

The
PRESERVE
— *at Eagle Creek* —

HOMEOWNERS
ASSOCIATION
DOCUMENTS

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SUBJECT TO THE ACCEPTANCE
FOR TRANSFER

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS OF
THE PRESERVE AT EAGLE CREEK**

Dated: May 25, 2001

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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS
OF THE PRESERVE AT EAGLE CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF THE PRESERVE AT EAGLE CREEK (this "Declaration"), is made this 25th day of May, 2001, by The Preserve at Eagle Creek, LLC, an Indiana limited liability company, and

WITNESSES:

WHEREAS, Declarant (as defined herein) is the owner or contract purchaser of the Development (as defined herein);

WHEREAS, Declarant intends by this Declaration (as defined herein) to impose upon the Development mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Development by the recording of this Declaration;

WHEREAS, Declarant desires to provide a flexible and reasonable procedure for the overall development of the Development and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such properties as are now or may hereafter be subject to this Declaration; and

WHEREAS, the Declarant has formed (or intends to form) the Association (as defined herein) for the purposes of carrying out the powers and duties aforesaid.

NOW, THEREFORE, Declarant hereby declares that all of the real estate described in Exhibit "A" attached hereto, and any additional property as may by subsequent amendment be added to and subjected to this Declaration, shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions, which shall "run with the land" and are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the described Development or any part thereof, their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each owner thereof. Declarant, for itself and its successors and assigns, specifically reserves unto itself the right and privilege to include Additional Land (as defined herein) within and subject to, the terms and provisions of this Declaration by recording a document with the Recorder of Marion County, Indiana, making reference to the terms and provisions hereof and purporting to accomplish such addition of real estate with respect to the provisions hereof.

ARTICLE I

DEFINITIONS

Section 1.1. Additional Land. Additional Land shall mean and refer to additional real property now owned or which may in the future be owned by Declarant subject to Declarant's reserved unilateral right to annex the same within and subject to this Declaration as provided elsewhere herein.

Section 1.2. Articles of Incorporation. Articles of Incorporation means and refers to the Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Indiana.

Section 1.3. Association. Association shall mean and refer to The Preserve at Eagle Creek Homeowners' Association, Inc., or an organization of similar name, formed, or to be formed, as an Indiana non-profit corporation, its successors and assigns. The Board of Directors or Board shall mean the elected body of the Association having its normal meaning under Indiana non-profit corporation law.

Section 1.4. Bylaws. Bylaws shall refer to the Bylaws of the Association, as the same may exist and be in effect from time to time.

Section 1.5. Common Area. Common Area shall mean all real and personal property now or hereafter owned by or subject to an easement for the common use and enjoyment of all Owners in the Development. The Common Area to be owned by the Association shall be conveyed to the Association at any time prior to the last conveyance of a Lot to any Owner by Declarant. By way of example and not by way of limitation, Common Area shall include the Drainage System in the Development including all lakes, retention/detention ponds, spillways, creeks and culverts, all landscaping other than landscaping on any Lot, accent or special effect lighting systems for the Development (excluding exterior light fixtures to be installed and maintained by Owners), community recreational facilities and such other or further items as shall be shown as Common Area or subject to an easement for stated purposes on the various Plats and Plans filed with the Recorder of Marion County from time to time with respect to portions of the Development.

Section 1.6. Common Expenses. Common Expenses shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association. Common Expenses shall include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement and replacement of Common Area, real estate taxes or personal property taxes assessed against any Common Area, as well as any other costs or expense incurred by the Association for the benefit of the Common Area and the Owners.

Section 1.7. Control Transfer Date. Control Transfer Date shall be the date on which the Declarant is no longer a Class B Member of the Association.

Section 1.8. Declarant. Declarant means The Preserve at Eagle Creek, LLC, an Indiana limited liability company, or any other person, firm, corporation or partnership which succeeds to the interest of The Preserve at Eagle Creek, LLC, as developer of the Development, as a matter of law or as evidenced by a written instrument of transfer to such effect.

Section 1.9. Development. Development shall mean and refer to the real property described in Exhibit "A", attached hereto and incorporated herein by reference and such additional real property as may be added in accordance with Article VIII.

Section 1.10. DCC. DCC shall mean and refer to the Development Control Committee established pursuant to the provisions of Article XI hereof.

Section 1.11. Drainage System. Drainage System shall mean and include the retention/detention ponds, storm sewers, subsurface drainage tiles, swales, ditches, pipes, and other structures, fixtures, properties, equipment, and facilities located in, upon, or under the Common Area, Streets, or easements affecting one or more Lots or property located outside the Development, and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, across and under the Development, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 1.12. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as herein and in the Association's Bylaws provided.

Section 1.13. Eligible Votes. Eligible Votes shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Section 1.14. Lot. Lot shall mean a portion of the Development other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plats and Plans filed with this Declaration and amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 1.15. Majority. Majority means more than fifty percent (50%) of the total number of eligible groups, Eligible Votes, eligible Owners, or other, as the context may indicate.

Section 1.16. Member. Member shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Section 1.17. Mortgage. Mortgage means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 1.18. Owner. Owner shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Development, but excluding any party holding the fee simple title merely as security for the performance of an obligation. Owner shall include the Declarant (but pursuant to Section 10.11 no assessments are payable by Declarant as an Owner except as specifically described therein).

Section 1.19. Person. Person means a natural person, a corporation, limited liability company, a partnership, limited partnership, trustee, or other legal entity.

Section 1.20. Plats and Plans. Plats and Plans shall collectively mean those plats or plans of all or any portion of the Development making reference hereto which have been or hereafter may be recorded in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented by replats or otherwise.

Section 1.21. Preservation Areas. Preservation Areas shall mean those portions of the Common Area that shall be maintained by the Association in their present condition as designated in any Plats and Plans and as designated in the Conceptual Site Plan as described in the Statement of Commitments, subject to drainage improvements, Drainage Easements (as hereinafter defined) as required by the applicable law or local authority, and such other easements as are shown on the Plats and Plans. No trails shall be established within the Preservation Areas.

Section 1.22. Quorum. Quorum shall mean the percent of Eligible Votes entitled to be cast on a matter at any meeting of Members as specified in the Bylaws.

Section 1.23. Special Assessments. Special Assessments shall mean those certain assessments authorized and made pursuant to the terms of Section 10.4 hereof.

Section 1.24. Statement of Commitments. Statement of Commitments shall mean the Preserve at Eagle Creek Statement of Commitments regarding the development of the Development dated March 12, 2001, and recorded March 14, 2001, in the Office of the Recorder of Marion County as Instrument No. 2001-0042740, attached hereto as Exhibit B.

Section 1.25. Statement of Development. Statement of Development shall mean the Preserve at Eagle Creek Development Statement regarding the development of the Development filed February 6, 2001, with the Indianapolis Department of Metropolitan Development, attached hereto as Exhibit C.

Section 1.26. Streets. Streets shall mean all driveways, walkways, roadways, streets and similar areas, designated as such on the Plats and Plans, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots, other than those that have been dedicated to the public and accepted for maintenance by the appropriate public agency.

ARTICLE II

PROPERTY RIGHTS

Section 2.1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of ingress and egress in and to, and, use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to:

(i) the right of the Association to charge reasonable admission and other fees for the use of any Common Area and to impose reasonable limits on the number of guests who may use such facilities;

(ii) the right of the Association to suspend or terminate a Member's voting rights in accordance with law and the Articles of Incorporation and Bylaws;

(iii) the right to suspend use of any such facilities for any period during which any assessment for Common Expenses against that Owner's Lot remains unpaid, and for any violation by an Owner of the Association's rules and regulations, for the duration of the violation and for an additional period thereafter not to exceed thirty (30) days;

(iv) the Declarant's reserved easements as described herein and the right of the Declarant to grant easements in and to the Common Area to any public agency, authority, or utility for such purposes as benefit only the Development or portions thereof and Owners or Lots contained therein;

(v) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3) of all Eligible Votes shall approve; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Development; and

(vi) the right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the Declarant during any time that the Declarant controls the Association and otherwise by at least two-thirds (2/3) of all Eligible Votes.

This Section 2.1 may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

Section 2.2. Delegation of Use. No Owner may delegate his or her right of enjoyment to the Common Area to any other individual without the prior written consent of the Association.

Section 2.3. Owner's Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

Section 2.4. Rules and Regulations. The Board of Directors of the Association may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, and individual Lots in the Development, as appropriate. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rule's effective date. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Board of Directors of the Association or the Members by two-thirds (2/3) of all Eligible Votes and with the written approval of the Class B Member prior to the Control Transfer Date. The Board shall have the authority to impose reasonable monetary fines and other sanctions for the violation of any rule or regulation, and monetary fines may be collected by lien and foreclosure, as provided in Article X. In addition, the Association, through its Board, may, by contract or other agreement, enforce county ordinances or permit Marion County to enforce ordinances affecting the Development for the benefit of the Association and its Members.

Section 2.5. Declarant's Reserved Easement. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, for the benefit of Declarant and its successors and assigns over, under, in, and on the Development, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment and otherwise dealing with the Development and any other property now owned or which may in the future be owned by Declarant. The reserved easement shall constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

(i) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, and in all or any portion of the Development; and the right to tie into any portion of the Development with driveways, parking areas, Streets, the Drainage System and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development;

(ii) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction and sale

by Declarant of residences in all or any portion of the Development or in any portion of the Additional Land; and

(iii) the right to maintain a sales and marketing office for the Development within the Common Area without cost to Declarant until Declarant no longer owns any Lots in the Development.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property within the Development, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development. Declarant may grant to a builder of Lots within the Development similar rights as granted to Declarant under (ii) and (iii) above.

This Section 2.5 may not be amended without the advance written consent of Declarant as long as Declarant owns one or more Lots.

Section 2.6. Character of the Development.

A. Use of Lots.

(i) Except as may be otherwise expressly provided in this Declaration, each Lot shall be used only for single family residential purposes only as a single family residence. No business buildings shall be erected on said Lots, and no business may be conducted on any part thereof, other than the home occupations permitted in the DP of Marion County, Indiana, as amended from time to time. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board of Directors may promulgate, or in the absence of such rules and regulations, with the prior written approval of the Board. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the rules and regulations adopted hereunder.

(ii) Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept on any Lot or on the Common Area or any part thereof to increase the rate of insurance on the Development or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

B. Use of Common Areas. No planting or gardening shall be done, and no fences, hedges, walls or any other structure or planting shall be erected or maintained upon the Common Area, except in accordance with the initial construction of the improvements located thereon by the Declarant or as approved by the Association's Board of Directors or their designated representatives. No antennas may be erected upon the Common Area, except the Association may erect a master antenna serving the Members. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section 2.6 is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

C. Signs. Except as hereinafter provided for Declarant, no signs of any type whatsoever, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on the Development, other than signage provided by Declarant (before the Control Transfer Date) or by the Association (after the Control Transfer Date) and approved by the DCC, and signs that are approved by the DCC and are erected by a builder of multiple Lots in the Development (a "Builder"), except that one sign of not more than six (6) square feet may be displayed for the purpose of either advertising the Lot for sale or advertising a garage/yard sale at such Lot.

D. Storage and Parking of Vehicles. There shall be no outside storage or parking upon any Lot or the Common Area of any automobile, commercial vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation device of any kind, except within the parking spaces in the Owner's garage and for visitors temporarily parking in spaces and in accordance with rules and regulations designated and promulgated by the Board; provided, however, that the temporary parking of the Owner's primary vehicle on the driveway of the Owner's Lot shall not be prohibited. No Owners or tenants shall repair or restore any vehicle of any kind upon any Lot or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

E. Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Development, except that normal household pets in reasonable numbers may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred, or maintained for any commercial purpose. The Board shall have the absolute power to prohibit a pet from being kept on any Lot in the Development, including inside residences constructed thereon. No doghouses or other pet enclosures shall be constructed or located on any Lot without the prior written approval of the DCC.

F. Nuisances. No outside toilets shall be permitted on any Lot in the Development (except during a period of construction and then only with the consent of the DCC), and no sanitary waste or other wastes shall be permitted to enter the storm drainage system. No discharge from any floor drain shall be permitted to enter into the storm drainage system. No noxious or offensive

activities shall be carried on any Lot in the Development, nor shall anything be done on any of said Lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another Lot in the Development. By purchase of a Lot, each Owner agrees that any violation of this paragraph constitutes a nuisance which may be abated by Declarant, the Association, or any Owner in the Development in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall become a charge or lien upon the offending Owner's Lot, and may be collected (i) in any manner provided by law or in equity for collection of a liquidated debt, or (ii) by foreclosure of said lien in the manner provided for in Section 10.6 for the lien of assessments. Neither the Declarant, nor any officer, agent, employee or contractor thereof, the Association, or any Owner enforcing the provisions of this paragraph shall be liable for any damage which may result from enforcement hereof.

G. Garbage, Trash and Other Refuse. No Owner of a Lot in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse on his Lot except as may be permitted below. All dwellings built in the Development shall be equipped with a garbage disposal unit. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street within the Development at any time, except at the time when refuse collections are being made.

H. Model Homes. No Owner of any Lot in the Development other than Declarant or persons having the written permission of Declarant shall build or use, or permit the building or use upon any such Lot of any dwelling that is to be used as a model home or exhibit house.

I. Temporary Structures. No temporary house, trailer, tent, garage, mini-barn or other out building shall be placed or erected on any Lot, nor shall any regular overnight camping be permitted on any Lot; provided, however, that Declarant or any person specifically authorized by Declarant may maintain a temporary construction or sales trailer on any Lot or Lots.

J. Utility Services. No utility services will be installed under any paved areas in the Development, except by jacking, drilling, or boring, unless specifically approved by the Declarant (or, after Declarant turns over control of the Association, by the DCC). All utility facilities in the Development will be underground, except where required to be placed above ground by the individual utility supplier.

K. Wells and Septic Tanks. No water wells shall be drilled on any of the Lots in the Development without the approval of the DCC. No septic tanks shall be installed on any of the Lots, in any of the Common Areas.

L. Solar Heat Panels. Except as approved by the DCC, no solar heat panels shall be allowed on any Lot or on any residence.

M. Accessory Outbuildings Prohibited. No accessory outbuildings, including mini-barns or other detached storage structures, shall be erected on any of the residential Lots.

N. Occupancy or Residential Use of Partially Completed Dwelling Houses Prohibited. No dwelling house constructed on any of the residential Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed for occupancy shall be made by the building inspector of the governmental entity having jurisdiction over the Development and such decision shall be binding on all parties.

O. Other Restrictions. All tracts of ground in the Development shall be subject to all covenants, conditions, easements, restrictions and limitations of record, including without limitation, this Declaration, the Guidelines for Architectural Approval (as defined in Section 11.1 hereof), the Statement of Commitments, and the Statement of Development, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

P. Fences, Walls, Screening, Swimming Pools, Sports Courts, Basketball Goals and Play Equipment. Fences, Walls, Screening, Swimming Pools, Sports Courts, Basketball Goals and Play Equipment shall be in constructed and improved in accordance with the Guidelines for Architectural Approval.

Q. Damaged Structures. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

R. Prohibition of Used Structures. All structures constructed or placed on any Lot in the Development, including play structures, shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot without the prior written approval of the DCC.

S. Maintenance of Lots and Improvements. Unless the Association is obligated to perform the same, the Owner of any Lot in the Development shall at all times maintain the Lot (and to the extent required by the restrictions contained elsewhere herein or in the Plats and Plans, Common Area adjacent to such Lot) and any improvements situated thereon in such a manner as to prevent the same from becoming unsightly and, specifically, such Owner shall:

(i) mow and care for the lawn at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds;

(ii) remove all debris or rubbish;

(iii) prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;

(iv) cut down and remove dead trees;

(v) keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly; and

(vi) comply with this Declaration and the Guidelines for Architectural Approval as the same apply to Owners of Lots.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. Classes of Membership. The Association shall have two (2) classes of Members consisting of Class A Members and the Class B Member.

