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ALLEN COUNTY RECORDS DEDICATION and DECLARATION OF COVENANTS,
Virginia & Young CONDITIONS, AND RESTRICTIONS FOR
 LAKE POINTE, SECTION II

This Declaration (hereinafter referred to as "the Declaration" or "this Declaration"), made this 12th day of September, 1985, by Macke Development Corp., an Indiana corporation (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate in Allen County, State of Indiana, which includes Lake Pointe, Section II, which will, with the recording of this plat, be subdivided into a residential community for 91 dwelling units and with open spaces for the benefit of such residential community, all to be included and known as Lake Pointe, Section I and Lake Pointe, Section II;

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

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

WHEREAS, Declarant has caused to be incorporated under the laws of the State

of Indiana a not-for-profit corporation under the name of Lake Pointe Homeowners Association, Inc., as such agency for the purpose of exercising such functions, and by this instrument conveys and warrants the Common Properties to said Corporation; and it is Declarant's intention that each owner of a Lot in any section of Lake Pointe shall become a member of said community association and be bound by its Articles of Incorporation and By-Laws;

NOW, THEREFORE, Declarant hereby declares that Lake Pointe, Section II, as described in the Legal Description and Dedication to which this Declaration is attached (hereinafter referred to as the "Real Estate") is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

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Further, Declarant does hereby lay off, plat, subdivide and dedicate said Real Estate in accordance with the information shown on the plat, being the certified plat appended hereto and incorporated herein. The subdivision shall be known and designated as Lake Pointe, Section II. The lots are numbered 50 through 91, both inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. Declarant hereby conveys and warrants to Lake Pointe Homeowners Association, Inc. all of the Common Properties shown on the Plat of Lake Pointe, Section II.

ARTICLE I

Definitions

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

- (a) "act" shall mean and refer to the Indiana Not-For-Profit Corporation Action of 1971, as amended;

(b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;

(c) "Architectural Review Board" shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;

(d) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;

(e) "Board" or "Board of Directors" shall mean and refer to the governing body of the Corporation elected, selected or appointed as provided for in the Articles, By-Laws, and this Declaration;

(f) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;

(g) "Club Properties" shall mean and refer to such portions of the real estate (all of which are included in Lake Pointe, Section II), including the improvements placed thereon, to be conveyed by Declarant to Lake Pointe Pool & Tennis Club, Inc. Club Properties are intended for the use and enjoyment of members of said club.

(h) "Common Expenses" shall mean and refer to expenses of administration of the Corporation; expenses for the upkeep, maintenance, repair, and replacement of the Common Properties; membership dues of Lake Pointe Pool and Tennis Club, Inc.; all sums lawfully assessed against the Owners by the Corporation; and all sums, costs, and expenses declared by this Declaration to be Common Expenses;

(i) "Common Properties" shall mean and refer to (i) such portions of the Real Estate as are herein declared by the Plat to be Common Properties and (ii) items deemed Common Properties for purposes of maintenance. Common Properties are intended for the use and enjoyment of owners of all Lots in Lake Pointe, including its various sections.

(j) "Corporation" shall mean and refer to Lake Pointe Homeowners Association, Inc., an Indiana not-for-profit corporation which Declarant has caused to be incorporated under said name, its successors and assigns;

(k) "Declarant" shall mean and refer to Macke Development Corp., an Indiana 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, and any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

(l) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family.

(m) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designated and intended for use as a building site for a dwelling unit, as designated by Declarant by its deed of the same to another person. For purposes of this Declaration, a "Lot" shall be any single numbered parcel of land identified as a lot on the recorded plat of the Real Estate.

(n) "Mortgagee" shall mean and refer to the holder of recorded first mortgage lien on a Lot;

(o) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean to refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot; but upon so acquiring title to any Lot, a mortgagee or tenant shall be an Owner;

(p) "Participating Builder" shall mean and refer to a person or entity who or which acquires a portion of the Real Estate for the purpose of improving such portion in accordance with the Plat for resale to future Owners.

(q) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

(r) "Plat" shall mean and refer to the subdivision plat of the Real Estate recorded in the Office of the Recorder of Allen County, Indiana, as the same may be hereafter amended or supplemented.

(s) "Pool and Tennis Club" shall mean and refer to Lake Pointe Pool & Tennis Club, Inc., its successors and assigns.

