest, and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any mortgage or deed of trust now or hereafter placed upon the Lots subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale, whether public or private, or such property pursuant to the terms and conditions of any such deed of trust. Such sale shall not relieve such Lots from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

(a) All properties dedicated and accepted by the local public authority and devoted to public use.

(b) All Common Areas as defined in Article I hereof.

(c) All areas reserved by the Declarant on the recorded Plat of the Properties.

(d) All Lots owned by Declarant until March 15, 1997.

## ARTICLE VII

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall automatically be a Member of the Association.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interest in any Lot, all such person shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

CLASS B. The Class B Member(s) shall be the Declarant. The Class B Member(s), at all times when the total number of Lots owned by the Class B Member(s) is greater than one-third (1/3) of the total number of Lots owned by Class A Members, shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership. When the total number of Lots owned by the Class A members equals or exceeds three (3) times the total number of Lots owned by the Class B Member(s), the Class B Member(s) shall, during the time such equality or excess continues, be entitled to only one vote for every Lot owned by it. Notwithstanding any other provision of this Article, from and after January 1, 1995, the Class B Member(s) shall be entitled to only one vote for every such Lot.

### Section 3. Quorum and Notice Requirements.

(a) Subject to the provision of paragraph (c) of this Section, any action authorized by Section 3(f) of Article V shall require the assent of the Members entitled to cast two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance (unless otherwise provided in the By-Laws of the Association) and shall set forth the purpose of such meeting.

(b) The quorum required for any action referred to in Section 3(f) of Article V of Section 5 of Article VI shall be as follows: At the first meeting called, as hereinafter provided, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the meeting, an additional meeting may be called, subject to the notice requirement hereinafter set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting.

(c) Any provision of this Declaration to the contrary notwithstanding any action described in Section 3(f) of Article V may be taken with the assent given in writing and signed by the Members entitled to cast two-thirds (2/3rds) of the votes of the Association.

(d) Except as hereinabove specifically set forth in Article IX, Section 3, paragraphs (a), (b) and (c), notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in its Articles of Incorporation and By-Laws, as same may be amended from time to time.

## ARTICLE VIII

### GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 1. Powers and Duties. The Board, for the benefit of the Properties and the Owner, shall provide, and shall pay for out of the maintenance fund provided for in Article V, Section 1, above, the following:



(a) Taxes and assessments and other liens and encumbrances, which shall properly be assessed or charged against the Common Areas, rather than against the individual Owners.

(b) Care and preservation of the Common Areas and full maintenance of a utility service for the Common Areas including the furnishing and upkeep of any desired personal property for use in the Common Areas.

(c) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(d) Legal and accounting services.

(e) A policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants), incident to the operation of the Association, in an amount not less than \$100,000 to indemnify against the claim of one person \$300,000 against the claim of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$100,000 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insureds shall not be prejudiced with respect to actions against other named insureds.

(f) Workmen's compensation insurance to the extent necessary to comply with any applicable laws.

(g) Such fidelity bonds as the Board may determine to be advisable.

(h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

(i) To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas on behalf of all Owners.

(j) To borrow funds to pay costs or operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(k) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks) and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

(l) To protect or defend the Common Areas from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

(m) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members (without limiting the generality of the foregoing language, the rules and regulations may provide for limitations on use of the swimming pools or other common recreational areas during certain periods by youthful persons, visitors or otherwise).

(n) To make available to each Owner within sixty days after the end of each year an annual report and, upon the written request of one-tenth of the Members, to have such report audited by an independent, certified public accountant, which audited report shall be made available to each Member within thirty days after completion.

(o) To adjust the amount, collect, and use any insurance proceeds to repair damage or place lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(p) To enforce the provision of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

Section 2. Board Powers, Exclusive. The Board shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made by the Association, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 3. Owner's Obligations to Repair. Each Owner shall, at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and the improvements thereon as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment hereunder when due.