(a) Class A. Class A Members shall be all Owners of Lots with the exception of the Declarant. Except as otherwise provided herein or in the Articles of Incorporation, each Owner shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, all such persons shall be Members. The vote for such Lot shall be exercised by the person whom the collective Members with respect to such Lot may designate. In the event that a Membership stands of record in the names of at least two (2) persons or entities, then if one person or entity votes, the vote binds all persons. In no event shall such vote be split into fractional votes and in no event shall more than one vote be cast with respect to any Lot. Each vote cast with respect to a Lot shall presumptively be valid, but if such vote is questioned by any Member holding any interest in such Lot and if all such Members holding an interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted. In addition, the Association may reject a vote, consent, waiver or proxy appointment if there is a reasonable basis to doubt the validity of a signature or the signatory's authority.

(b) Class B. The Declarant shall be the sole Class B Member. The Class B Member shall be entitled to four (4) votes per Lot that it owns for so long as it shall own any Lot or other real estate in the Development or until the Declarant's Class B membership is converted to a Class A membership if that occurs earlier. The Class B membership shall cease and be converted to a Class A membership on the happening of the first to occur of the following events:

(i) when the Class B Member owns or is the contract purchaser of less than twenty-five percent (25%) of the Lots in the Development,

(ii) when the Class B Member voluntarily surrenders its Class B membership, or

(iii) five (5) years after the first Lot is conveyed to an Owner in any portion of the Development.

Section 3.3. Board of Directors. Subsequent to the Control Transfer Date, the Board of Directors of the Association shall be as prescribed by the Association's Bylaws. The Board of Directors shall manage the affairs of the Association. The initial Board of Directors shall be appointed by Declarant and shall manage the affairs of the Association until the Control Transfer Date.

Section 3.4. Professional Management. No contract or agreement for professional management of the Association by Declarant nor any other contract between the Association and Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

Section 3.5. Responsibilities of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement of the Common Areas, the determination of Common Expenses, the collection of annual assessments and Special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration and/or the Guidelines for Architectural Approval, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain insurance in accordance with the provisions of Article V hereof. The Association may contract for such services as management, snow removal, security control, trash removal, and such other services as the Association deems necessary or advisable.

Section 3.6. Control and Transfer of Control of Association. Until the Control Transfer Date, the Board of Directors of the Association shall consist of persons appointed by Declarant.

ARTICLE IV

MAINTENANCE

Section 4.1. Maintenance.

(a) The Association shall maintain and keep in good repair the Common Area. The maintenance of the Common Area shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Association's sole cost and expense as Common Expense, of all trees, fences, shrubs, grass, Streets, Common Area parking spaces, bike paths, walks, Drainage System improvements, the accent or special effect lighting system, central signage for the Development including street signage and

other improvements situated upon the Common Area. The Association shall repair or replace any street sign that has incurred substantial damage or has been destroyed or removed within ten (10) business days of notice of such damage, destruction or removal.

(b) In the event that the Board of Directors of the Association determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder or otherwise; or (ii) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repairs, or replacement required and shall advise the Owner to complete the same within three (3) days from the date of such notice; provided, however, that if the same is not capable of completion within the three (3) day period, such notice shall advise the Owner to immediately commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

(c) The cost of snow removal and landscaping maintenance in excess of amounts budgeted therefor shall be paid by the Owners (on the same basis as assessments for Common Expenses are allocated to the Owners in accordance with Section 10.3 hereof) by a Special Assessment. In the event the Association enters into contracts for snow removal and landscaping maintenance while Declarant controls the Association, the Association shall indemnify and hold Declarant harmless from all liability and obligations with respect thereto. This Section 4.1(c) is included herein in recognition of the fact that the costs of snow removal and landscaping maintenance for the Development may substantially exceed amounts budgeted therefor by the Association due to inordinate snow fall, an inordinate number of snow falls during any season, general weather conditions, agricultural conditions and amount of use. Nothing contained herein shall be construed to require that the Association provide snow removal service for the Development. In the event snow removal service is to be provided for the Development an amount therefor shall be included in the annual budget and collected as a Common Expense with the understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual snow removal costs.

ARTICLE V

INSURANCE

Section 5.1. Insurance.

(a) The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) The Board shall also obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a Five Hundred Thousand Dollar (\$500,000) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000) limit per occurrence, and a Two Hundred Fifty Thousand Dollar (\$250,000) minimum property damage limit. Premiums for all insurance on the Common Area shall be Common Expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(c) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(ii) All policies on the Common Area shall be for the benefit of the Owners and their mortgagees as their interests may appear.

(iii) Exclusive authority to adjust losses under policies in force on the Development obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(v) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or

more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Marion County area.

(vi) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(2) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(3) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(4) that no policy may be cancelled, invalidated, or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) that no policy may be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

(d) In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Board's best business judgment, but may not be less than three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 5.2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk casualty insurance on such Owner's Lot and structures constructed thereon. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner

determines not to rebuild or to reconstruct, the individual Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. The Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

Section 5.3. Disbursement of Proceeds. Proceeds of insurance policies written in the name of the Association shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(b) If it is determined that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 5.3(a).

Section 5.4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Development covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Development. Repair or reconstruction, as used in this paragraph means repairing or restoring the Development to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Class B Member and at least seventy-five percent (75%) of the Eligible Votes shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and

no alternative improvements are authorized, then and in that event the damaged portion of the Development shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 5.5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall use general funds or seek a special assessment as permitted in Section 10.4.

ARTICLE VI

NO PARTITION

Section 6.1. No Partition. Except as is permitted in this Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 5.3 in the case of damage or destruction, or unless the applicable portions of the Development have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VII

CONDEMNATION

Section 7.1. Condemnation.

(a) Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners, to be disbursed as set forth in Section 7.1(b) hereof.

(b) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Class B Member and seventy-five (75%) per cent of the Eligible Votes shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the

Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTY

Section 8.1. Annexation without Approval of Owners.

(a) As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property adjacent to the Development as the same exists from time to time whether in fee simple or leasehold, by filing in the Recorder's Office of Marion County, Indiana, an amendment to this Declaration annexing such property. Such amendment to this Declaration shall not require the vote or approval of any Owners. Any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein.

(b) Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument.

(c) The rights reserved unto Declarant to subject Additional Land to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such Additional Land to this Declaration or to the jurisdiction of the Association nor any obligation, if subjected, to build housing of the same type, design, or materials. If such Additional Land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose covenants and restrictions similar to those contained herein upon such Additional Land, nor shall such rights in any manner limit or restrict the use to which such Additional Land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 8.2. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication shall be accepted by the Association and thereafter shall be maintained by the Association as a Common Expense for the benefit of all Owners.

Section 8.3. Amendment. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" attached hereto.

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 9.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.

Section 9.2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn and landscaping service and other common services to each Lot.

Section 9.3. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests located within the properties described in Exhibit "A" attached hereto or hereafter annexed into the Development and conveyed to it by the Declarant.

Section 9.4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation or the Bylaws, and every other right or privilege reasonably to be implied for the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 9.5. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner five (5) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees and paraprofessional fees actually incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 9.6. Right of Entry. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter into structures and upon Lots for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or

occupant of the Lot.

ARTICLE X

ASSESSMENTS

Section 10.1. Purpose of Assessment. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. The word "assessments" as used herein shall mean all assessments referred to herein for Common Expenses, including Special Assessments.

Section 10.2. Creation of Assessments.

(a) There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. Assessments for Common Expenses shall be allocated among all Owners within the Association as described in Section 10.3 hereof and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

(b) Each such assessment, together with interest, costs, and reasonable attorney's fees and paraprofessional fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, all assessments shall be paid annually.

Section 10.3. Computation of Assessment.

(a) It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall list Common Expenses. Each Owner

of any Lot in the Development hereby covenants and agrees to pay to the Association its allocated share (the "Allocated Share") of the annual assessments for Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Allocated Share of each Owner in the Development shall be determined by the Declarant and shall be based upon a combination of the following factors: (i) the projected number of Lots in the Development; (ii) the actual or projected purchase price and/or value of each Lot and any residence thereon; (iii) the square footage of each Lot; (iv) the number of Lots owned by Owners other than the Declarant; and (v) any other factor which the Declarant may determine, from time to time, is in the best interest of Declarant and the Development. The method by which the Declarant allocates the Common Expenses among Owners may be changed from time to time prior to the Control Transfer Date as changes occur in the five (5) factors set forth above. The method of computing each Owner's Allocated Share that is used by the Declarant on the Control Transfer Date shall be the method used by the Board subsequent to the Control Transfer Date unless a change in method is approved by two-thirds (2/3) of all Eligible Votes. The Board shall cause a copy of the budget, the amount of the assessments to be levied against each Lot for the following year and a description of the method used in determining the assessments to be delivered to each Owner at least fifteen (15) days prior to the meeting. Each segment of the budget including, without limitation, the assessments for Common Expenses shall become effective unless disapproved at the meeting by a vote of at least two-thirds (2/3) of a Quorum of the Members.

(b) Notwithstanding the foregoing, however, in the event that (i) the proposed budget or the assessments for Common Expenses are disapproved in accordance with Section 10.3(a), or (ii) the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget (or such portion thereof or assessments as shall have been disapproved in accordance with the foregoing) shall have been determined as provided herein, the budget (or applicable portion thereof or assessments) in effect for the then current year shall continue for the succeeding year.

(c) In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year, except that so long as the Declarant controls the Association, and subject to Declarant's rights to impose Special Assessments as described in Section 4.1(c) hereof, Declarant may, but shall be under no obligation, to fund such deficit; provided, however, that Declarant shall be reimbursed by the Association for any deficits so funded, together with interest at ten percent (10%) per annum until so reimbursed, from available surpluses in later years or through Special Assessments. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more Special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessments due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid, with interest, as required above before such excess shall be so credited to Owners.

(d) During the first year following the date of recordation of this Declaration, the total assessments per Lot per year for Common Expenses shall not exceed \$350.00.

Section 10.4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy Special Assessments in any year. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

Section 10.5. Lien for Assessments.

(a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees and paraprofessional fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Marion County, Indiana, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

(b) All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 10.6. Effect of Nonpayment of Assessments: Remedies of the Association.

(a) Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

(b) All payments shall be applied first to costs and attorney and paraprofessional fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or Special Assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or Special Assessments which are the subject matter of suit in the order of their coming due.

Section 10.7. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost for the Common Area. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment for Common Expenses as provided in Section 10.3. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 10.8. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees and paraprofessional fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses shall be deemed to be Common Expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 10.9. Capitalization of Association. Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to \$100.00. All such amounts shall be set aside as capital replacement/working capital reserve, and shall not be utilized by Declarant or the Association until after the Control Transfer Date.

Section 10.10. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to an Owner (who is not a commercial builder), or by an Owner who is a commercial builder to an Owner who is an end-user and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to an Owner; provided, however, that Declarant may, in its sole and absolute discretion delay the starting date for assessments for as long as Declarant shall deem appropriate in its sole and

absolute discretion but assessments shall in all events be payable commencing on the first day of the first month following the date the Lot is occupied for the residential purposes or is suitable for such occupancy as evidenced, for example, by the appropriate official of Marion County, Indiana, or an architect issuing a certificate of occupancy or its equivalent stating that the residential structure on such Lot is substantially complete and available for occupancy.

Section 10.11. Assessments by Declarant.

(a) Declarant covenants and agrees to pay the full amount of the annual assessment for each Lot occupied for residential purposes that it owns; notwithstanding anything contained herein to the contrary, the Declarant shall not be required to pay any assessments for any Lots not occupied for residential purposes that it owns, including but not limited to model homes.

(b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

Section 10.12. Ownership of Multiple Contiguous Lots for One Single-Family Residence. Any Owner of contiguous Lots in the Development, including one Lot and a portion of another Lot, who desires to use more than one of such Lots as the site for one single-family residence, must apply for approval of the same in writing to the DCC, which approval shall be given or withheld by the DCC in the DCC's sole discretion. If the DCC approves such request (a "Multiple Lot Approval"), the multiple Lots constituting the site for such single-family residence shall, for so long as the multiple Lots remain improved with only one single-family residence, be treated as a single Lot for purposes of this Declaration, including without limitation, for purposes of the voting rights set forth in Section 3.2 of this Declaration. In connection with the Owner's desire to use multiple contiguous Lots for one single-family residence, each such Owner shall be responsible for obtaining, at its sole expense, all required government approvals, including any required platting or replatting of the affected property. In addition, each Owner shall comply with all applicable laws, regulations and zoning ordinances, including without limitation, all yard setback requirements, in connection with the use of multiple contiguous Lots for one single-family residence.

ARTICLE XI

ARCHITECTURAL STANDARDS

Section 11.1. Architectural Standards Jurisdiction. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Development Control Committee established herein. The DCC shall have the right to unilaterally promulgate, modify, and amend at any time and from time to time, on behalf of the Board of Directors and the Association, architectural, development and site planning guidelines and standards, and application and approval procedures, which shall be binding on all Owners of Lots within the Development, as determined in the reasonable discretion of the DCC (the "Guidelines for Architectural Approval"). The Guidelines for Architectural Approval will include requirements and restrictions regarding drainage, landscaping, tree removal, sidewalks, etc., as well as new construction and the construction of improvements. Such guidelines and amendments thereto shall be those of the Association and may be recorded in the Office of the Recorder of Marion County, Indiana, by the Declarant until the Control Transfer Date and subsequent thereto by the Association. The Guidelines for Architectural Approval shall be made available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Development and who shall conduct their operations strictly in accordance therewith. Compliance with the Guidelines for Architectural Approval shall not relieve Owners of their obligation to comply with any and all applicable zoning ordinances, restrictions, development statements, or any other similar requirement. A copy of the Guidelines for Architectural Approval is attached hereto as Exhibit D.

No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no planting or removal of plants, trees, or shrubs, fences, walls or other structures shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the DCC has been obtained.

Until all the real estate included in the Development has been conveyed by Declarant to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the DCC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of this right prior to that time, except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the DCC.

Section 11.2. New Construction. The DCC shall have exclusive jurisdiction over all original construction on any portion of the Development.

Section 11.3. Modifications. The DCC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures thereon and the open space, if any, appurtenant thereto; provided, however, the DCC may delegate this authority to the appropriate board or committee of any residential association subsequently created or subsequently subjected

to this Declaration so long as the DCC has determined that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the DCC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired.

Section 11.4. Procedures for Approval. The procedures for approval by the DCC shall be as set forth in the Guidelines for Architectural Approval.

Section 11.5. Power of Disapproval. The DCC may refuse to grant approvals required under this Article when:

(a) the plans, specifications, drawings or other materials submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of these restrictions;

(b) the design or color scheme of a proposed repainting, modification or improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, all as determined in the sole discretion of the DCC; or

(c) the proposed improvement, construction or modification, or any part thereof, would be contrary to the interests, welfare or rights of all or any part of the other Owners, all as determined in the sole discretion and opinion of the DCC.

Section 11.6. Liability of Committee. Neither the DCC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other material submitted to it, nor for any defects in any work done according thereto, nor for any damages associated with their approval or disapproval of any matters subject to this Article.

Section 11.7. Inspection. The DCC or its duly authorized agents may inspect work being performed with their permission to assure compliance herewith, and any applicable regulations of the Association, and an easement for such inspection is hereby reserved over and upon each and every Lot in the Development.

Section 11.8. Declarant Improvements. The DCC shall have no powers with respect to any construction, improvements or modifications undertaken by the Declarant (or any assignee of Declarant if the Declarant has approved the plans therefor) or any improvements approved by Declarant at any time.

Section 11.9. Remedies for Failure to Obtain Approval. In the event any construction or modifications are made without first obtaining approval of the DCC as required herein or any construction is being performed other than in accordance with DCC approved plans and architectural

guidelines and standards, the Declarant, the Association and the DCC shall have the powers of enforcement granted to the Association generally for purposes of this Declaration and may require any modifications, construction, changes or improvements undertaken or installed without or contrary to the approval of the DCC and such architectural guidelines and standards to be removed or renovated by whatever means the Declarant, the Association and/or DCC deem appropriate, with the costs thereof, including costs of collection and attorneys fees and paraprofessional fees, to become a lien against the defaulting Owner's Lot in the manner described in Section 10.5 hereof.