(t) "Real Estate" shall mean and refer to the parcel of real estate in Allen County, Indiana described in the Legal Description set out in the Plat to which this Dedication and Declaration is attached;

(u) "Restrictions" shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens, and all other provisions set forth in this Declaration, as the same may be amended from time to time;

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

ARTICLE II

Declaration; Easement to Corporation; Easement to Declarant

Section 1. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed or execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner or contract purchaser acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant,

the Corporation, and the Owners and subsequent Owner of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

Section 2. Easement to Corporation. Declarant hereby grants a non-exclusive easement in favor of the Corporation for the maintenance of the Common Properties (including items deemed Common Properties for maintenance). Said easement shall permit the Board or its agents to enter onto any Lot to perform normal maintenance and to make emergency repairs, or to do other work reasonably necessary for the proper maintenance or operation of the subdivision, and to enter onto any Lot for the purpose of reconstruction and restoration in the event of casualty.

Section 3. Easement to Declarant. Declarant hereby reserves a non-exclusive easement over the Common Properties in favor of Declarant to improve the Common Properties.

ARTICLE III

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Dedications

Section 1. Streets and Easements. The streets and easements specifically shown and described on the Plat are hereby dedicated to public use for their usual and intended purposes.

Section 2. Common Properties. The Common Properties, specifically shown and described on the Plat as "Mill Lake" and "Park", are intended for use by the Owners of Lots in Lake Pointe, including its various sections, for recreation and other related activities. The designated areas are not dedicated hereby for use by the general public but are dedicated solely to the common use and enjoyment of the Owners of Lots in Lake Pointe, including its various sections.

ARTICLE IV

Corporation; Membership; Voting; Functions

Section 1. Membership in Corporation. Declarant and each Owner of a Lot

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

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

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

(b) Class B. Class B members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B members in a written notice mailed or delivered to the resident agent of the Corporation. Class B members shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and terminate upon the first to occur of (i) the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or (ii) July 1, 1988 (the applicable date being herein referred to as the "Applicable Date").

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

ARTICLE V

Board of Directors

Section 1. Management. The business and affairs of the Corporation shall be

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

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Elmer H. Macke, Jeffry A. Gilmore, and Chris Stauffer (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Lot for any purpose (unless he is actually the Owner of a Lot and thereby a member of the Corporation).

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

Section 4. Terms of Office and Vacancy. Subject to the provisions of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable

Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

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

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Properties (unless the same are otherwise the responsibility or duty of Owners or Declarant), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the

Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) maintenance, repair, replacement, and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance), including the maintenance and repair of the storm water detention area;
- (b) snow removal from the streets and parking areas shown on the Plat;
- (c) assessment and collection from the Owners of the Owners' respective share of the Common Expenses;
- (d) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (e) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (f) keeping a current, accurate, and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
- (g) procuring and maintaining for the benefit of the Owners, the Corporation and the Boards the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (h) paying taxes assessed against and payable with respect to the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (i) making available to Owners and Mortgagees, and to holders, insurers, or guarantors of any first mortgage, current copies of this Declaration, the By-Laws or other rules concerning the Subdivision and the books, records, and financial statements of the Corporation. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances; and
- (j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Corporation's audited financial statement for the immediately preceding fiscal year free of charge to the party making such request.

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

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

(b) to purchase, lease, or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

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

(d) to employ, designate, discharge, and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair, and replacement of the Common Properties;

(e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Corporation;

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

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Section 8. Limitations on Board Action.

(a) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.

(i) contracts for replacing or restoring portions of the Common Properties damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(b) The Board shall not, without the prior written approval of at least

sixty-seven percent (67%) of the Owners (other than Declarant):

(i) by acting or omission abandon, partition, subdivide, encumber, sell, or transfer the Common Properties owned by the Corporation (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);

(ii) by act or omission change, waive, or abandon any scheme or regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwellings, the exterior maintenance of Dwellings, the maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns in the Subdivision;

(iii) fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement costs; and

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

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

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

Section 11. Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any Person, his heirs, assigns, and legal representatives, made a party to any action, suit, or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or

proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit, or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication of any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

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

Section 13. Initial Management. The Initial Board has entered, or will hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than April 1, 1988, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Corporation. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties, obligations, and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Corporation.

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ARTICLE VI

Real Estate Taxes; Utilities

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

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

ARTICLE VII

Maintenance, Repairs and Replacements

Section 1. By Owners. Each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefor arises, all maintenance, repairs, and decoration of the interior of his Dwelling Unit. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Properties for purposes of maintenance only. All fixtures and equipment installed within or as part of a Lot, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot which, if neglected, might adversely affect any other Lot or any part of the Common Properties. Such maintenance and repairs include but are not limited to internal water lines, plumbing and related systems and components thereof including fixtures and appliances attached thereto, electric lines, gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Lot.