## ARTICLE IX

### PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration (hereinafter defined as the "Existing Property") is located in Allen County, State of Indiana, is described on the Plat, attached hereto, and is designated Section IV and more particularly described on a subdivision Plat (the "Plat" hereafter) thereof recorded as Plat record \_\_\_\_\_, Cabinet \_\_\_\_\_, page \_\_\_\_\_, in the Office of the Recorder of Allen County, Indiana.

Section 2. Additions to Existing Property. If Declarant is the owner of any property which it desires to add to the concept of this Declaration, it may do so by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, which shall extend the concept of the covenants, conditions and restrictions of this Declaration to such property, PROVIDED, HOWEVER, that (i) such additional property shall be contiguous (as hereafter defined) to the Properties subject to this Declaration at the time, and (ii) such Supplementary Declaration may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Existing Property. Any additions made

pursuant to this Section 2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added. For the purposes hereof, the term "contiguous" shall mean adjoining; provided, that any tracts or parcels of land which are separated by a street, road, sidewalk, right-of-way, easement or other thoroughfare shall be deemed to be contiguous.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date that this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Members entitled to cast a majority of the votes of the Association has been recorded, agreeing to abolish said Covenants, Conditions and Restrictions or to change said Covenants, Conditions and Restrictions in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change; provided further, that no such agreements to change shall be applicable to existing buildings on the Properties.

Section 2. Termination or Amendment by Declarant. Until such time as the first Lot is sold by Declarant, Declarant, at its discretion, may abolish or amend said Covenants, Conditions and Restrictions or change them in whole or in part, subject, however, to approval of the Allen County Plan Commission.

Section 3. Consent of Members. Except as provided in Section 1 and Section 2 of this Article, the Covenants, Conditions and Restrictions of this Declaration may be abolished, amended and/or changed in whole or in part, only with the consent of the Members of each class of membership entitled to cast fifty-one percent (51%) of the votes of each such class of Association, evidenced by a document in writing bearing each of their signatures; provided, that (i) no amendment whatsoever shall be made without the written consent of the Declarant prior to March 15, 1995 notwithstanding that Declarant has no interest in the Properties at the time, (ii) Declarant shall have the

right to amend this Declaration at any time from time to time, without the consent of any Member, to the extent that such amendments are required by the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, or other governmental authority involved in financing the improvement, purchase or sale of any of the Lots or the improvements to be constructed thereon, and (iii) no amendment shall be made eliminating any of the covenants of Articles III and IV or adversely affecting or reducing the assessments provided in Article VI without the prior written approval of the Allen County Plan Commission or its successor, and further, however, that the restrictions and covenants herein contained as they relate to the storm water detention system and the maintenance and repair thereof shall be for an indefinite period except as amended with the prior approval of the Allen County Drainage Board.

Section 4. Enforcement Enforcement of these covenants and restrictions shall be by and proceedings at law or in equity against any person or person violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 6. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 7. Notices. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

IN WITNESS WHEREOF, MICHAEL W. THOMAS, General Partner of OAKMONT DEVELOPMENT, an Indiana General Partnership, being the Declarant herein, has executed this instrument of this the 14 day of JANUARY, 1994.

OAKMONT DEVELOPMENT COMPANY,  
An Indiana General Partnership

By Michael W. Thomas  
Michael W. Thomas  
its General Partner

STATE OF INDIANA       )  
                              ) SS:  
COUNTY OF ALLEN       )

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and State, this day personally appeared MICHAEL W. THOMAS, known to me to be the person, and General Partner, whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said OAKMONT DEVELOPMENT an Indiana Limited Partnership, and that he executed the same as the act of such OAKMONT DEVELOPMENT for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14<sup>th</sup> day of JANUARY, 1994.

Susan J. Evans  
Notary Public

SUSAN J. EVANS  
Printed Name

My Commission Expires:  
9-25-94

I reside in ALLEN County, IN

This Instrument Prepared By:  
Patrick G. Michaels  
Barrett & McNagney  
P.O. Box 2263  
215 E. Berry Street  
Fort Wayne, Indiana 46801  
(219) 423-9551

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