ARTICLE XII

MORTGAGEE RIGHTS

Section 12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an Eligible Mortgage Holder), will, upon payment of the reasonable expense of the Association associated therewith, be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) condemnation, damage or destruction to the Development or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of Eligible Mortgage Holders.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, so long as Indiana law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law, for successive periods not to exceed the period permitted by such law, provided such renewal or extension is approved by at least two-thirds (2/3) of all Eligible Votes. Further, no such renewal or extension shall be effective unless there is filed for

record in the Office of the Recorder of Marion County, Indiana, on or before the effective date thereof an instrument executed by the President and Secretary of the Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved by the Owners. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 13.2. Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing. Further, so long as Declarant owns any property in the Development or capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect, in the opinion of Declarant, the substantive rights of any Owner or mortgagee hereunder.

(b) In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Eligible Votes and the consent of the Declarant, so long as Declarant has an unexpired option to subject property to this Declaration. Amendments to this Declaration shall become effective upon recordation in the Hamilton County, Indiana records, unless a later effective date is specified therein.

(c) Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to bring this Declaration into compliance with the requirements of any public agency having jurisdiction thereof or of any agency guaranteeing, insuring, or approving Mortgages, so long as Declarant owns any Lots within the Development or to enable reasonable development of and construction on the Lots; provided, that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any mortgagee, nor which substantially impairs in the reasonable opinion of the Declarant, the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. Declarant further reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, which amendment shall

be fully effective in accordance with its terms:

(i) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Declaration; or

(ii) to insert such provisions clarifying matters or questions arising under this Declaration as are necessary or desirable and are not contrary to or inconsistent with this Declaration as theretofore in effect; or

(iii) to amend or modify this Declaration in any manner which in the reasonable opinion of the Declarant does not adversely affect in any material respect the rights of any mortgagee or Owner, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 13.3. Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including attorney's fees and paraprofessional fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 13.4. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, cable television, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Development. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 13.5. Construction and Sale. Notwithstanding any provisions contained in the Declaration to the contrary, so long as Declarant owns any Lots, it shall be expressly permissible for Declarant, free of any and all charges therefor, to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Section 13.5 shall terminate upon the earlier of (a) twenty-five (25) years from the date this Declaration is recorded or (b) upon the Declarant's recording a written statement that all sales activity has ceased.

Section 13.6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 13.7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable. If any of the provisions hereof shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the provisions hereof.

Section 13.8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 13.9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of Elizabeth, Queen of England.

ARTICLE XIV

ENFORCEMENT

Section 14.1. In General. Any party to whose benefit the restrictions herein contained inure, including Declarant and the Association, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration at the sole cost and expense of the party violating this Declaration (which cost and expense shall become a lien on the violating Owner's Lot subject

to foreclosure in the manner provided in Article X), but neither Declarant nor Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.

Section 14.2. Government Enforcement. The Department of Metropolitan Development of Marion County, Indiana, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor the Department of Metropolitan Development of Marion County, Indiana.

Section 14.3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the provisions of this Declaration shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence, or continuation of such violation or violations of this Declaration.

ARTICLE XV

PRIVATE AMENITIES AND SERVICES

Section 15.1. Private Amenities and Services. The Drainage System, Streets, and other elements comprising the Common Area shall be owned and maintained by the Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or liquidation, dissolution or winding up of the affairs of the Association, the Association shall, after paying or making provision for the payment of all the liabilities of the Association, distribute all the assets of the Association exclusively for the purposes of the Association in such manner, or to such organization or organizations as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed by the Judge of the Circuit Court of Marion County, Indiana, exclusively for such purposes or to such organization or organizations, as such Court shall determine, which are organized and operated exclusively for such purpose.

ARTICLE XVI

LIMITATION ON DECLARANT'S LIABILITY

Section 16.1. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association. If any judgment is ever levied against Declarant (or its assignee), the same is hereby agreed to be limited to the extent of Declarant's (or such assignee's) interest in the

Development; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon any other assets of Declarant (or its assignee).

ARTICLE XVII

ADDITIONAL EASEMENTS AND RESTRICTIONS

Section 17.1. Easements. Lots are subject to perpetual non-exclusive drainage easements, utility easements, resident access easements, island easements, and landscape easements either separately or in combination, as shown on the Plats and Plans, which are reserved for the use of the Declarant, Association, Lot Owners, public utility companies and governmental agencies as follows and which are all subject to such rules and regulations as the Board may promulgate:

(a) Drainage Easements (D.E.) - Are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, including stormwater retention or detention areas, to serve the needs of the Development and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of the Owner to maintain the drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Declarant. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(b) Utility Easements (U.E.) - Are created for the use of public utility companies, not including transportation companies, for the installation of pipes, mains, ducts, communication lines (which shall include cable T.V.), and such other further public services the Declarant may deem necessary. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(c) Sanitary Sewer Easements (S.E.) -- Are created to provide paths and courses for sewage to serve the needs of the Development and for the use of the local governmental agency having jurisdiction over the sanitary waste disposal system of said city and/or county designated to serve the Development for the purposes of installation and maintenance of sewers that are part of said system. Each Owner of a Lot must connect with any public sanitary sewer available. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(d) Island Easements (I.E.) -- Are created to provide island areas in public and/or private streets for the use of the Declarant and the Association in landscaping and maintaining said landscaping to enhance the overall appearance, value and desirability of the Development. It shall be the responsibility of the Association to maintain such easement areas. Under no circumstances shall the easement be blocked in any manner. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant. These easement areas shall be subject to all rules and regulations of the City of Indianapolis Department of Transportation and any

other municipal or other applicable governmental office or agency.

(e) Landscape Easements (L.S.E.) -- Are created to provide areas for the use of the Declarant and the Association in landscaping and maintaining said landscaping to enhance the overall appearance, value and desirability of the Development. It shall be the responsibility of the Association to maintain such easements. Under no circumstances shall the easement be blocked in any manner. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(f) Private Access Area (I.& E.E.) -- Are created to provide areas for the use of the Declarant and the Association in constructing and maintaining private streets and roadways for use by the Owners, occupants and their guests and invitees. It shall be the responsibility of the Association to maintain such easements. Under no circumstances shall the easements be blocked in any manner. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant.

(g) Buffer Easements (B.E.)-- Are created to provide for visual buffering between adjoining properties. The Association may augment the Buffer Easement areas with landscaping, and thereafter, it shall be the responsibility of each Owner to maintain the Buffer Easement areas on such Owner's Lot in their current condition, and to replace any landscaping which is removed or which must be removed due to the poor condition of such landscaping.

Section 17.2. Floodway Restrictions. No structures may be built on that portion of any Lots which lie within a floodway, flood plain or wetlands regulated under Section 404 of the Clean Waters Act ("Wetlands"). Any landscaping or other improvements made to any part of the Lots, and any alterations thereon, shall be subject not only to approval of the Declarant (or the Association), but also to the prior approval of the Indiana Department of Natural Resources, its successors and assigns, and all other governmental agencies having jurisdiction thereof. Any Wetlands within the Development shall not be disturbed.

Section 17.3. Common Areas. Those areas designated as "Common Area" on any Plats and Plans are hereby declared to be Common Area. The Common Area is hereby reserved for the use of the Declarant during the development period, for the use of the Association after the development period, and for the use and enjoyment of all the Owners subject to the limitations contained herein, and further subject to the right of the Association to promulgate reasonable rules and regulations governing such use and enjoyment. Each Owner shall be responsible for mowing and maintaining any Common Area located directly between his Lot line and any lake unless and until the Association shall have elected to take over such maintenance. There shall be absolutely no swimming or boating in any lakes, nor any other use of any such lakes, except as may be permitted by the Declaration. The Owners of Lots in the Development shall take and hold title to the Lots subject to the rights herein granted with respect to the Common Area.

Section 17.4. Lot Access. All Lots within the Development shall be accessed from the interior Streets of the Development.

Section 17.5. Construction Procedure. During construction, reasonable care shall be taken by the builders of the Lots therein to protect all public and private streets from decomposition due to construction. During construction, sites shall be kept as clean as possible to avoid blowing trash and to prevent mud from coming onto other portions of the Development or adjoining properties. Builders shall keep streets reasonably clean and free of dirt/mud and debris during construction periods and neither the Declarant nor the Association shall have responsibility or liability for the streets during construction.

Section 17.6. Streets. The Streets as shown on the Plats and Plans shall remain private streets and become the property of the Association, unless expressly dedicated to the public by specific notation on the Plats and Plans or by separate instrument.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first above-written.

THE PRESERVE AT EAGLE CREEK, LLC,
an Indiana limited liability company

By: SCM REAL ESTATE DEVELOPMENT
CORP., an Indiana corporation, its managing
member



By: _____
Michael J. Klein, Secretary

STATE OF Indiana)
) SS:
COUNTY OF Hamilton)

Before me, a Notary Public in and for said County and State, personally appeared Michael J. Klein, the Secretary of SCM Real Estate Development Corp., an Indiana corporation, which is the managing member of The Preserve at Eagle Creek, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, Easements, and Restrictions of The Preserve at Eagle Creek.

WITNESS my hand and Notarial Seal this 25 day of May, 2001.

Pasha N Wade
Notary Public (Signature)

PASHA N WADE
(Printed Name)

My Commission Expires:

7-27-06

County of Residence:

Hamilton

This instrument was prepared by John A. Girod, Esq., ICE MILLER, One American Square, Box 82001, Indianapolis, IN 46282; Telephone: (317) 236-2255.

EXHIBIT A
LEGAL DESCRIPTION

Part of the Southwest Quarter of Section 21, and part of the Northwest and Southwest Quarters of Section 28, all in Township 17 North, Range 2 East of the Second Principal Meridian, in Marion County, Indiana, described as follows:

Beginning at the Northeast corner of said Southwest Quarter of Section 28, being the Northeast corner of land described in Instrument number 77-016251 recorded among the records of Marion County, Indiana; thence South 00 degrees 10 minutes 33 seconds East (assumed bearing) along the East line of said Southwest Quarter Section and the East line of said Instrument number 77-016251 287.54 feet (301.35 feet, deed) to the centerline of Crown Point Road; thence along the Southerly line of land described in said Instrument number 77-016251 and the center line of Crown Point Road the following three (3) courses: 1) North 26 degrees 27 minutes 59 seconds West 31.89 feet (48.74 feet, deed) to the point of curvature of a curve concave Southwesterly with a central angle of 26 degrees 48 minutes 07 seconds and a radius of 272.00 feet (deed and measured); 2) Northwesterly along said curve an arc distance of 127.24 feet (deed and measured) (said curve being subtended by a long chord bearing North 39 degrees 52 minutes 02 seconds West 126.08 feet) to the point of tangency thereof; 3) North 53 degrees 16 minutes 06 seconds West along said centerline 258.80 feet (deed and measured) to a point on the South line of the Southeast Quarter of the Northwest Quarter of said Section 28, said point being on the North line of land described in Instrument number 77-016251; thence North 88 degrees 35 minutes 12 seconds East along said South line of the Southeast Quarter of the Northwest quarter of said Section 28 and the North line of said land described in Instrument number 77-016251 a distance of 21.15 feet; thence along the Northerly line of Crown Point Cemetery as per plat thereof recorded among the records of Marion County Indiana in Plat Book 23, Page 30, the following two (2) courses: 1) North 69 degrees 16 minutes 05 seconds West 164.00 feet; 2) South 57 degrees 54 minutes 19 seconds West along said South line 787.57 feet to the Southwest corner of the East Half of said Northwest Quarter of Section 28; thence North 00 degrees 01 minutes 11 seconds West along the West line of said East Half 1316.27 feet to the Southeast corner of the Northwest Quarter of the Northwest Quarter of said Section 28; thence South 88 degrees 38 minutes 25 seconds West along the South line of the Northwest Quarter of the Northwest quarter of said Section 28 1290.55 feet to point being North 88 degrees 38 minutes 25 seconds East 30.00 feet from the Southwest corner of the Northwest Quarter of said Northwest Quarter of section 28, said point being the Southeast corner of the 0.91 acre exception to land described in Instrument number 77-016251 as recorded among the records of Marion County, Indiana; thence North 00 degrees 08 minutes 10 seconds East along the East line of said exception 1317.57 feet to a point being North 88 degrees 41 minutes 39 seconds East 30.01 feet from the Northwest corner of said Northwest Quarter of Section 28, said point being the Northeast corner of said exception, said point also being on the South line of land described in Instrument number 77-016251 as recorded among the records of Marion County, Indiana; thence North 88 degrees 41 minutes 39 seconds East along the South line of the said Southwest Quarter of Section 21 and the South line of said land described in Instrument number 77-016251, 169.99 feet to the Southeast corner of said land; thence North 00 degrees 11 minutes 06 seconds West along the East line of said land described in Instrument number 77-16251 and parallel with West line of said Southwest Quarter of Section 21, 740.00 feet to the Northeast corner of said land; thence South 88 degrees 41 minutes 30 seconds West along the North line of said land described in Instrument number 77-16251 and parallel with the South line of said Southwest Quarter of Section 21, 200.00 feet to point on the West line of said Southwest Quarter of Section 21; thence North 00 degrees 11 minutes 06 seconds West along said West line 1888.77 feet to the Northwest corner of said Southwest Quarter of Section 21; thence North 88 degrees 27 minutes 43 seconds East along the North line of the said Southwest Quarter of Section 21, 330.00 feet to the Northwest corner of land described in Instrument number 92-32360 as recorded among the records of Marion County, Indiana; thence South 00 degrees 11 minutes 06 seconds East along the West line of said land described in Instrument number 92-32360 and parallel with the West line of said Southwest Quarter of Section 21, 273.27 feet (273.16 feet, deed); thence North 88 degrees 29 minutes 07

seconds East along the South line of said land described in Instrument number 92-32360 a distance of 320.15 feet to the Westerly right-of-way line of Interstate 65; thence (the following 16 courses being along said westerly right-of-way line); 1) South 27 degrees 42 minutes 00 seconds East 21.53 feet; 2) North 00 degrees 11 minutes 24 seconds West 110.32 feet; 3) South 31 degrees 36 minutes 57 seconds East 16.77 feet; 4) South 34 degrees 32 minutes 43 seconds East 106.47 feet 5) South 31 degrees 07 minutes 25 seconds East 87.25 feet; 6) South 27 degrees 42 minutes 00 seconds East 457.20 feet; 7) South 25 degrees 57 minutes 54 seconds East 500.23 feet; 8) South 27 degrees 42 minutes 00 seconds East 242.00 feet; 9) South 01 degrees 08 minutes 06 seconds East 11.18 feet; 10) South 29 degrees 47 minutes 25 seconds East 548.38 feet; 11) South 23 degrees 07 minutes 34 seconds East 250.80 feet; 12) South 28 degrees 31 minutes 06 seconds East 700.07 feet; 13) South 14 degrees 33 minutes 58 seconds East 154.03 feet; 14) South 33 degrees 05 minutes 03 seconds East 762.87 feet; 15) South 19 degrees 08 minutes 24 seconds East 157.71 feet; 16) South 46 degrees 27 minutes 48 seconds East 157.64 feet to the East line of said Northwest Quarter of Section 28; thence South 00 degrees 10 minutes 33 seconds East 1409.83 feet to the point of beginning containing 179.175 acres, more or less, subject to the rights-of-way, easements, and restrictions.