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Section 2. By the Corporation. Maintenance, repairs, replacements, and upkeep of the Common Properties shall be furnished by the Corporation, as a part of its duties. The cost of the foregoing shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Properties, the Corporation, as part of its duties, and as a part of the Common Expenses, shall provide:

(a) maintenance, repairs, and upkeep of the exteriors of each dwelling unit. Such exteriors including, but not limited to, roofs, gutters, doors, windows (excluding glass which shall be considered a part of the interior maintenance) and exterior walls shall be considered part of the Common Properties for maintenance only;

(b) for maintenance of the lawns, which shall be considered part of the Common Properties for maintenance only. Maintenance of lawns shall include but shall not be limited to the watering, fertilizing, mowing, and replanting when necessary of the grass. It shall not include the care and maintenance of shrubs, trees, flowers or other plants on any Lot, which shall be the responsibility of each Lot Owner.

If any Owner shall fail to properly maintain the trees and shrubs upon his Lot to the satisfaction of the Corporation, then the Corporation shall have the right to provide such maintenance, and replacement if necessary, and to include the costs thereof as an assessment against the Lot upon which said labor and material are furnished; and said assessment shall be a lien upon the Lot as provided in Article X hereof.

Further, the Corporation shall be responsible for the perpetual maintenance and repair of the storm water detention basin to be constructed by Declarant to serve all sections of Lake Pointe, such construction to be in accordance with plans and specifications on file with the Allen County Surveyor. Maintenance shall include but not be limited to cosmetic maintenance (including structural) to the basin from and after construction, including mowing, weed control, trash pickup, algae and mosquito control, and maintenance so as to avoid the basin's becoming an attractive nuisance for children. All maintenance will be done so as to assure that all storm runoff will be detained and that rate of runoff will not be increased after the improvements have been completed by the Declarant. Declarant by execution of this instrument hereby agrees that it shall construct the Project in accordance with the aforesaid plans and specifications. The Corporation shall maintain the storm water detention basin in a condition acceptable to the Allen County Drainage Board or other governmental authority having jurisdiction over storm water drainage for so long as the detention basin exists. Should the Corporation fail to maintain or to make the appropriate repairs to the storm detention basin in a manner acceptable to the Allen County Drainage Board within thirty (30) days after notification in writing by the Allen County Drainage Board of the maintenance or repairs required, then the Allen County Drainage Board shall have the right of entry over and upon any and all portions of Lake Pointe for the purpose of repairing and maintaining the storm water detention basin. At any time the Allen County Drainage Board is required to enter and make repairs, the same shall be billed to the Corporation and should the same not be paid within thirty (30) days, the Allen County Drainage Board shall have the right to place a lien upon all Lots for costs incurred by it in the repair and maintenance of the

storm water detention basin, including interest at the rate of fourteen per cent (14%) per annum and attorney fees. All costs incurred by the terms of this paragraph shall constitute a part of the Common Expenses.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties as it deems necessary.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee, or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or items deemed as such for purposes of maintenance), or if maintenance, repairs, or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Corporation, the Board and the Managing Agent for the Corporation (if any) shall be entitled to reasonable access to any Lot or Dwelling Unit as may be required in connection with maintenance, repairs, or replacements of or to the Common Properties and items deemed as Common Properties for purposes of maintenance.

Section 3. By the Declarant. Until April 1, 1986, Declarant shall maintain all unimproved lots owned by Declarant as well as the Park Areas surrounding Mill Lake.

ARTICLE VIII

Architectural Control

Section 1. The Architectural Review Board. As a standing committee of the

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

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

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters a Lot or the exterior of any Dwelling Unit from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in the Declaration. No building, fence, wall, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

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

ARTICLE IX

Mortgages

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

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

(i) any condemnation loss or any casualty loss which affects a material portion of the subdivision or any Dwelling Unit on which there is a first mortgage;

(ii) any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days;

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;
and

(iv) any proposed action which would require the consent or approval of Mortgagees.

Section 3. Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid assessments or other charges against the Lot, which statement shall be binding upon the Corporation and

the Owners, and any Mortgagee or purchaser of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such Statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article X hereof.

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

ARTICLE X

Assessment

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

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments and Unimproved Lot Assessments (hereinafter defined) for

the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided that any increase of more than ten percent (10%) must be approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy; provided further, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments, the Unimproved Lot Assessments, and all other sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments and Unimproved Lot Assessments 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 Properties (or items deemed Common Properties for purposes of maintenance), which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties (or items deemed Common Properties for maintenance) shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Allen County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver of release in any manner of the obligations of the Owners to pay the Common Expenses as provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments and Unimproved Lot Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments and Unimproved Lot Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash

requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be computed as follows: (1) the costs of mowing the common areas, the costs of taxes and insurance on the common areas, and Pool and Tennis Club dues (commencing upon completion of construction of the Pool and Tennis Club facilities by Declarant) shall be divided by the number of Lots in the subdivision to determine quotient A; (2) all other Common Expenses except the cost of the master casualty insurance policy provided for in Article XII, Section 1 shall be divided by the number of Dwelling Units in the subdivision to determine quotient B; the cost of such master casualty insurance policy shall be divided on a pro rata basis for each Dwelling Unit based upon the square feet of living area in each Dwelling Unit including garages but excluding basements to determine quotient C; quotients A, B and C shall be added together for each Dwelling Unit and the sum shall be the Regular Assessment for each Dwelling Unit.

48 The annual budget as adopted by the Owners shall also, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Unimproved Lot, which shall be computed as follows: (1) unimproved lot maintenance; i.e., mowing and weed control, (2) mowing of the common areas, (3) taxes and insurance on the common areas, and (4) Pool and Tennis Club dues (commencing upon completion of construction of the Pool and Tennis Club facilities by Declarant), but not the other common expenses shared by the owners of Dwelling Units. A Lot shall be considered unimproved until ninety (90) days after a Building Permit has been issued.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment") or against his respective Unimproved Lot (herein called the "Unimproved Lot Assessment"). In the event the Regular Assessment or Unimproved Lot Assessment for a particular fiscal year is initially based upon a temporary budget, such assessments shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit and Unimproved

Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments and Unimproved Lot Assessments shall be equal to the total amount of expenses provided and included in the final budget, including reserve funds as hereinabove provided.

The Regular Assessment and Unimproved Lot Assessment against each Dwelling Unit and Unimproved Lot shall be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment and Unimproved Lot Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment and Unimproved Lot Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment and Unimproved Lot Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget,

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

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

The Regular Assessment and Unimproved Lot Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the

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

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

Section 4. Special Assessments. From time to time Common Expenses of an

unusual or extraordinary nature or not otherwise anticipated may arise. At such time unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, pro-rated in equal shares (herein called "Special Assessment"); provided, that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the generality of the foregoing provision, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

Section 5. Restoration Assessments. The Corporation may levy a Restoration Assessment upon any Lot whose Owner fails to maintain such Lot, as provided in Article VII. Restoration Assessments shall be limited to the actual amount necessary to meet the cost of restoration and the cost of collection thereof.

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Section 6. Failure of Owner to Pay Assessments.

No Owner may exempt himself from paying assessments, whether they be Regular Assessments, Unimproved Lot Assessments, Special Assessments, or Restoration Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment on the Owner's Lot may be filed and foreclosed by the Board for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure

of an Owner to make timely payments of any assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot, and the Board shall be entitled to be appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to reasonable attorney's fees) and interest from the date such assessments were due, until paid, at a rate equal to the "prime interest rate" then being charged by Summit Bank of Fort Wayne, Indiana, to its largest and best corporate customers (or if said Bank is no longer in existence, then such rate charged by another bank in Allen County, Indiana selected by the Board).

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The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any assessment as to such installments which became due prior to such sale, transfer, or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot 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, Unimproved Lot Assessments, Special Assessments or Restoration Assessments thereafter

becoming due or from the lien therefor. Such unpaid share of any assessment, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

Section 7. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments, Unimproved Lot Assessments, and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments, Unimproved Lot Assessments, and Special Assessments until the Applicable Date.

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

(a) From the date of the first conveyance of a Lot by Declarant to any other Person until the earlier of the Applicable Date or December 31, 1986,

(i) the Regular Assessment shall be Seventy Dollars (\$70.00) (plus dues owing the Pool and Tennis Club once its facilities have been constructed) per month on each Lot commencing ninety (90) days after the Building Permit has been issued, pro-rated on a daily basis for any period of time less than a month (the amount required to fund the insurance escrow shall be in addition to the Regular Assessment).

(ii) the Regular Assessment shall be ten per cent (10%) of the amount of the Regular Assessment set forth in subparagraph (i) for each Lot owned by a Participating Builder commencing ninety (90) days after the deed from Declarant has been recorded until one hundred eighty (180) days after the Building Permit has been issued, at which time the Regular Assessment for that Lot shall be raised to the full amount set forth in subparagraph (i). A Participating Builder shall be exempt from the Unimproved Lot Assessment and dues owing the Pool and Tennis Club.

(iii) the Unimproved Lot Assessment shall be Ten Dollars (\$10.00) (plus dues owing the Pool and Tennis Club once its facilities have been constructed) per month on each Unimproved Lot owned by someone other than Declarant or a Participating Builder, pro-rated on a daily basis for any period of time less than a month.