EXCEPT a part of the Southeast Quarter of the Northwest Quarter of section 28, Township 17 North, Range 2 East of the Second Principal Meridian, in Marion County, Indiana, being comprised of that land described in Instrument number 77-44243 recorded among the records of Marion County, Indiana and also that land described in a Corporate Warranty Deed dated October 24, 1997, combined and described as follows:

Commencing at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 28; thence North 00 degrees 01 minutes 11 seconds West (assumed bearing) (North 00 degrees 00 minutes 00 seconds, Instrument Number 77-44243), along the West line of said quarter-quarter section 20.95 feet (Instrument number 77-44243 and measured) to the centerline of Crown Point Road projected westerly; thence North 87 degrees 26 minutes 19 seconds East (North 87 degrees 27 minutes 30 seconds East, Instrument number 77-44243), along said projection and centerline, 415.81 feet (Instrument number 77-44243 and measured) to the POINT OF BEGINNING; thence North 02 degrees 16 minutes 41 seconds West (North 02 degrees 15 minutes 30 seconds West, Instrument number 77-44243) 177.84 feet to the Southernmost corner of land described in said Corporate Warranty Deed; thence North 23 degrees 50 minutes 15 seconds West (corporate warranty deed and measured) along the Westerly line of land described in said Corporate Warranty Deed 152.43 feet (corporate warranty deed and measured); thence North 56 degrees 42 minutes 08 seconds East (North 56 degrees 42 minutes 30 seconds East, corporate warranty deed) along the Northerly line of land described in said Corporate Warranty Deed 92.31 feet (92.32 feet, corporate warranty deed) to the most northerly corner thereof, being the Northwest corner of that land described in Instrument number 77-44243; thence North 59 degrees 44 minutes 48 seconds East (North 59 degrees 45 minutes 59 seconds East, Instrument number 77-44243) 54.40 feet; thence South 67 degrees 10 minutes 15 seconds East (South 67 degrees 09 minutes 04 seconds East, Instrument number 77-44243) 140.22 feet (140.71 feet, Instrument number 77-44243); thence South 23 degrees 52 minutes 00 seconds East (Instrument number 77-44243 and measured) 88.60 feet (Instrument number 77-44243 and measured); thence South 24 degrees 04 minutes 59 seconds East (South 24 degrees 04 minutes 56 seconds East, Instrument number 77-44243) 226.12 feet (Instrument number 77044243 and measured) to the centerline of Crown Point Road; thence South 72 degrees 32 minutes 09 seconds West (South 72 degrees 40 minutes 10 seconds West, Instrument number 77-44243) along said centerline, 152.87 feet (153.35 feet, Instrument number 77-44243); thence South 87 degrees 26 minutes 19 seconds West (South 87 degrees 27 minutes 30 seconds West, Instrument number 77-44243) along said centerline, 167.17 feet (Instrument number 77-44243 and measured) to the point of beginning, containing 2.208 acres, more or less, subject to rights-of-way, easements, and restrictions. (Containing 176.928 Acres, net)

EXHIBIT B

2000-ZON-147(2000-00-022)

Inst. # 2001-009279

RECEIVED FOR RECORD THE PRESERVE AT EAGLE CREEK

01 MAR 2001 PM 12:42

STATEMENT OF COMMITMENTS
WANDA MARTIN
MARION COUNTY RECORDER



**COMMITMENTS CONCERNING THE USE OR DEVELOPMENT OF REAL ESTATE
MADE IN CONNECTION WITH A REZONING OF PROPERTY OR PLAN
APPROVAL**

In accordance with I.C. 36-7-4-613 or I.C. 36-7-4-614, the owner (the "Owner") of the real estate located in Marion County, Indiana, which is described below (the "Real Estate"), makes the following COMMITMENTS concerning the use and development of the Real Estate for a residential subdivision consisting of not more than 222 single family homes, as more particularly described on the Conceptual Site Plan attached hereto as Attachment "B" (the "Subdivision"):

Legal Description:

Part of the Southwest Quarter of Section 21, and part of the Northwest and Southwest Quarters of Section 28, all in Township 17 North, Range 2 East of the Second Principal Meridian, in Marion County, Indiana, described as follows:

Beginning at the Northeast corner of said Southwest Quarter of Section 28, being the Northeast corner of land described in Instrument number 77-016251 recorded among the records of Marion County, Indiana; thence S00E10'33"E (assumed bearing) along the East line of said Southwest Quarter Section and the East line of said Instrument number 77-016251 287.54 feet (301.35 feet, deed) to the centerline of Crown Point Road; thence along the Southerly line of land described in said Instrument number 77-016251 and the centerline of Crown Point Road the following three (3) courses: 1) N26E27'59"W 31.89 feet (48.74 feet, deed) to the point of curvature of a curve concave Southwesterly with a central angle of 26E48'07" and a radius of 272.00 feet (deed and measured); 2) Northwesterly along said curve an arc distance of 127.24 feet (deed and measured) (said curve being subtended by a long chord bearing N39E52'02"W 126.08 feet) to the point of tangency thereof; 3) N53E16'06"W along said centerline 258.80 feet (deed and measured) to a point on the South line of the Southeast Quarter of the Northwest Quarter of said Section 28, said point being on the North line of land described in Instrument number 77-016251; thence N88E35'12"E along said South line of the Southeast Quarter of the Northwest Quarter of said Section 28 and the North line of said land described in Instrument number 77-016251 a distance of 21.15 feet; thence along the Northerly line of Crown Point Cemetery as per plat thereof recorded among the records of Marion County Indiana in Plat Book 23, Page 30, the following two (2) courses: 1) N69E16'05"W 164.00 feet; 2) S57E54'19"W 121.15 feet to a point on the south line of the said Northwest Quarter of section 28; thence S88E35'12"W along said South line 787.57 feet to the Southwest corner of the East Half of said Northwest Quarter of Section 28; thence N00E01'11"W along the West line of said East Half 1316.27 feet to the Southeast corner

of the Northwest Quarter of the Northwest Quarter of said Section 28; thence S88E38'25"W along the South line of the Northwest Quarter of the Northwest Quarter of said Section 28 1290.55 feet to point being N88E38'25"E 30.00 feet from the Southwest corner of the Northwest Quarter of said Northwest Quarter of Section 28, said point being the Southeast corner of the 0.91 acre exception to land described in Instrument number 77-16251 as recorded among the records of Marion County, Indiana; thence N00E08'10"E along the East line of said exception 1317.57 feet to a point being N85E41'39"E 30.01 feet from the Northwest corner of said Northwest Quarter of Section 28, said point being the Northeast corner of said exception, said point also being on the South line of land described in Instrument number 77-16251 as recorded among the records of Marion County, Indiana; thence N88E41'39"E along the South line of the said Southwest Quarter of Section 21 and the South line of said land described in Instrument number 77-16251, 169.99 feet to the Southeast corner of said land; thence N00E11'06"W along the East line of said land described in Instrument number 77-16251 and parallel with the West line of said Southwest Quarter of Section 21, 740.00 feet to the Northeast corner of said land; thence S88E41'39"W along the North line of said land described in Instrument number 77-16251 and parallel with the South line of said Southwest Quarter of Section 21, 200.00 feet to point on the West line of said Southwest Quarter of Section 21; thence N00E11'06"W along said West line 1888.77 feet to the Northwest corner of said Southwest Quarter of Section 21; thence N88E27'43"E along the North line of the said Southwest Quarter of Section 21, 330.00 feet to the Northwest corner of land described in Instrument number 92-32360 as recorded among the records of Marion County, Indiana; thence S00E11'06"E along the West line of said land described in Instrument number 92-32360 and parallel with the West line of said Southwest Quarter of Section 21, 273.27 feet (273.16 feet, deed); thence N88E28'07"E along the South line of said land described in Instrument number 92-32360 a distance of 320.15 feet to the Westerly right-of-way line of Interstate 65; thence (the following 16 courses being along said westerly right-of-way line) 1.) S27E42'00"E 21.53 feet; 2.) N00E11'24"W 110.32 feet; 3.) S31E36'57"E 16.77 feet; 4.) S34E32'43"E 106.47 feet; 5.) S31E07'25"E 87.25 feet; 6.) S27E42'00"E 457.20 feet; 7.) S25E58'54"E 500.23 feet; 8.) S27E42'00"E 242.00 feet; 9.) S01E08'06"E 11.18 feet; 10.) S29E47'25"E 548.38 feet; 11.) S23E07'34"E 250.80 feet; 12.) S28E31'06"E 700.07 feet; 13.) S14E33'58"E 154.03 feet; 14.) S33E05'03"E 762.87 feet; 15.) S19E08'24"E 157.71 feet; 16.) S46E27'48"E 157.64 feet to the East line of said Northwest Quarter of Section 28; thence S00E10'33"E 1409.83 feet to the point of beginning containing 179.175 acres, more or less, subject to rights-of-way, easements, and restrictions.

EXCEPT a part of the Southeast Quarter of the Northwest Quarter of Section 28, Township 17 North, Range 2 East of the Second Principal Meridian, in Marion County, Indiana, being comprised of hat land described in Instrument number 77-44243 recorded among the records of Marion County, Indiana and also that land described in a Corporate Warranty Deed dated October 24, 1997, combined and described as follows:

Commencing at the Southwest corner of the Southeast Quarter of the Northwest Quarter of Section 28; N00E01'11"W (assumed bearing) (N00E00'00", Instrument number

77-44243), along the West line of said quarter-quarter section 20.95 feet (Instrument number 77-44243 and measured) to the centerline of Crown Point Road projected westerly; thence N87E26'19"E (N87E27'30"E, Instrument number 77-44243), along said projection and center line, 415.81 feet (Instrument number 77-44243 and measured) to the POINT OF BEGINNING; thence N02E16'41"W (N02E15'30"W, Instrument number 77-44243) 177.84 feet to the Southernmost corner of land described in said Corporate Warranty Deed; thence N23E50'15"W (corporate warranty deed and measured) along the Westerly line of land described in said Corporate Warranty Deed 152.43 feet (corporate warranty deed and measured); thence N56E42'08"E (N56E42'30"E, corporate warranty deed) along the Northerly line of land described in said Corporate Warranty Deed 92.31 feet (92.32 feet, corporate warranty deed) to the most northerly corner thereof, being the Northwest corner of that land described in Instrument number 77-44243; thence N59E44'48"E (N59E45'59"E, Instrument number 77-44243) 54.40 feet; thence S67E10'15"E (S67E09'04"E, Instrument number 77-44243) 140.22 feet (140.71 feet, Instrument number 77-44243); thence S23E52'00" (Instrument number 77-44243 and measured) 88.60 feet (Instrument number 77-44243 and measured); thence S24E04'59"E (S24E04'56"E, Instrument number 77-44243) 226.12 feet (Instrument number 77-44243 and measured) to the centerline of Crown Point Road; thence S72E32'09"W (S72E40'10"W, Instrument number 77-44243) along said centerline, 152.87 feet (153.35 feet, Instrument number 77-44243) thence S87E26'19"W (S87E27'30"W, Instrument number 77-44243) along said centerline, 167.17 feet (Instrument number 77-44243 and measured) to the point of beginning, containing 2.208 acres, more or less, subject to rights-of-way, easements and restrictions.

Statement of COMMITMENTS:

1. **OPEN OCCUPANCY.** The Owner agrees to abide by the Open Occupancy and Equal Employment Opportunity Commitments required by Metropolitan Subdivision Commission Resolution No. 85-R-69, 1985, which commitments are attached hereto and incorporated herein by reference as Attachment "A".
2. **EROSION CONTROL PLAN.** Owner shall prepare a detailed Erosion Control Plan for the Subdivision. Such plan shall be submitted to the Administrator of the Department of Metropolitan Development (the "Administrator") for approval prior to commencement of construction of the Subdivision. Simultaneously with submission of the proposed Erosion Control Plan to the Administrator, Owner shall provide a copy thereof to the President of Pike Township Residents' Association ("PTRA"). The PTRA shall be entitled to deliver its comments, if any, to the Administrator for consideration prior to such approval of the same. However, the parties agree that such plan shall include a dry creek facility and natural filtration system (similar to the facilities and the process in place at The Preserve at Fall Creek, situated at the intersection of East 79th Street and Fall Creek Road, Indianapolis, Indiana) to protect water run-off into Fishback Creek.

3. **WETLANDS.** Owner shall identify, prior to commencement of construction of the Subdivision, all wetlands situated within the Real Estate. Owner shall not undertake any disturbance of the wetland areas.

4. **RIGHT-OF-WAY DEDICATION/IMPROVEMENT.**
 - a. **Dedication.** Owner shall dedicate to DCAM a 35' half right-of-way along the entire frontage of the Subdivision along West 82nd Street. Owner shall dedicate to DCAM a 25' half right-of-way along Crown Point Road from the point of entry of the Subdivision easterly to Wilson Road.

 - b. **Access.** No direct access to individual lots will be permitted from the Subdivision to Crown Point Road.

 - c. **Improvement.** Owner shall install a westbound left turn in, right turn out and passing blister adjacent to the entryway from the Subdivision onto West 82nd Street. Owner shall improve Crown Point Road from the point of entry from the Subdivision easterly to Wilson Road by extending the pavement to a total of 25' in width. Owner shall install a right turn in lane into the Subdivision from Crown Point Road.

5. **HOMEOWNERS' ASSOCIATION.** A Homeowners' Association will be formed prior to conveyance of the first lot to a resident in order to maintain the common areas within the Subdivision.

6. **SINGLE FAMILY HOMES.** All single family homes constructed within the Subdivision shall have a minimum of 2200 square feet for two-story homes, and a minimum of 1800 square feet for single-story homes. The first floor of the homes situated along the perimeter roads of the Subdivision shall be constructed primarily of brick, stone, drivet or other natural material (including so called "hardy plank"), except for doors, soffits, windows and other ornamentation.

7. **LANDSCAPE PLAN.** Owner shall prepare a detailed Landscape Plan for the Subdivision prior to commencement of construction. Such Landscape Plan shall be prepared and delivered to the Administrator for approval prior to commencement of construction of the Subdivision. Simultaneously with delivery of such proposed Landscape Plan to the Administrator, a copy of the same shall be provided to the President of the Pike Township Residents' Association so as to allow it sufficient time to provide its comments, if any, to the Administrator in connection with such review of the proposed Landscape Plan. The existing wooded areas along Crown Point Road and the westerly perimeter of the Subdivision shall be maintained, to the extent practicable, in their natural state. In those areas along Crown Point Road and the western perimeter of the Subdivision that do not contain existing trees, the Owner, in consultation with the Traders Point Residents' Association ("TPRA"), will prepare a landscape buffer plan which contemplates supplemental planting of deciduous trees and evergreen trees

designed to minimize the visual impact to the adjoining neighbors. The Landscape Plan for the Subdivision shall be implemented and maintained by the Owner. Notwithstanding the foregoing, once an individual lot has been sold by the Owner, such lot owner shall be responsible for maintaining his/her/its lot in accordance with the Landscape Plan. Further, once control of the Subdivision Common Areas has been transferred by the Owner to The Preserve at Eagle Creek Homeowners' Association ("Homeowners' Association"), the Homeowners' Association shall be responsible for maintaining the Common Areas located within the Subdivision in accordance with the Landscape Plan as set forth in the Declaration of Covenants, Conditions and Restrictions for the Subdivision.

8. **TREE PRESERVATION PLAN.** Prior to any construction activities upon the Real Estate, a Tree Preservation Plan shall be developed and submitted to the Administrator for review and approval. Owner shall submit with the Tree Preservation Plan three (3) 20' X 20' sample areas inventorying all trees 4" in diameter or larger (to be measured at 6" above the ground), which shall include the common names of such trees. A copy of such tree inventories shall also be submitted to the Department of Indy Parks and Recreation for review and comment. Owner shall provide all builders constructing homes within the Subdivision with reasonable notice concerning the tree preservation measures to be complied with in accordance with the Tree Preservation Plan.