(b) After December 31, 1986 (if the Applicable Date has not then

occurred) and for each year thereafter until the Applicable Date, the Regular Assessment or Unimproved Lot Assessment upon each Lot may be increased by the Board by an amount not greater than an amount equal to the same percentage of said assessment provided under subparagraph (a) above as the percentage increase, if any, in the Consumer Price Index figure for the month of December, 1984 and the Index figure for the last month of the year preceding the year for which such increase is to be effective. Such increases may be made by the Board annually on, or effective on, January 1 of each year until the Applicable Date. As used herein, "Consumer Price Index" means the "Consumer Price Index for All Urban Consumers, All Items (CPI-U, reference base of 1967=100)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U. S. Bureau of Labor Statistics is either discontinued, or revised by changes in the weights assigned by the 1972-73 Consumer Expenditure Survey to the expenditure groups, in the sample of items priced, in the sample of places where the pricing takes place or in the statistical methods employed in the calculation of the Consumer Price Index, then, and in any of such events, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical selected by the Corporation shall be substituted for said Consumer Price Index and used for making such computations.

Notwithstanding the foregoing or anything else contained herein, Declarant shall be exempt from all assessments, unless Declarant constructs a Dwelling Unit upon a Lot, in which case it shall be subject to the Regular Assessment charged to a Participating Builder on that Lot only.

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ARTICLE XI

Insurance

Section 1. Casualty Insurance. The Corporation shall purchase a master casualty insurance policy with an "agreed amount and inflation guard endorsement" and a "blanket building endorsement" affording fire and extended coverage insurance insuring each dwelling unit in an amount consonant with the full replacement value of the improvements which, in whole or in part, comprise the dwelling units, excluding all floor, ceiling and wall coverings and fixtures, betterments, and improvements installed by any Owner and excluding any personal property owned by any Owner whether located on any Lot or elsewhere. If the Board of Directors can obtain such coverage for reasonable amounts, it may also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined

by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the dwelling unit resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Corporation or the Board, as appropriate, only in accordance with the provisions of this Declaration.

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Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Corporation does not elect to restore.

Section 2. Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or

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

Section 3. Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors, and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby,

which notice shall be furnished by the officer of the Corporation who is required to send notices of meetings of the Corporation. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Mortgagee of each Lot.

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

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

ARTICLE XII

Casualty and Restoration; Condemnation; Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction

of the structure or exterior of any Dwelling Unit, due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Dwelling Unit so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

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

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

Section 2. Total or Partial Condemnation. In the event of the condemnation of all or any part of the Common Properties or all or any part of any Dwelling Unit, the Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties or Dwelling Units. For the purpose of such negotiation and/or of contest of such award to the Board as to Dwelling Units, the Board is hereby declared to be the agent and attorney-in-fact of any Owner affected

by the condemnation. The appointment of the Board shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board.

Awards for the taking of all or part of a Dwelling Unit shall be collected by the Board and distributed to the affected Owners. To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among Owners affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board acting as agent for all other affected Owners shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

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

ARTICLE XIII

Restrictions, Covenants, and Regulations

Section 1. Restrictions on Use. The following covenants and restrictions on the use and enjoyment of the Lots and Common Properties shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the Real Estate heretofore or hereafter recorded, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there

shall be no right of reversion or forfeiture resulting from such violation.

These covenants and restrictions are as follows:

(a) All Lots shall be used exclusively for residential purposes and for occupancy by a single family. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height, excluding walk-out basements. Each Dwelling Unit shall include not less than a two car garage, which shall be built as part of said Dwelling Unit and attached thereto.

(b) Nothing shall be done or kept on any Lot, or on the Common Properties, which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Properties. No Owner shall permit anything to be done or kept on his Lot or on any of the Common Properties which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Properties, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Lot.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Lot or placed on the outside walls of any building, and no sign, awning, canopy, shutter, solar panels, or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.

48 (e) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or any of the Common Properties, except that pet dogs, cats, or customary household pets may be kept on a Lot, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Properties, caused by his pet. The tethering of pets in any outdoor area does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any owner desiring to bring or maintain a pet on the Real Estate shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Properties. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Real Estate, except to the extent said deposit has been used or is needed to repair damage caused by such pet. Any requirement for the depositing of such security deposit shall not be deemed to release or in any way limit an Owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate within ten (10) days after written notice from the Board to the respective Owner to do so.

(f) No Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience, or damage to other Lot Owners and occupants or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical

equipment, amplifiers, or other equipment or machines or loud persons.

(g) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from any public street.

(h) No industry, trade, or other commercial activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate with the exception of Home Occupations, which is hereby defined as a use conducted entirely within a Dwelling Unit and participated in solely by persons residing in that Dwelling Unit, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof or have any exterior evidence thereof.

(i) No "for sale", "for rent", or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Real Estate or any Lot without the prior consent of the Board; provided, however, that the right is reserved by Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Real Estate in connection with any unsold or unoccupied Lots and nothing contained herein shall be construed or interpreted to affect or restrict the activities of Declarant in the marketing, advertising, or sale of Lots as a part of the development of this subdivision.

(j) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or other persons entitled to use the same and to use and enjoy the Common Properties or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Properties.

(k) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked, or stored anywhere within the Real Estate; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger vehicles.

(l) No outbuildings, described as buildings or structures which are not attached to the Dwelling Unit or attached garage, shall be permitted upon any Lot.

(m) No pools, except for children's wading pools with sides which extend not more than one foot above the surface of the ground, shall be permitted upon any lot.

(n) No radio or television antenna or satellite receivers ("dishes") shall be attached to the exterior of any Dwelling Unit or attached garage, or located as a free standing unit anywhere on a Lot. Antennae may be placed in attics, however. Such antennae and/or satellite receivers may be located on the Club Properties.

(o) Plans and specifications for the Addition, on file with the Allen County Plan Commission and the Board of Commissioners of Allen County, Indiana, require the installation of concrete sidewalks within the street rights-of-way in front of Lots 75 through 82, both inclusive, and Lots 85 through 91, both inclusive, all as shown on the Lake Pointe Street Plan on file with the Allen County Plan Commission. Installation of said sidewalks shall be the obligation of the owner of any such lot,

exclusive of Declarant, and shall be completed in accordance with said plans and specifications prior to the issuance of a certificate of occupancy for any such lot, and the cost of said installation shall be a lien against any such lot enforceable by the Allen County Plan Commission. Should such certificate of occupancy be issued to Declarant, said Declarant shall be considered an owner for purposes of the enforcement of this covenant.

(p) Invalidation of any one of these covenants by judgment or court order shall in no wise effect any of the other provisions, which shall remain in full force and effect.

(q) Each Owner shall keep his Lot in good order, condition, and repair and free of debris, all in a manner and with such frequency as is consistent with good property management. In the event an Owner of any Lot shall fail to so maintain his Lot, the Corporation after notice to the Owner and approval by two-thirds (2/3) vote of all Owners, shall have the right to enter upon said Lot to correct, repair, maintain, and restore the Lot. All costs incurred by the Corporation related to such correction, repair, maintenance, or restoration shall be and constitute a Special Assessment against such Lot, payable by the Owner upon demand by the Corporation.

(r) All garbage, trash, and refuse shall be stored in appropriate containers inside the Dwelling Units (including garages) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash, and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

(s) Common Properties shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(t) No building 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 recorded plat. Inasmuch as this subdivision is a Planned Unit Development, side yard setbacks are not required; however, homes must be placed on each lot so as to provide that there will be maintained a minimum distance of 10 feet between dwellings as finally located. Homes shall not be located nearer than 15 feet to the rear property line.

(u) Easements for the installation and maintenance of utility and drainage facilities are reserved as shown on the recorded plat for the construction of poles, wires, and conduits, and the necessary or proper attachments in connection therewith for the transmission of utilities, telephone service, construction and maintenance of drains, sewers, pipe lines, gas, water, and heat and for any other public or quasi-public corporation engaged in supplying any one or more of the above utilities will have the right to enter upon said easements for any purpose for which said easements are reserved. All of said easements shall be kept free of permanent structures (except those installed by any such municipal, public or quasi-public corporation) and removal of any obstructions by any such utility company shall in no way obligate the utility company to pay damages or to restore any such removed obstruction to its original form. All such obstructions, whether temporary or permanent, shall be subject to the paramount rights of any such utility company to construct, install, repair, maintain, or replace its utilities and/or sewer installations.

(v) In addition to the utility easements herein designated,

easements in the streets, as shown on this plat, are hereby reserved and granted to all public utility companies, the proprietors of the land herein platted, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain, and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary appliances subject, nevertheless, to all reasonable requirements of any body having jurisdiction thereof as to maintenance and repair of said streets.

(w) Surface drainage easements used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed. Utility structures above finish design grade shall not be permitted in such easements.

(x) Before any Dwelling Unit on any Lot in the subdivision shall be used or occupied as a dwelling, or as otherwise provided by the subdivision restrictions above, the Declarant, or any subsequent owner of said Lot shall install all improvements serving said Lot as provided in said plans and specifications for this subdivision with the Board of Commissioners of Allen County. Before any Lot located within the subdivision may be used or occupied, such user or occupier shall first obtain from the Zoning Administrator the improvement location permit and certificate of occupancy required by the Allen County Zoning Ordinance. This covenant shall run with the land and be enforceable by the County of Allen, State of Indiana, or by an aggrieved Lot owner in the subdivision.

48 (y) The further dividing of any Lot or combination of Lots within this subdivision once it has been approved 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 of an adjoining lot to change the size of a lot, so long as no lot shall have a width of less than sixty (60) feet at the building line.