9. **PRESERVATION AREAS/ CONSERVATION AREAS.** Owner shall take all reasonable steps to protect all areas designated as "Preservation Areas" on the Conceptual Site Plan. No trails shall be established within the Preservation Areas. All builders constructing homes within the Subdivision will be required to comply with the Tree Preservation Plan and the tree preservation requirements for the Conservation Areas set forth in the DP Development Statement. Such tree preservation requirements shall provide that no trees greater than 4-1/2" in caliber shall be removed unless the same are (i) within the building site pad, (ii) within 15' of the perimeter of the building structure or appurtenance thereto, (iii) between the front of the house and the interior roadway of the Subdivision, and/or (iv) required to be removed in order to comply with safety requirements or the requirements of any governmental agency. At the time of construction of any home on a wooded lot, protective barriers will be installed at a location 15' to 20' from the perimeter of the proposed home to protect existing trees and vegetation from construction damage. Further, prior to the completion of construction of a home, Owner shall require each builder to install not less than two native trees along the street frontage of each lot, which shall be equal to or greater than 2" in caliber, as measured, 6-12" above ground, and be of a native or shade species. The Declaration of Covenants Conditions and Restrictions for The Preserve at Eagle Creek shall require that the owner of each home replace any such street trees that do not survive. In the event any builder violates the tree preservation requirements set forth herein and in the Tree Preservation Plan, such builder shall be required to reestablish trees in the Subdivision consistent with the trees lost. For example, if a 6" tree is removed, the builder shall reestablish such tree by installing three 2" trees or two 3" trees in replacement thereof.

Any such replacement tree shall not include the following species: Ash, Female Ginko, Cottonwood, Silver Maple or Box Elder.

10. **ENHANCEMENT.** In order to allow residents within the Subdivision to take advantage of the natural beauty provided by the Preservation Areas, Owner shall establish scenic overlooks within the Subdivision and walkways within and near the amenity center for the Subdivision, and as noted on the Conceptual Site Plan. Owner shall establish within the perimeter of the submersed area of the retention ponds, as designated on the Conceptual Site Plan, rip-rap, native plants, or similar items in order to deter human utilization of such retention ponds.
11. **RECREATIONAL AREAS.** Owner shall establish a pool house, pool, children's pool, children's playground, and other recreational features generally as depicted on the Conceptual Site Plan, and generally consistent with that which exists at the development known as The Preserve at Fall Creek, situated at the intersection of East 79th Street and Fall Creek Road, Indianapolis, Indiana.
12. **ENFORCEMENT.** These Commitments may be enforced by the Department of Metropolitan Development, The Preserve at Eagle Creek Homeowners' Association and/or the PTRA and otherwise as set forth below. In the event the PTRA believes that a violation of the Commitments set forth hereunder has occurred, it shall provide written notice of such violation to the allegedly offending party. Such offending party shall have thirty (30) days to cure such violation. In the event the allegedly offending party fails to cure such violation or determines that it is not in breach of the Commitments set forth hereunder, the parties may bring the dispute in front of the Administrator. The Administrator shall determine whether or not a breach of these Commitments has occurred and shall determine the appropriate remedy. In the event the allegedly offending party is determined by the Administrator to have breached the Commitments set forth hereunder and does not comply with the Administrator's determination, then and only in such event, PTRA may file suit in order to enforce the terms of these Commitments due to a material breach thereof. The determination of the Administrator shall not be binding in any such suit. The prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees incurred by it in connection with such action. Nothing contained herein shall preclude The Preserve at Eagle Creek Homeowners' Association from enforcing the Declaration of Covenants, Conditions, and Restrictions for the Subdivision as set forth therein.
13. **CEMETERY.** Owner shall not undertake any above ground disturbance of any land located within 100' of the cemetery located on Crown Point Road near the Subdivision, except for the widening of Crown Point Road discussed in Section 4(c) above.
14. **STREET LIGHTING.** In order to reduce light pollution, Owner agrees there shall be no individual lot lamp post lights or yard post lights within the Subdivision. Further, Owner agrees that with respect to each of the homes that abut Crown Point Road, no rear yard lighting will be permitted to be higher than the bottom of the eave of the first floor

of each such home and all such lighting shall be directed downward, so as not to be directed off of the lot of each such homeowner. These Commitments shall also be included as part of the Declaration of Covenants, Conditions and Restrictions of the Subdivision. Coach lights on each home shall be permitted and neighborhood street lamp post lights, with downward light deflection, shall be permitted.

15. **OUTBUILDING.** No detached storage structure shall be allowed within the Subdivision. Any outbuilding or detached structure such as a pool or bath house shall be constructed of materials that match the existing home on any given lot, including the use of natural materials where required.
16. **UTILITY EASEMENTS.** Owner shall extend utility easements to the westerly and southerly perimeter of the Subdivision, the size and location of which shall be determined during the final platting of the Subdivision and shall be based on good engineering judgment of the Owner, in consultation with TPRA, and staff of the Department of Capital Asset Management in order to provide future utility access to adjacent areas. Owner shall waive any right to reimbursement for sanitary sewer hook up (15 year law) for residences west of I-65 that are in existence on the date of the execution of these Commitments by Owner.

These COMMITMENTS shall be binding on the Owner, subsequent owners of the real estate and other persons acquiring an interest therein; provided that Commitment #1 (Open Occupancy and Equal Opportunity Commitments) shall not be binding on an owner, subsequent owners or other person acquiring an interest therein if such persons are exempt persons or are engaged in an exempt activity as defined on Attachment "A" which is attached hereto and incorporated herein by reference. These COMMITMENTS may be modified or terminated by a decision of the Metropolitan Subdivision Commission made at a public hearing after proper notice has been given.

COMMITMENTS contained in this instrument shall be effective upon:

- (a) the adoption of rezoning petition # 2000-ZON-147, 2000-DP-022 by the City-County Council changing the zoning classification of the real estate from a DA zoning classification to a DP zoning classification; or
- (b) the adoption of approval petition # N/A by the Metropolitan Subdivision Commission;

and shall continue in effect for as long as the above-described parcel of real estate remains zoned to the D-P zoning classification or until such other time as may be specified herein.

These COMMITMENTS may be enforced jointly or severally by:

- 1) The Metropolitan Subdivision Commission;

- 2) Owners of all parcels of ground adjoining the real estate to a depth of two (2) ownerships, but not exceeding six-hundred-sixty (660) feet from the perimeter of the real estate, and all owners of real estate within the area included in the petition who were not petitioners for the rezoning or approval. Owners of real estate entirely located outside Marion County are not included, however. The identity of owners shall be determined from the records in the offices of the various Township Assessors of Marion County which list the current owners of record. This paragraph defines the category of persons entitled to receive personal notice of the rezoning or approval under the rules in force at the time the commitment was made;
- 3) Any person who is aggrieved by a violation of either of the Commitments contained in Commitment #1 (Open Occupancy and Equal Employment Opportunity Commitments); and
- 4) The Preserve at Eagle Creek Homeowners' Association.

The undersigned hereby authorizes the Division of Neighborhood Services of the Department of Metropolitan Subdivision to record this Statement of Commitments in the office of the Recorder of Marion County, Indiana, upon final approval of petition #2000-ZON-147; 2000-DP-022.


IN WITNESS WHEREOF, Owner has executed this instrument this 12TH day of March, 2001.

Eagle Creek Nursery Company, Incorporated

By: 

Thomas M. Esterline, Sr., Vice President

The Preserve at Eagle Creek, LLC

By: 

Michael J. Klein, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Michael J. Klein, Secretary of The Preserve at Eagle Creek, LLC, Petitioner, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 12th day of March, 2001.

My Commission Expires:

7-27-06

Signature Pasha N Wade
Printed PASHA N WADE

County of Residence:

Hamilton

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Thomas M. Esterline, Sr., Vice President of Eagle Creek Nursery Company, Incorporated, Owner, who acknowledged the execution of the foregoing instrument and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 12th day of March, 2001.

My Commission Expires:

7-27-06

Signature Pasha N Wade
Printed PASHA N WADE

County of Residence:

Hamilton

This instrument was prepared by and after recording should be returned to April Sparks Pyatt, Attorney at Law, Ice Miller, One American Square, Box 82001, Indianapolis, IN 46282-0002, (317) 236-5980.

ATTACHMENT "A"

OPEN OCCUPANCY AND EQUAL EMPLOYMENT OPPORTUNITY COMMITMENT

- (a) The owner commits that it shall not discriminate against any person on the basis of race, color, religion, ancestry, national origin, handicap or sex in the sale, rental, lease or sublease, including negotiations for the sale, rental, lease or sublease, of the real estate or any portion thereof, including, but not limited to:
- (1) any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one or more families or a single individual;
 - (2) any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes;
 - (3) any vacant or unimproved land offered for sale or lease for any purpose whatsoever.
- (b) The owner commits that in the subdivision, sale, rental or other disposition of the real estate or any portion thereof, neither it nor any person engaged by it to develop, sell, rent or otherwise dispose of the real estate, or portion thereof shall discriminate against any employee or applicant for employment, employed or to be employed in the subdivision, sale, rental or other disposition of the real estate, or portion thereof with respect to hire, tenure, conditions or privileges of employment because of race, color, religion, ancestry, national origin, handicap or sex.

EXEMPT PERSONS AND EXEMPT ACTIVITIES

An exempt person shall mean the following:

1. With respect to commitments (a) and (b) above:
 - (a) any not-for-profit corporation or association organized exclusively for fraternal or religious purposes;
 - (b) any school, educational, charitable or religious institution owned or conducted by, or affiliated with, a church or religious institution;
 - (c) any exclusively social club, corporation or association that is not organized for profit and is not in fact open to the general public;

provided that no such entity shall be exempt with respect to a housing facility owned and operated by it if such a housing facility is open to the general public;

2. With respect to commitment b, a person who employs fewer than six (6) employees within Marion County.

An exempt activity with respect only to commitment (a) shall mean the renting of rooms in a boarding house or rooming house or single-family residential unit; provided, however, the owner of the building unit actually maintains and occupies a unit or room in the building as his residence, and, at the time of the rental the owner intends to continue to so occupy the unit or room therein for an indefinite period subsequent to the rental.

The PRESERVE

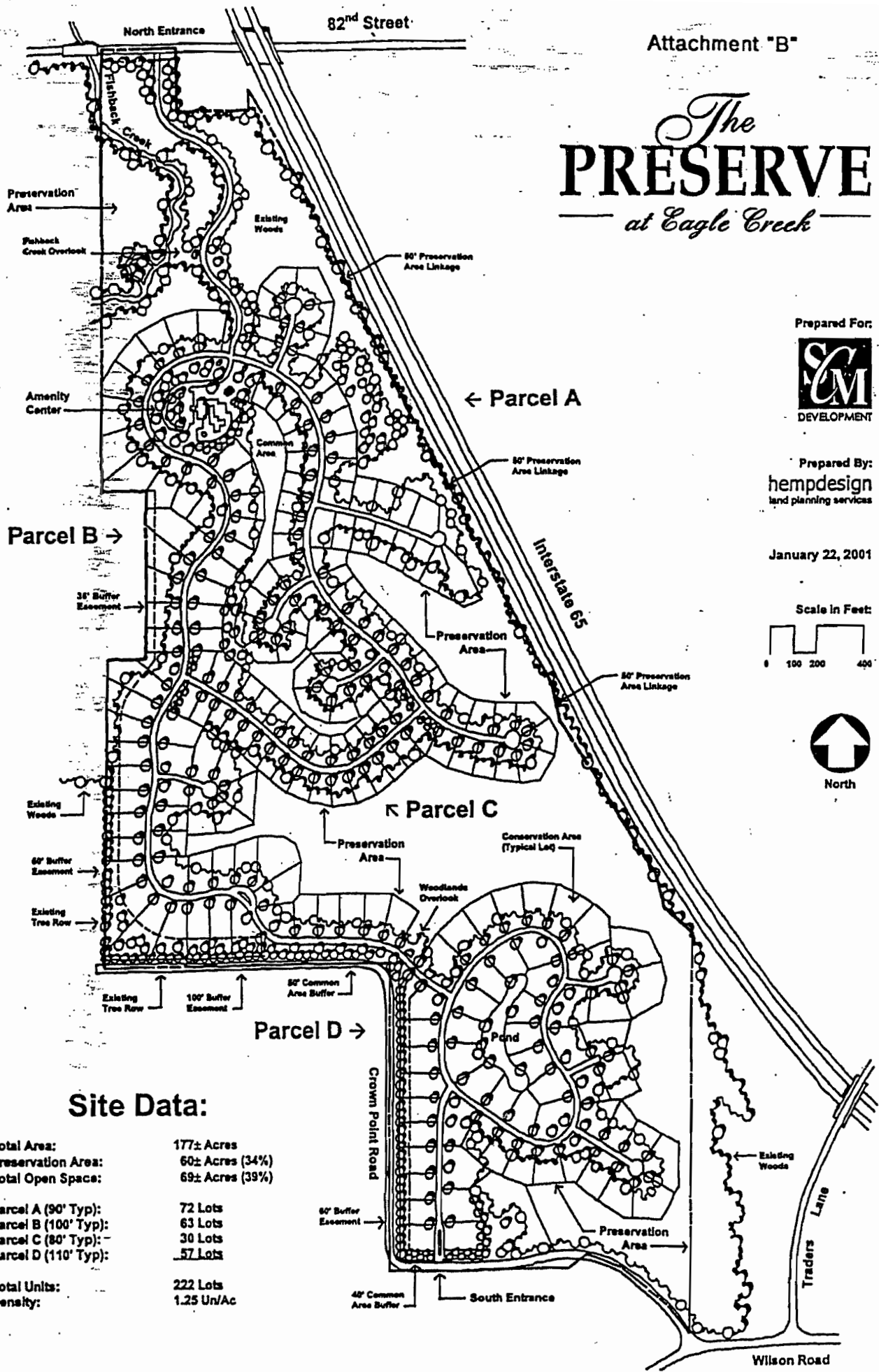
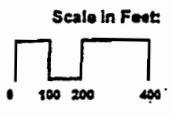
at Eagle Creek

Prepared For:

 DEVELOPMENT

Prepared By:
 hempdesign
 land planning services

January 22, 2001



Site Data:

| | |
|----------------------|-----------------|
| Total Area: | 177± Acres |
| Preservation Area: | 60± Acres (34%) |
| Total Open Space: | 69± Acres (39%) |
| Parcel A (90' Typ): | 72 Lots |
| Parcel B (100' Typ): | 63 Lots |
| Parcel C (80' Typ): | 30 Lots |
| Parcel D (110' Typ): | 57 Lots |
| Total Units: | 222 Lots |
| Density: | 1.25 Un/Ac |

EXHIBIT C

THE PRESERVE AT EAGLE CREEK

DEVELOPMENT STATEMENT

PETITION NOS. 2000ZON-147; 2000DP 022

1. **Location.** The approximate 177 acre site is located in the Northwest portion of Pike Township in Marion County. Specifically, the site is in the southwest quadrant of the intersection of 82nd Street and Interstate 65. The property is bordered by Crown Point Road to the south.
2. **Present Use.** More than one-half of the site is heavily wooded. The flatter, more open field areas are being utilized by Eagle Creek Nursery for growing and cultivating tree stock related to their nursery operation. There are two residential structures on the south edge of the site which are being occupied as rental properties.
3. **Surrounding Zoning.** The area immediately surrounding the subject parcel is generally undeveloped and zoned DA.
4. **Topography.** The surface of the immediate site is gently rolling to sloping. Drainage is primarily along the ground surface into low-lying areas and roadside ditches. The ground surface typically slopes from the central portion of the site down towards the east and northwest.
5. **Proposed Use.** Proposed use shall be a DP zoning. The development will include a maximum of 222 single family detached homes for an overall density of 1.25 units per acre. The density of the plan is in compliance with the Comprehensive Plan for the area. Approximately 167 acres of the site is designated UC (1) which allows up to 2.0 units per acre. The balance of the property along Fishback Creek is designated UC and will be permanently protected. Approximately 69 of the 177 acres have been set aside as common, Open Space (39% of total project area) on the Conceptual Site Plan, including 60 acres of Preservation Area (34% of total project area).
6. **Planning Strategy**
 - a) The site has been carefully master-planned utilizing the following planning objectives:
 - b) Create a residential community plan that responds to the natural characteristics of the site in a sensitive manner.
 - c) Utilize clustering and open space patterns to preserve and protect the most sensitive parts of the property.
 - d) Maximize large, contiguous areas of open space by concentrating development in areas with the fewest natural constraints.
 - e) Keep overall density at or below the average recommended by the Pike Township Comprehensive Plan.

f) Preserve woodlands, wetlands and natural drainage routes through creative development standards.

Opportunities and constraints were then identified and incorporated into the Conceptual Site Plan. A clustering concept has been utilized to concentrate development in the open meadows, on flat plateaus and ridge-tops, thereby preserving the site's significant natural features.

Large networks of open space were established to permanently protect the natural creeks, wildlife and woodlands. Special development standards have also been proposed as part of the project to reduce the impact of development near these areas.

7. **Landscape Requirements For Each Lot.** Prior to recordation of the final plat for each section, a typical lot landscape plan for each lot therein, will be submitted for administrative review and approval. The landscape plan for each lot must be implemented and completed at the time of initial occupancy of each house.
8. **Perimeter Treatment.** The intent for the perimeter of the Property is one of minimal disturbance. The physical characteristics of the parcel create a natural buffer to adjoining properties. Ingress/egress points to public streets and frontages will consist of buffers adorned with landscape amenities.
9. **Tree Preservation.** Trees are the primary marketing focus of this site. As such, the Developer will take painstaking measures to preserve as many trees as possible. The Developer will commit to keeping all of the Preservation Areas totally undisturbed, in their natural state, provided the regulatory agencies find this acceptable. The Conceptual Site Plan, which has been submitted simultaneously herewith, identifies Preservation Areas and Conservation Areas within the development. The Developer will submit a tree preservation plan to the Administrator for approval, which shall provide for a proposed method of protection of trees during construction.

Within the Conservation Areas, the Developer will require each Builder not to disturb or remove any trees with a caliper in excess of 4 ½" other than those necessary to build the primary structure or appurtenances thereto. Tree preservation for the home building operations would commence not further than 15' outside of any point on the structure or appurtenances thereto. Builders constructing homes within the project shall be required to submit to the Architectural Review Board, a package on each proposed homesite.

Each package shall consist of the following as a minimum:

- a) Front, rear, and side elevations.
- b) Floor plans for all levels.
- c) Plot Plan including specific erosion control measures for the home construction process.

Builders shall be required to participate in the following tree preservation measures:

- a) Within the Conservation Areas, no trees with a caliper in excess of 4 ½" shall be removed from any lot unless the same are (i) within the building site pad, (ii)

within 15' of the perimeter of the building structure or appurtenances thereto, (iii) between the front of the primary structure and the interior roadway of the subdivision, and/or (iv) required to be removed in order to comply with safety requirements of any governmental agency.

- b) Prior to completion of a home, each builder shall install a minimum of two (2) native trees or shade species along the street frontage of each lot, which shall be equal to or greater than 2" in caliper as measured 6-12" above ground.
- c) Any builder who violates the tree preservation and improperly removes trees shall be required to reestablish such trees consistent with the trees removed. For example, if a 6" tree is removed, builder may reestablish such tree by installing three 2" trees or two 3" trees in replacement thereof.
- d) Any trees outside of the Conservation Areas, but whose drip line extends into the Conservation Areas, may be trimmed back such that construction may reasonably proceed. However, such trees may not be removed unless deemed unsafe or unlikely to survive the trimming process.

9. **Utilities.**

- a) The development will be served by public water and public sanitary sewers.
- b) Sanitary sewer will be extended pursuant to the requirements of DCAM.
- c) All streets in the development will remain private, but will be constructed to DCAM cross-sectional standards. The intent of maintaining private streets is to request certain waivers of standards as they relate to width, minimum distance between reverse curves, radius length, building setbacks and utility easements. The purpose for these waivers is to provide maximum design flexibility in order to preserve the natural characteristics of the site.
- d) Miscellaneous. The site is served by Indianapolis Water Company for potable water, Citizens Gas & Coke Utility for natural gas, Ameritech for telephone service and Indianapolis Power & Light for electricity service.

9. **Conceptual Plan/Minimum Setback Lines and Yards.** A conceptual plan is included in this report indicating the schematic use, densities and layout within the development. Any use or development of any lot within the development shall be in conformity with the following minimum setback lines and yards: (i) a minimum front setback line and yard of 20', (ii) sideyards with an aggregate of no less than 13' with no minimum on one side, and (iv) a minimum rear yard setback of 20', except along Crown Point Road where the minimum setback shall be 50' as noted on the Conceptual Site Plan.

10. **Traffic.** The primary access points to the site shall be from 82nd Street and Crown Point Road as depicted on the Preliminary Site Plan.

11. **Sequence of Development.** The project will be developed in phases, generally from north to south. Each phase will consist of approximately 30 to 40 lots. It is anticipated that the project will be fully developed over an eight to ten year period of time.

The PRESERVE

at Eagle Creek

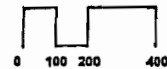
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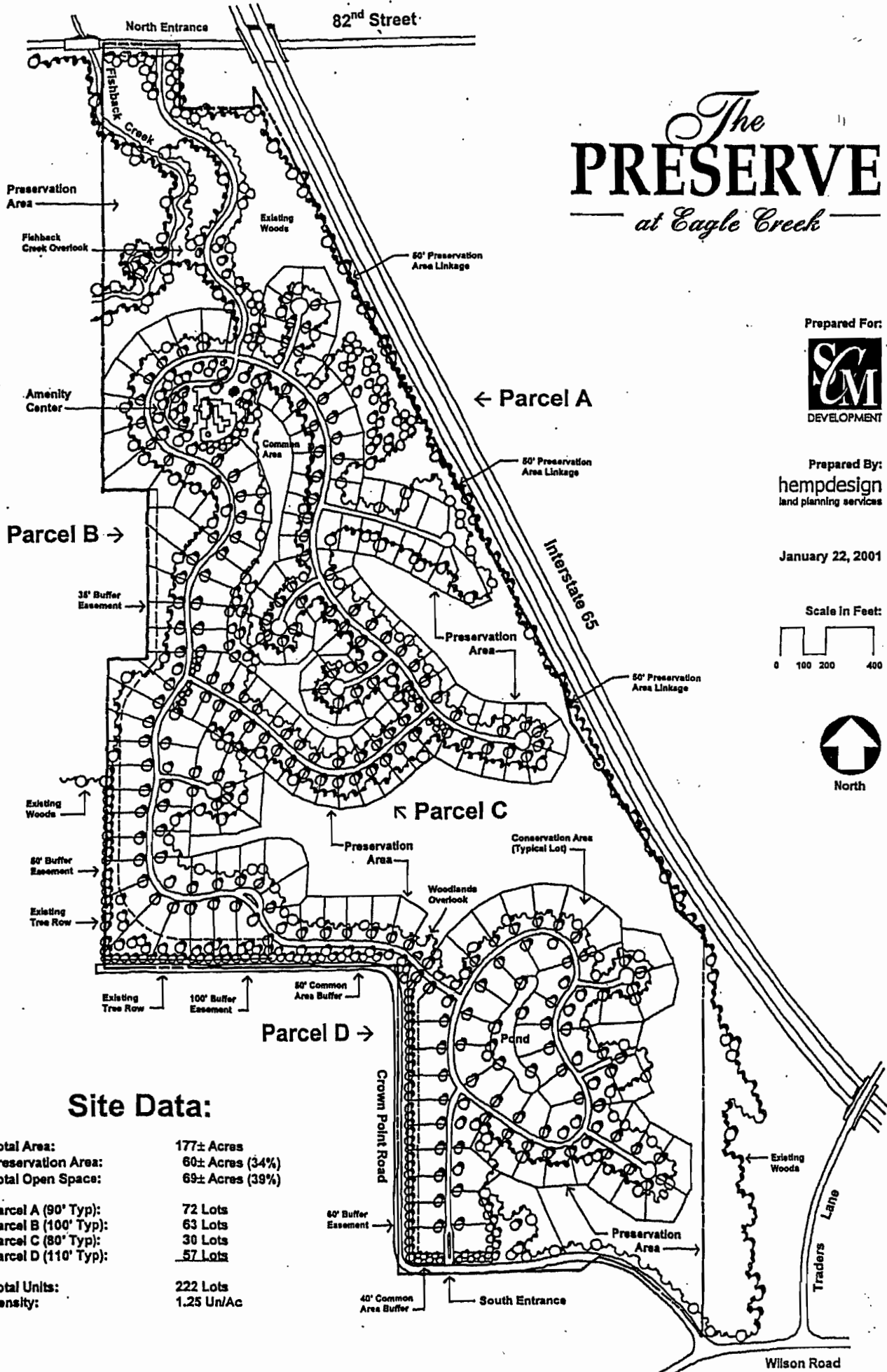
Prepared By:
hempdesign
land planning services

January 22, 2001

Scale in Feet:



North



Site Data:

| | |
|----------------------|-----------------|
| Total Area: | 177± Acres |
| Preservation Area: | 60± Acres (34%) |
| Total Open Space: | 69± Acres (39%) |
| Parcel A (90' Typ): | 72 Lots |
| Parcel B (100' Typ): | 63 Lots |
| Parcel C (80' Typ): | 30 Lots |
| Parcel D (110' Typ): | 57 Lots |
| Total Units: | 222 Lots |
| Density: | 1.25 Un/Ac |

EXHIBIT D

DEVELOPMENT CONTROL COMMITTEE GUIDELINES FOR ARCHITECTURAL APPROVAL THE PRESERVE AT EAGLE CREEK

INTRODUCTION

Pursuant to the Declaration of Covenants, Conditions, Easement and Restrictions of the Preserve at Eagle Creek as amended and supplemented (herein referred to as the “Declaration”), The Preserve at Eagle Creek Developmental Control Committee (herein referred to as the “DCC”) is charged with the responsibility of preserving and enhancing the values of properties subject to the Declaration, of maintaining a harmonious relationship among structures and the natural vegetation and topography of said properties, and of providing for the proper functioning of the storm drainage system for the said properties. For these purposes, the DCC has the right to promulgate and enforce rules, regulations and guidelines to regulate the exterior design, appearance, use, location and maintenance of lands, and improvements thereon, subject to the Declaration. In order to satisfy this responsibility, the DCC has the right to take the following actions:

- a) Approve or disapprove plans and specifications for all proposed construction on land subject to the Declaration, and
- b) Approve or disapprove plans and specifications for all improvements on property on land subject to the Declaration.

The following guidelines for all construction on and improvement of the land subject to the Declaration are hereby adopted by the DCC for guidance to property owners in preparing and submitting plans and specifications to the DCC for its consideration. These guidelines may be changed, modified and amended by the DCC at any time, in accordance with the procedure therefore set forth in the Declaration.

NOTE: NO NEW CONSTRUCTION OR IMPROVEMENT TO ANY LOT MAY BE INITIATED WITHOUT PRIOR WRITTEN APPROVAL FROM THE DCC.

While the DCC shall have up to (15) days for approval or rejection of submitted plans, every effort will be made to complete the review process in a shorter period when necessary to accommodate the needs of property owners.

I. CONSTRUCTION APPROVAL

In order to create and maintain a high quality residential development on the subject property, certain criteria for all construction has been established by the DCC.

1. **General Requirements For Construction**

While detailed construction requirements may vary by specific areas or sections of the property, the general requirements are set forth below.

- a) Square Footage. All single-family homes constructed within the Development shall have a minimum of 2,200 square feet for two-story structures and 1,800 square feet for single-story structures.
- b) Tree Preservation. No trees greater than 4 ½" in caliper shall be removed unless the same are (i) within the building site pad, (ii) within 15' of the perimeter of the building structure or appurtenance thereto, (iii) between the front of the house and the interior roadway of the Development, and/or (iv) required to be removed in order to comply with safety requirements or the requirements of any governmental agency. At the time of construction of any home on a wooded lot, protective barriers will be installed at a location 15' to 20' from the perimeter of the proposed home to protect existing trees and vegetation from construction damage. In the event any builder or lot owner violates the tree preservation requirements set forth herein, such builder or lot owner shall be required to reestablish trees on the lot consistent with the trees lost. For example, if a 6" tree is removed, the builder or lot owner shall reestablish such tree by installing three 2" trees or two 3" trees in replacement thereof. Any such replacement tree shall not include the following species: Ash, Female Ginko, Cottonwood, Silver Maple or Box Elder.
- c) Construction Trash. All builders will be required to utilize a thirty (30) cubic yard trash receptacle for each home during periods of construction in order to properly dispose of debris.
- d) Temporary and Permanent Driveway. Each builder is required to install and maintain a temporary stone drive on each lot. Such temporary drive shall consist of #2 and/or #53 stone and shall provide for construction access to the building area from commencement of house construction until completion of a permanent drive. The permanent driveway on each lot shall be hard surfaced.
- e) Colors and Materials of Homes. Materials used on the exterior of homes and improvements are subject to the approval of the DCC, and all exterior colors are, generally, to be subdued, earthen tones or white and compatible with other structures in or planned for the immediate area. Unless otherwise approved by the DCC, homes in the Development shall be constructed primarily of brick, stone, drivet or other natural materials, except for doors, soffits, windows and other ornamentation.

- f) Yards. By applicable zoning ordinance, the “front-yard” of a lot is considered to be that area between the street frontage and the house regardless of how the house is faced. The homes constructed on the lots shall have a minimum setback from the edge of the curb of 25’ unless otherwise indicated on the final recorded plat for said section. Side-yards shall have an aggregate of no less than 13’ with a minimum setback from the edge of the property line of 5’ unless otherwise approved by the Committee, and subject to platted easements. The minimum rear-yard setback shall be 20’, subject to platted easements.
- g) Erosion Control and Tree Protection Measures. During periods of construction of a home or improvements on a lot, the builder shall provide adequate physical barriers such as temporary orange construction fencing in order to protect trees from damage by construction equipment and related activities. In addition, builders shall be required to exercise appropriate erosion and sediment control measures, such as silt fencing, straw bales, temporary seeding, etc., at each building lot at commencement of site work through establishment of vegetation, in order to prevent silt transportation to the main drainage ways. No disturbance of, or excavation within the ravines or other areas identified as Preservation Areas shall be permitted.
- h) Utilities. All utilities shall be installed underground unless otherwise required by the utility provider.
- i) Garages. Each home shall have an attached garage for at least (2) automobiles.
- j) Street Trees. Each lot shall include street trees, the size, species and location as specified on the Development Landscape Plan, which is available upon request from the DCC.

2. Plans And Specifications

In order to properly review proposed construction, the DCC has established the following drawings as a minimum for submittal to the DCC. Submittal for approval shall include all items below. Clarification drawing and details may be requested by the DCC prior to approval if adequate details are not included in the plans.

- a) Plot Plan. Include location of the proposed structure, street trees, driveways, walks, terraces, decks, pools, fences, air conditioning units, etc., and shall include information on setbacks and easements.
- b) Grading & Utility Plan. Include all existing and proposed contours, finished floor elevations, proposed and existing utilities.
- c) Tree Protection & Erosion Control Plan. Include tree clearing limits, erosion control and tree preservation measures to be taken during construction.

- d) Floor Plans & Elevations. Include floor plans for all levels, front, side and rear elevations.
- e) Exterior Details & Specifications. Include exterior details, building colors, finishes and materials.

All site related plans shall be drawn at scale of not less than 1"=20'. All architectural related plans are to be drawn at a scale of not less than 1/4"=1'. All plans shall be fully dimensional and presented in duplicate (two sets) on a 24"x36" sheet size format.

II. METHOD OF APPROVAL

The owner of any lot seeking construction approval shall submit a "New Construction Plan Submittal Form" as attached hereto.

The DCC shall review plans within (15) days of submittal. A "Checklist of Compliance," attached to these Guidelines, shall be returned by the DCC, with one (1) set of plans stamped "Approved" and dated by the DCC. The DCC shall retain one (1) set of plans with the Checklist for its files. If the DCC disapproves the plans, written notice of such shall be given to the lot owner and shall specify the reason or reasons for such disapproval. Construction may not start until all plans received "Approval" from the DCC.

III. RESUBMITTAL

If the submittal is incomplete, or the DCC has disapproved any of the submitted plans it is the responsibility of the owner to see that corrections or modifications are made in compliance with the DCC comments. One set of corrected plans shall then be resubmitted with changes "noted". The DCC will make every effort to review and approve the plans as quickly as possible.