(z) No building shall be built on any Lot having a ground floor area upon the foundation, exclusive of one-story open porches, breezeway or garage, of less than 1,300 square feet for a one-story dwelling, nor less than 850 square feet for a dwelling of more than one story.

(aa) No wire, metal, or chain link fences will be permitted upon any Lot. No fence shall extend more than 12 feet beyond the rear of the Dwelling Unit or be more than 15 feet in width. All fences must be approved by the Architectural Control Committee.

(bb) 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. No incinerators or outside incinerators shall be kept or allowed on any Lot.

(cc) No electric bug killers shall be permitted upon any Lot.

(dd) All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. No roll siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any building on any Lots of said Subdivision, and no roll roofing of any description or character shall be used on

the roof of any dwelling house or attached garage on any of said Lots.

(ee) All driveways from the street to the garage shall be poured concrete.

(ff) No rain and storm water run off or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewage System, which shall be a separate sewer system from the Storm Water and Surface Water Run Off Sewer System. No sanitary sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Run Off Sewer System.

(gg) No docks, piers, or other structures shall be constructed within the Mill Lake Area, except that Lake Pointe Pool & Tennis Club, Inc. shall have the right to construct a pier as a part of its facilities. No motorized boats shall be allowed on Mill Lake, except for boats used in rendering maintenance to the Lake Area and for boats with electric trolling motors.

(hh) In order to minimize potential damages from surface water, flood protection grades are established as set forth below. All dwellings shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor. The flood protection grade for Lots 50 through 71, both inclusive is 833.0 feet Mean Sea Level, and the flood protection grade for Lots 72 through 74, both inclusive, is 826.0 feet Mean Sea Level.

48 Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including but not limited to any covenants and restrictions set forth herein or otherwise, Declarant shall have, until the Applicable Date, the right to use and maintain the Common Properties and any Dwelling Units owned by Declarant and other portions of the Real Estate (other than individual Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Lots or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices, and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Properties, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Real Estate at any time.

ARTICLE XIV

Amendment of Declaration

Section 1. Generally. Except as otherwise provided in the Declaration, amendments to this Declaration shall be proposed and adopted in the following manner and shall, prior to becoming effective, be subject to the approval of the Allen County Plan Commission:

(a) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

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

(d) Adoption. Any proposed amendment to this Declaration must be approved during the first twenty years by a vote of the Owners to which not less than ninety percent (90%) of the votes of the Corporation are allocated and thereafter by seventy-five percent (75%) of such Owners. The instruments of amendment must be signed by such Owners and recorded.

(e) 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 Allen County, Indiana, and such amendment shall not become effective until so recorded.

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Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Lots, (c) to bring this Declaration into compliance with any statutory requirements, or

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

ARTICLE XV

Acceptance and Ratification

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

ARTICLE XVI

Negligence

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

ARTICLE XVII

Benefit and Enforcement

This Declaration and the Restrictions shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the office of the Recorder of Allen County, Indiana and expiring thirty (30) years thereafter, after which time they shall be automatically extended for successive periods of ten (10) years each unless by vote of a majority of the then Owners of the Lots it is agreed to change this Declaration or the
48 Restrictions in whole or in part, or to terminate the same.

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

ARTICLE XVIII

Annexations

Additional real estate may be annexed to the Real Estate by the Declarant and made subject to this Declaration of Covenants, Conditions, and Restrictions. Said additional real estate must be contiguous to the Real Estate herein and may consist of an additional 20.51 acres, more or less, and may be developed for condominiums, multiple-family units, or single-family units. Said annexation may be perfected without the consent of the Owners within five (5) years of the date of the recording of the Plat of Lake Pointe, Section I, by (a) filing of record of a Supplemental Declaration with respect to such contiguous land which describes it as part of the Real Estate and (b) filing with the Corporation the plat of such addition. For this purpose, "contiguous land" shall also mean land which is separated from land already described in the Plat by an area dedicated to public use.

In addition to the foregoing, Declarant may provide for a merger of contiguous developments' homeowners associations.

ARTICLE XIX

FHA and VA Approval

As long as there is a Class B membership in the Corporation, amendments of this Declaration pursuant to Article XIV and annexation of additional real estate must receive the prior written approval of FHA and VA.

ARTICLE XX

Miscellaneous

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

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

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

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

Section 5. Interpretation. The captions and titles of the various articles, section, 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.

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Section 6. Titleholder's Consent. Elmer H. Macke and Martha M. Macke, husband and wife, join in this plat as the titleholders of a portion of the real estate solely for the purpose of giving their consent to the plat, and said titleholders assume no responsibility for performing any acts of the Declarant as set forth in said plat.