IV. ARCHITECTURAL GUIDELINES

The DCC has established the following guidelines for specific types of construction and improvements on land subject to the Declaration. Any addition, exterior alteration or change to an existing building shall be compatible with the design character or the original building. Any new detached structure (if permitted), shall be compatible with the existing structure.

1. Fences, Walls and Screening

Fencing, walls and screening will be designed and installed to be as harmonious as possible with the architectural character of the Development. No fence or screen will be approved if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the DCC when reviewing for approval. Fences in general shall not be located any closer to the front of the home than the rear foundation line of the structure. Dog run fencing will be allowed only if an electronic "invisible fence" is used. The DCC discourages fencing of the entire back yard due to the effect that this may have on the feeling of spaciousness desired by other property owners. The DCC shall have the right to require additional landscaping on the exterior side of all solid fencing on a lot. Fences may be privately installed, but must be constructed to professional levels of quality.

- a) Height Restrictions. The DCC believes that the environmental integrity of the Development will be materially lessened if the open nature of the Development is affected by the proliferation of fences of excessive height. The DCC therefore, will approve fences up to four (4) feet in height which otherwise meet the fencing standards herein. The DCC will give consideration, however, to a variance in this height limit where clearly unique circumstances exist. By way of example, the use of six (6) foot privacy fences around small patio areas of a backyard of a home will be considered. The specific fence height restrictions are as follows:
 - 1) Property fencing and walls above grade shall not exceed four (4) feet in height unless otherwise approved by the DCC.
 - 2) The DCC will not approve any proposed fence which exceeds four (4) feet in height unless the adjacent property line of the lot presents some circumstances clearly unique to that lot.
 - 3) Patio screens/privacy fences shall not exceed six (6) feet in height.
 - 4) Pool fencing; see "4. *Swimming Pools*".
- b) Materials and Finish.
 - 1) Wood fencing or screening will be considered subject to the DCC's right to require landscaping on the exterior sides thereof.
 - 2) The DCC will not approve an application for the installation of a chain link or other galvanized metal fencing unless it is vinyl coated or covered with similar coating material and is black or brown in color.
 - 3) All fencing or screening should preferably have finished material on both sides. If only one side has finished materials, that side must face the public side or adjoining property.

- 4) Walls above grade should be constructed of natural stone, masonry or attractive timber. Railroad ties will not be allowed.

2. Landscape Materials

All new plant materials shall conform the current issue of the American Standard for Nursery Stocks published by the American Association of Nurserymen. The landscape plan for each lot must be implemented and completed prior to occupation of the home. Each lot will have a minimum planting requirement as follows:

- a) Street Trees

Deciduous shade trees 2½” caliper (installed between curb & sidewalk). The location and species as depicted on the Development Landscape Plan which is available upon request from the DCC. The Owner of each home shall replace any such street trees on their lot as necessary.

- b) Front and Side Yards

| | |
|------------------|------------------|
| 1 Flowering tree | 1 ½” caliper |
| 1 Conifer trees | 8’-10’ height |
| 8 Shrubs | 3’ - 4’ height |
| 12 Shrubs | 18” - 24” spread |

3. Lawns

All yards are to be seeded as the minimum requirement. All established lawns will be required to be fertilized and weeded as necessary to insure a quality lawn appearance at all times.

4. Swimming Pools

Swimming pools must have the approval of the DCC before any work is undertaken. No above ground pools shall be allowed. Permanent backyard pools will be approved by the DCC only after careful consideration of the potential effect of such a pool to neighboring properties. An application for the construction of a swimming pool will not be considered unless the application is accompanied by proposed fencing and landscape design. The design of the fence shall conform to governmental regulations. Use of plantings in the vicinity of the proposed pool will be required to soften the affect of sound and fencing on neighboring properties.

5. Sport Courts, Basketball Goals

Tennis courts, racquetball courts, paddle ball courts, squash courts and other recreational or sporting facilities will be approved by the DCC only after thorough consideration of the potential affect of such a structure or use in neighboring properties.

The DCC will not approve lighted courts or facilities. An application for the construction of any such facility will not be considered unless accompanied by fencing and landscape plans. It is recommended by the DCC that any such fencing be of an open composition in order to blend in with the surrounding properties and soften the affect on adjacent properties.

Backboards of all basketball goals shall be translucent fiberglass with a black pole (or approved equal). The DCC reserves the right to disapprove the location of all basketball goals.

6. Play Equipment

Permanent children's play equipment such as swing and slide, playhouses, etc., shall not require approval by the DCC provided such equipment is not more than six (6) feet in height, maintained by the lot owner in good repair, and every reasonable effort has been made to screen or shield from adjacent properties. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the DCC.

7. Mailboxes

Uniform mailbox designs/standards for the Development will be approved/provided by the DCC.

8. Driveways

All driveways must be asphalt, concrete or an acceptable alternate as approved by the DCC. Extensions, widening or re-routing of existing driveways must be approved by the DCC prior to construction.

9. Sidewalks

Each lot is required to have four (4) foot wide sidewalks installed in accordance with the approved Development construction plans. Plans are available from the DCC upon request.

10. Antennas

Unless specifically authorized by the DCC, no television, radio or other antennas may be erected by any lot owner on the exterior portion of any house or lot other than a satellite receiving dish which shall not exceed 18" in diameter.

11. Lighting

In order to reduce light pollution, there shall be no individual Lot lamp post lights or yard lights within the Development. Further, with respect to each of the residences on Lots that abut Crown Point Road, no rear yard lighting will be permitted to be higher than the bottom of the eaves of the first floor of each such residence and all such lighting shall be directed downward, so as not to be directed off of the Lot of each Lot Owner. Coach lights on each residence shall be permitted and neighborhood street lamp post lights, with downward light deflection, may be installed by the Association.

V. MISCELLANEOUS

All construction trades performing work on any structure or other improvements on any lot in the Development shall be expected to conduct their work in a professional manner and in accordance with all standards published by the recognized trade councils respective of their industries. It is not the responsibility of the DCC to supervise or inspect the quality of construction performed by the construction trades.

NOTE: NO NEW CONSTRUCTION OR IMPROVEMENT TO ANY LOT MAY BE INITIATED WITHOUT PRIOR WRITTEN APPROVAL FROM THE DCC.

**THE PRESERVE AT EAGLE CREEK
NEW CONSTRUCTION PLAN SUBMITTAL FORM**

Instructions

The Owner or Owners of any Lot seeking approval of new construction at The Preserve At Eagle Creek must complete this submittal form by supplying all information required below and submit together with two (2) copies of all plans and drawings referred to herein, to the DCC for its action at the following address:

The Preserve At Eagle Creek DCC
c/o SCM Development
90 Executive Drive, Suite H
Carmel, IN 46032

1. General Information (Please complete the following)

- | | |
|---|-------------------------------------|
| (a) Lot number: _____ | (d) Number of stories: _____ |
| (b) Estimated total cost (including lot): _____ | (e) 1st floor square footage: _____ |
| (c) Style of architecture: _____ | (f) Total square footage: _____ |

2. Plans & Specifications (Please submit 2 sets of the following)

- (a) Plot Plan of the lot showing proposed building site, street trees, setbacks and easements.
- (b) Grading and Utility Plan of the lot showing existing and proposed lot conditions.
- (c) Tree Protection and Erosion Control Plan showing tree clearing limits, erosion control and tree preservation measures to be taken during construction.
- (d) Floor Plans and Elevations showing all sides and levels.
- (e) Exterior Details and Specifications showing building finishes, materials and colors.

3. Owner's Request For Approval

The undersigned, Owner(s) of the Lot in The Preserve At Eagle Creek identified above, as an inducement to The Preserve At Eagle Creek Development Control Committee to consider the approvals herein requested, hereby states and certifies (A) that he is the sole owner of said Lot, (B) that the information set forth herein is true and correct, and (C) that the plans and drawings identified above and submitted herewith to the DCC are the only plans and drawings being submitted for construction approval by the DCC. The undersigned represents, warrants and agrees that all construction upon and improvement of the subject Lot will be performed in accordance with such plans and drawings as finally approved by the DCC. The undersigned acknowledges and understands that any changes in plans and drawings, after the approval of those submitted to the DCC, must be resubmitted to the DCC for its consideration and ultimate approval. The undersigned further agrees to abide by all of the terms, provisions and requirements of the recorded Declaration and all amendments and supplements thereto, the subdivision plat, the Development Control Committee guidelines, and the requirements of The Preserve At Eagle Creek Homeowners Association, Inc. governing The Preserve At Eagle Creek or related neighborhoods.

Dated: _____

Owner(s): _____

Signature

Printed

Current Address

Rules and Regulations
for
The Preserve at Eagle Creek
(Revised)

Effective January 1, 2009

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I. OVERVIEW

The Declaration of Declaration, Conditions, Easements and Restrictions of the Preserve At Eagle Creek ("Declaration") permits the Board of Directors ("BOD") of the Preserve at Eagle Creek Homeowners' Association ("HOA") to "establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, and individual Lots in the Development". *Declaration § 2.4*. Pursuant to that authority, the BOD has adopted these "Rules and Regulations for the Preserve at Eagle Creek" (hereinafter "Rules and Regulations").

Nothing in these Rules and Regulations shall be construed to supplant or otherwise override any provision within the Declaration. In the event that any Rule and/or Regulation expressed herein directly contradicts any provision contained within the Declaration, then the Declaration shall control. However, it should be noted that the BOD has carefully reviewed the Declaration during the process of formulating and adopting these Rules and Regulations, and it is the opinion of the BOD that nothing contained herein directly contradicts any provisions contained in the Declaration.

II. DEFINITIONS

"Abandoned or inoperable vehicle" means (a) one that has not been moved for 72 hours, whether drivable or not; (b) one that is not currently licensed, or (c) one that has been reported as a nuisance by a Resident.

"Architectural Control Committee" (or "ACC") means five-member committee created and approved by the BOD to review all lot modification requests.

"Architectural Modification Guidelines" means the document attached hereto as Appendix A.

"Child of a Resident" (and similar constructions) means a Resident's daughter, son, step-daughter, step-son, granddaughter, grandson, step-granddaughter, step-grandson, niece, nephew, ward, or foster child who is 21 years of age or younger.

"Commercial vehicle" means any vehicle with visible commercial signage or advertising, and/or exterior racks, ladders, or equipment.

"Common area" has the definition contained in Section 1.5 of the Declaration.

"Dangerous Animal" shall include, but not be limited to, the following: poisonous snakes; non-poisonous snakes over four feet long; non-domesticated breeds of dogs; raccoons; poisonous spiders (not including tarantulas); poisonous toads; poisonous frogs; skunks; and non-domesticated breeds of cats.

"Guest" means any invitee of a Resident.

"Guidelines For Architectural Approval" shall mean the document attached to the Declaration as Exhibit D.

“Livestock” shall include, but not be limited to, the following: cows, bulls, and other bovines; horses, ponies and other equines; pigs, boars, and other swine; chickens, turkeys, and other poultry; bison; and llamas.

“Lot modification” means any modification of, addition to, or alteration of an existing lot, structure thereon, or open space appurtenant thereto, and shall include but not be limited to, construction (which includes, but is not limited to, staking, clearing, excavating, grading, and other site work) and the planting or removal of plants, trees, or shrubs, fences, walls or other structures.

“Neighborhood” means the Development defined in Section 1.9 of the Declaration and all lots, common areas, and improvements made therein.

“Nuisance” means an act or omission occurring within the Neighborhood that, in the opinion of a majority of the BOD, could reasonably cause embarrassment, discomfort, or annoyance to other Residents. This term includes but is not limited to: loud noises that disturb a Resident’s quiet enjoyment of his/her home or lot; interior or exterior lights (including car headlights and temporary flood lights) that shine into or onto adjoining lots; discharge from any floor drain permitted to enter the storm drainage system; noxious or unpleasant odors; failure to dispose of animal feces; lack of maintenance or upkeep of lots, homes, or vehicles; vandalism; exhibitionism; violation of the Declaration concerning lot modifications and/or violation of the Guidelines for Architectural Approval or the Architectural Modification Guidelines; violation of these Rules and Regulations; and violation of any statute, zoning regulation, or ordinance.

“Preservation Area” has the definition provided in Section 1.21 of the Declaration.

“Rent-to-own contract” means any contract for the sale of a home in which the Resident makes regular installment payments to the property owner for the purchase of the property, and does not include regular loan payments made to a bank or lending institution.

“Resident” means any person owning or leasing a home in the Neighborhood, and anyone else who resides in any home in the Neighborhood for longer than two (2) weeks of continuous duration.

“School holiday” means any non-weekend day on which the “continuous schools” of the Metropolitan School District of Pike Township, Marion County, Indiana, are not in session. For a listing of these dates, see <http://www.pike.k12.in.us/district/parents/schoolcalendars.htm>.

“Vehicle” means an automobile, commercial vehicle, truck, tractor, mobile home, RV, trailer (with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation device of any kind.

“Visitor” means any guest or invitee of a Resident.

III. RULES PERTAINING TO LOTS

A. Lot & Home Use

1. Sidewalks and Common Areas Adjacent To Homes

- a) Residents shall not leave personal property (such as, but not limited to, tools, lawn equipment, bicycles, skateboards, tricycles, scooters, toys, and sports equipment), on sidewalks or in any Common Area adjacent to their lots.

2. Outside Storage

- a) Residents shall not store personal property (such as, but not limited to, tools, lawn equipment, bicycles, skateboards, tricycles, scooters, toys, sports equipment) within plain view of any street or neighboring property.

3. Home Leasing

- a) No lot or home, or any portion of either, shall be leased for any purpose other than for use as a single-family residence. "Rent-to-own" contracts shall be considered leases for purposes of this rule.
- b) No lot or home, or any portion of either, shall be leased without first obtaining the written approval of the BOD. Such approval shall be sought by written request addressed to either the Registered Agent of the Association, or the President of the BOD. If delivered to the President, such written request shall be delivered: (i) personally to his/her home address; (ii) via U.S. mail, postage prepaid, and properly addressed to the President at his/her home address; or (iii) via electronic mail at an address specified by the President. These addresses can be found at www.ThePreserveAtEagleCreek.com.
- c) No lease within the Neighborhood shall be effective unless/until all lessees of the property have provided to the BOD written acknowledgment of both their having received and read completely and their unconditional agreement to be bound by the most recent edition of the Rules and Regulations and the Declaration.

4. Home Businesses

- a) No commercial and/or home business may be conducted on any lot without first obtaining the written approval of the BOD. Such approval shall be sought by written request addressed to either the Registered Agent of the Association, or the President of the BOD. If delivered to the President, such written request shall be delivered: (i) personally to his/her home address; (ii) via U.S. mail, postage prepaid, and properly addressed to the President at his/her home address; or (iii) via electronic mail at an address specified by the President. These addresses can be found at www.ThePreserveAtEagleCreek.com.
- b) All requests for approval submitted under subparagraph (a) of this Rule shall specify: (i) the residence (including address and lot number) where the business shall be conducted; (ii) a detailed description of the business to be conducted, including but not limited to the hours of operation and the number of customers or clients expected to visit the residence during the hours of operation; and (iii) citation to the portion of the Revised Code of the Consolidated City and County Indianapolis/Marion, Indiana, specifically permitting the home business/occupation for which approval is being requested.
- c) No permission shall be granted for the operation of a commercial or home business on any lot within the Neighborhood that would violate a state statute, county code, city ordinance, zoning law, Covenant provision, or Rule and Regulation.

5. Parties

- a) Noise from any residential or Neighborhood pool party must be kept at a level that cannot be heard within the homes of neighboring Residents.
- b) The citation of any Resident for any noise ordinance violation by a Marion County and/or City of Indianapolis law enforcement officer for an incident occurring within the Neighborhood shall constitute prima facie evidence of a "nuisance" as set forth in the Declaration, Article II, § 2.6(F), regardless of whether such citation is eventually affirmed, overturned, settled, or dismissed in a court of law.
- c) Any Resident hosting a party shall specifically inform each party guest of the parking requirements for visitors expressed in Section IV(A)(2) of these Rules and Regulations, and any Resident hosting a party during which a party guest violates Section IV(A)(2) shall be personally liable for the violation, whether or not the Resident specifically informed the party guest of the requirements of Section IV(A)(2) and/or had actual knowledge of the violation.