ARTICLE XXI

Pool and Tennis Club

A portion of the real estate platted as Lake Pointe, Section II, and designated on the Plat as "Club Properties" shall be conveyed by Declarant to Lake Pointe Pool & Tennis Club, Inc., a corporation to be formed by Declarant, for the purpose of providing recreational facilities for the use and enjoyment of the Owners of all Lots in Lake Pointe, Section I and Lake Pointe, Section II, and including subsequent sections annexed as provided in

Article XVIII, (all of which is hereinafter called the "Benefited Area"), as well as for the use and enjoyment of non-residents (being individuals who are not Owners of Lots in the Benefited Area) as provided in the By-Laws of the Lake Pointe Pool & Tennis Club, Inc.

In order to provide for the operation and maintenance of said facilities, the following protective restrictions and covenants shall apply to each Lot in the Benefited Area.

Section 1. Every Owner of a Lot or unit in the Benefited Area shall be a member of Lake Pointe Pool & Tennis Club, Inc. (hereinafter referred to as Pool and Tennis Club.) Membership shall be appurtenant to and may not be separated from ownership of any Lot. All members shall be subject to initiation fees and an assessment which shall become a lien upon his Lot. Membership dues shall be included as part of the Regular Assessment as provided in Article X, Section 3 hereof. There shall be no more than 300 memberships, unless authorized by the Board of Directors.

Section 2. Any Owner may delegate, in accordance with the By-Laws of the Pool and Tennis Club, a not-for-profit corporation, his right of enjoyment to the pool and tennis facilities to the adult members of his family who reside on the property and other persons permitted by the rules and regulations of said Pool and Tennis Club.

Section 3. Non-residents of the Benefited Area may be granted memberships by the Board of Directors.

Section 4. Until such time as there are 225 memberships in the Pool and Tennis Club, members of the Board of Directors of the Pool and Tennis Club shall be designated by Declarant. After the membership of the Pool and Tennis Club is comprised of more than 200 owners, the Board of Directors shall be elected by the members as provided in the By-Laws of the Pool and Tennis Club. Declarant may surrender control sooner at his election.

Section 5. Until such time as there are 300 memberships in the Pool and Tennis Club, Declarant shall be entitled to charge each non-resident member initiation fees for membership in said Pool and Tennis Club to reimburse Declarant for the cost of the amenities constructed by Declarant upon the real estate; thereafter, the Pool and Tennis Club shall be entitled to said

initiation fees.

Section 6. The Board shall, pursuant to appropriate By-Laws, be responsible for the maintenance and upkeep of the Club Properties, including the pool and tennis facilities owned by the Pool and Tennis Club. It shall advise Lake Pointe Homeowners Association, Inc., annually, of the amount of money the Pool and Tennis Club will require for maintenance and upkeep and shall suggest to said Corporation the amount each lot owner should be assessed as a member of the Pool and Tennis Club.

Section 7. Until such time as there are 225 memberships in the Pool and Tennis Club, Declarant shall, to the extent necessary, contribute such funds over and above those funds collected by the Pool and Tennis Club which are necessary to provide adequate maintenance and upkeep for the facilities owned by the Pool and Tennis Club. After such time, Declarant shall be relieved of any further obligation to make any contributions toward the maintenance and upkeep of the facilities of the Pool and Tennis Club.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first hereinabove set forth.

48

MACKE DEVELOPMENT CORP.

Elmer H. Macke
Elmer H. Macke

By: Elmer H. Macke, President
Elmer H. Macke, President

Martha M. Macke
Martha M. Macke

By: Martha M. Macke, Secretary
Martha M. Macke, Secretary

STATE OF INDIANA }
COUNTY OF ALLEN } SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 12th day of September, 1985, personally appeared Elmer H. Macke and Martha M. Macke, husband and wife, each being over the age of eighteen (18) years, and acknowledged the execution of the foregoing instrument. Witness my hand and notarial seal.

My Commission Expires:
January 8, 1989

Carol L. Gilbert
Carol L. Gilbert
Notary Public
County of Residence: Allen

STATE OF INDIANA)
COUNTY OF ALLEN) SS:

Before me, the undersigned, a Notary Public in and for said County and State,
this 12th day of September, 1985, personally appeared Elmer H.
Macke and Martha M. Macke, the President and Secretary respectively of Macke
Development Corp., to me known to be such officers of said corporation, and
acknowledged the execution of the foregoing instrument for and on behalf of
said corporation and by its authority. Witness my hand and notarial seal.

48 My Commission Expires:
January 8, 1989

Carol L. Gilbert
Carol L. Gilbert
Notary Public
County of Residence: Allen

This instrument prepared by: William D. Swift, Attorney, 590
Lincoln Tower, Fort Wayne, Indiana, 46802.

Recorded September 25, 1985 at 2:15 P.M. Plat Record 47 pages 28-41