6. Garage Sales

- a) No garage sale shall occur except as expressly permitted herein.
- b) Garage sales may occur only on dates and during times specified in writing and/or on www.ThePreserveAtEagleCreek.com by the BOD, and the BOD shall not authorize garage sales more than two times per calendar year for no more than a single day each, starting no earlier than 8 a.m. and ending no later than 8 p.m.
- c) The BOD, on behalf of the HOA, shall provide temporary signage and advertising as it deems appropriate for designated garage sale dates and times, and no person or entity other than the BOD may erect signage within the Neighborhood concerning or related to garage sales.
- d) Any Resident conducting an authorized garage sale shall ensure that roadways adjacent to his/her property, and his/her driveway within 15 feet of the roadway, are kept open and unobstructed.
- e) Any Resident conducting an authorized garage sale shall ensure that all trash generated by the garage sale is contained in appropriate receptacles and that no damage occurs to adjacent lots or common areas. Residents found by the BOD to have violated this provision shall be responsible for any expenses incurred by the HOA to remove trash or repair damage.

7. Animals

- a) No Resident may have, keep, or maintain any livestock on any lot or in any Common Area.
- b) No Resident may have, keep, or maintain any dangerous animal on any lot or in any Common Area, nor may any Resident permit any visitor or guest to bring any dangerous animal onto any lot or common area, for any length of time, no matter how short in duration. In addition, no Resident may encourage the presence of raccoons on his/her lot by feeding or leaving food out for raccoons.
- c) No Resident may keep, breed, or maintain any animal on any lot or in any common area for a commercial purpose.
- d) Notwithstanding any other rule expressed herein, no Resident may maintain any animal on his or her property that regularly disturbs any neighbor in the quiet enjoyment of the neighbor's home or property.

- e) No animal that is otherwise allowed on a Resident's lot may be permitted outside the confines of the Resident's lot except when being transported in a vehicle or when attached to a lead no longer than 8 feet that is held by a person capable of controlling the animal.
- f) Any Resident keeping or maintaining any animal upon his/her lot (or allowing a non-Resident guest or visitor to bring any animal upon his/her lot) shall be responsible for immediately disposing of any feces deposited by the animal on any lot or common area within the Neighborhood, including his/her own lot.
- g) No doghouses or other pet enclosures (other than a perimeter fence permitted by the Architectural Modification Guidelines) shall be allowed on any lot.
- h) No animals shall be permitted inside the Neighborhood's pool or playground enclosure.
- i) A Resident, by maintaining, keeping, or allowing the presence of any animal on his/her lot, expressly agrees to abide by, and to require those residing in or visiting his/her residence to abide by, these Rules and Regulations.

8. Vehicles

- a) Garages are intended as the primary location for the parking of a Resident's vehicles. Driveways shall not be utilized as the regular parking place for a Resident's vehicles, and no trailer may be parked overnight on any driveway within the Neighborhood at any time. (Exception: RVs, motor homes, and campers may be parked in a driveway overnight for up to two consecutive nights during any two-week period to facilitate loading prior to use, and a boat and boat trailer may be parked in a driveway for one night during any two-week period to facilitate loading prior to use.)
- b) Streets shall never be utilized for the parking, regular or temporary, of any vehicle owned, leased, or used by a Resident or a Resident's child.
- c) Vehicles with visible "For Sale" signs cannot be parked overnight in the Neighborhood except within a Resident's garage.
- d) No unsightly vehicle, as determined by the BOD, may be parked by a Resident on his/her driveway.
- e) The BOD reserves the right to have a vehicle towed, at owner's expense, due to the violation of any of these Rules and Regulations.

9. Nuisances

- a) No Resident shall engage in or permit any nuisance to exist on his/her lot, including those created or caused by the Resident's guest, visitor, or child.
- b) All Residents shall be responsible for any nuisance created or caused anywhere in the Neighborhood by the Resident's guest, visitor, or child, regardless of whether the nuisance is known to the Resident at the time it occurs.

10. Exterior Holiday Lighting

- a) Holiday lighting is permitted without prior approval of the ACC according to the following requirements.
- b) Light displays must be tasteful and should only be on the eaves of the house or bushes and trees adjacent to the house.
- c) Lights cannot be hung before November 1st and must be removed (weather permitting) by January 30th. If weather prevents removal, the lighting must at least be disconnected and removed within two (2) weeks after the weather ceases to prevent removal.
- d) Tasteful displays may be placed in the landscaping, but nothing larger than three feet high can be displayed without prior approval of the ACC.

B. Lot Maintenance

1. Lawns

- a) All lawns must be comprised predominantly of a grass variety common to central Indiana, and lawns must be adequately seeded or sodded to prevent/eliminate bare spots.
- b) Lawns must be adequately watered, fertilized, seeded, and mowed so as to maintain at all times a quality appearance. Grass shall not be permitted to grow longer than 7 inches. Lawns, landscape areas, and beds shall be kept weed-free at all times.
- c) Lots must be kept free of debris and trash.

2. Trees and Shrubs

- a) Because low limbs are dangerous when walking on the sidewalk or driving on the street, the limbs, branches, or leaves from trees, bushes, shrubs, or flowers protruding over the vertical plane of a sidewalk or street less than seven (7) feet above the sidewalk or street must be trimmed by the Resident at least to the point where they break the vertical plane of the sidewalk or street.
- b) Dead trees & shrubs must immediately be removed by the Resident. They are unsightly, and dead trees pose a serious threat to the Resident and the Resident's neighbors.

3. Houses

- a) Maintenance, repair, and upkeep of homes at all times is required.
- b) Roofs shall not be missing shingles.
- c) Siding, brick, and exterior paint shall be maintained at a quality appearance at all times. No color of siding, brick, or paint different from the original shall be used for any repair or maintenance project without the express written approval of the ACC or BOD
- d) Gutters, downspouts, and vents shall be painted and maintained in good repair.

4. Fixtures

- a) All fixtures on the lot must be kept in good appearance and free from wear and tear in appearance.
- b) Fences and play structures made of wood should be kept stained and weather proofed.

5. Mailboxes

- a) All Residents shall keep their mailboxes in good repair.
- b) All mailboxes are to be uniform in appearance with house numbers on them of a font and size identical to those originally affixed. The wooden posts must be painted black, and repainted as needed to maintain a sightly appearance.
- c) Mailboxes shall be kept free of dents, rust, or broken doors.
- d) To replace a damaged or broken mailbox, contact the following company: (a) for Residents living in the Estuary, contact "Address Art" at 317-254-1508; or (b) for Residents living in Oakwood, contact "Caporale Post" at 317-883-3725.

C. Lot Modification

1. Architectural Control Committee

- a) The ACC has the authority to approve, disapprove, approve in part and disapprove in part, or conditionally approve any lot modification request, provided that the ACC is unanimous in its decision.
- b) If the ACC cannot reach unanimity concerning a lot modification request, such request shall be submitted to the BOD for decision, and the BOD's decision shall be final.

2. Preapproval Required

- a) No lot modification may commence without first being approved in writing by the BOD or the ACC, unless otherwise stated in the Guidelines for Architectural Approval (which are attached as Exhibit D to the Declaration).
- b) Any Resident who engages in lot modification without first receiving the required written approval may be subject to legal action requiring the removal of unauthorized modifications. If such action is necessary, the Resident shall be responsible for all costs and attorney fees incurred by the Association. ***THIS COULD BE VERY COSTLY, SO PLEASE GET APPROVAL FIRST!***

IV. RULES PERTAINING TO COMMON AREAS

A. Parking On Street. The narrowness of the Neighborhood's streets, combined with their undulations and curves, makes the parking of cars, trailers, and other vehicles on the streets extremely hazardous to both drivers and to the children who live and play here. Accordingly, parking on streets shall be severely limited and permitted only in strict compliance with these Rules and Regulations.

- 1. Residents shall not park any vehicle on any street in the Neighborhood at any time.** Residents must park their vehicles in their garages, except: (a) they may park their primary vehicle on their driveways temporarily; and (b) they may park a vehicle on the street near the home of another Resident while at the home of that Resident as a guest, provided they do so in accordance with the requirements for "visitors" listed in Section IV(A)(2).

2. Visitors shall be permitted to park on streets under the following conditions:

- a) Visitors shall only park either on the circular portions of cul-de-sacs or on the side of the street on which even-numbered mailboxes are placed. Vehicles shall never be parked on both sides of any street at any time, nor anywhere on Preservation Drive between the entrance to the Neighborhood and its intersection with Fawnwood Drive.
- b) **Notwithstanding subsection a) of this rule, no vehicle may be parked on any street or cul-de-sac within the neighborhood when there is two (2) or more inches of snow on the road.**
- c) Notwithstanding subsection a) of this rule, no vehicle may be parked in such a way as to impede access to any mailbox by a U.S. postal carrier.
- d) Notwithstanding subsection a) of this rule, no vehicle may be parked on a street in such a way as to impede driveway ingress and egress.
- e) Notwithstanding subsection a) of this rule, no street parking is permitted within eight (8) feet of a stop sign.
- f) Notwithstanding subsection a) of this rule, **no vehicle may be parked on either side of the road on the curve where Preservation Drive and Preservation Way meet.** In other words, no vehicle may be parked between the mailboxes representing 7734 Preservation Drive and 8621 Preservation Way on the outside of the curve, nor between the mailboxes representing 7755 Preservation Drive and 8612 Preservation Way on the inside of the curve.
- g) All vehicles parked on the street shall have both passenger-side tires touching the curb.
- h) **ANY VEHICLE PARKED IN VIOLATION OF THESE RULES AND REGULATIONS MAY, AT THE BOD'S DISCRETION, BE TOWED AT THE OWNER'S EXPENSE. BECAUSE STREET PARKING IN OUR NEIGHBORHOOD CREATES SO MANY PROBLEMS, THE BOD WILL NOT HESITATE TO TOW VEHICLES, SO PLEASE BE SURE TO FOLLOW THESE RULES!**
- i) Residents shall be responsible for informing visitors of acceptable and unacceptable parking locations, and ignorance of these parking parameters shall not be an excuse preventing the towing, at the BOD's discretion, of any violating vehicle.

B. Driving In Neighborhood. The same considerations that necessitate severe restrictions on street parking also necessitate prohibitions against speeding and reckless driving in the Neighborhood. The posted speed limit is 25 m.p.h. and shall be strictly enforced. Speeding or any other form of reckless driving shall not be permitted. Reckless driving complaints will be forwarded to the police, and if the Association receives more than one complaint regarding a Resident's, or Resident's family member, or guest's driving, then the Association may, after further investigation, pursue civil action against the owner for creating a dangerous nuisance in the Neighborhood.

C. Use of Neighborhood Pool.

- 1. Open only to Residents, their children, and their guests.** Only Residents, their children, and their guests may use the pool. Residents must accompany guests within the pool enclosure at all times.
- 2. Children accompanied by an adult.** Any person under the age of 14 must be accompanied by an adult within the pool enclosure.
- 3. Pool hours and trespassing.** Pool hours shall be from 8:00 a.m. to 9:00 p.m. during the pool season. Residents (or their children) and/or their guests inside the pool enclosure at an unauthorized time shall be considered trespassing and may be subject to criminal prosecution. The standing protocol for the BOD and its management company is to contact local law enforcement if they see anyone using the pool facility outside its posted operating hours.
- 4. Contamination of pool.** Inevitably, accidents will happen. If any Resident or his/her child or guest secretes any blood or bodily waste into the baby pool or regular pool, it is the Resident's duty and obligation immediately to notify the pool contractor at the phone number posted at the pool and on the Neighborhood website (www.ThePreserveAtEagleCreek.com). Any Resident, or Resident's family member or guest, failing to do so may be banned from using the pool facilities for a duration to be determined by the BOD.

D. Use of Common Areas. The Common Areas of the Neighborhood are the property of the HOA and exist and are maintained for the benefit of the HOA members collectively.

- 1.** Construction or improvements to or on any portion of Common Area and/or Preservation Area are strictly prohibited. Violators of this provision shall be responsible for all expenses associated with the restoration of the Preservation area to its pre-construction or pre-improvement state, including but not limited to any legal costs and fees incurred by the HOA in pursuing legal action against the violator(s) to enforce this provision.
- 2.** No trees, plants or any vegetation may be removed from any portion of a Common or Preservation Area. If a dead tree in an adjacent Common or Preservation Area poses a hazard to a Resident's home, the Resident must notify the BOD or the management company, who will then remove the dead tree at the expense of the HOA. Under no circumstances shall a Resident undertake the removal of the dead tree from a Common or Preservation Area without the BOD's authorization.
- 3.** No trails may be created or maintained, either intentionally or inadvertently, in any Preservation Area. To prevent the creation of such trails or the widening and/or erosion of natural game trails, no bicycles, motorcycles, or motorbikes of any kind shall be operated within a Preservation Area.
- 4.** The Association reserves the right to review any encroachment made within the Common or Preservation Areas prior to the completion of the Development, and also reserves the right to honor any encroachment into those areas that was approved by the Declarant or applicable builder if the Board deems it necessary or appropriate under the circumstances.

V. MISCELLANEOUS

- A. Abandoned or Inoperable Vehicles.** Abandoned or inoperable vehicles shall not be parked anywhere within Neighborhood other than within a Resident's garage. Irrespective of the actions that may be taken by Marion County or other governing body, the BOD reserves the right to tow abandoned or inoperable vehicles at the owner's expense.
- B. Commercial Vehicles.** Commercial vehicles may not be parked overnight anywhere in the Neighborhood except within a Resident's garage.
- C. Signs.** The posting of signs within the addition is prohibited, with the following exceptions:
- 1. "For Sale" or "For Rent" Signs.** Realtors or Residents may place one "For Sale" or "For Rent" sign on the lot, so long as said sign does not exceed 2' x 2' in size, does not exceed three feet in height. Any such sign must be immediately removed upon sale or rental of the home and may not remain for purposes of "advertising" the sale.
 - 2. Home Security Signs.** Residents may place a small security system notification sign immediately adjacent to their home, but not on the lawn.
 - 3. Temporary "Garage Sale" Signs.** Temporary signs announcing the annual Neighborhood-wide garage sale day may be placed within the Neighborhood by the BOD only.
 - 4. Temporary Real Estate "Open House" Signs.** Temporary real estate "open house" signs may be placed within the Neighborhood so long as they are placed only during times when the real estate agent is present in the home and in no case may they remain overnight.
 - 5. Temporary Signs To Announce Information Of Common Interest.** The BOD, at its discretion, may erect or permit the erection of temporary signs in the Neighborhood to announce information of general interest to the HOA members. Only the BOD shall have this authority, however.
 - 6. Pool and Playground Signs.** Signs displaying pool and/or playground rules and hours may be placed by the BOD at the pool and/or playground areas, respectively.
 - 7. Parking Signs.** The BOD, at its discretion, may place signs in the Neighborhood that inform visitors where they may and/or may not park.
- D. Trash And Recycling Materials**
- 1.** All trash, trash containers, and recyclable material must be kept out of sight at all times, except as specified below:
 - a) Trash within containers and recyclable materials within containers may be placed on the curb of the Resident's driveway on the morning of pick-up or on the evening before pick-up.
 - b) Empty trash and recyclable containers may remain on the curb of the Resident's driveway following pick-up until sundown on the day of pick-up.
 - 2.** All trash shall be secured so as not to be subject to animals or wind. Any Resident whose trash containers spill their contents onto the ground shall be responsible for immediate placement of the trash back into the container, and shall be liable for any nuisance or damage created by trash that does not remain secured in a trash container prior to pick up.

VI. RULE ENFORCEMENT

A. General Policy and Procedure.

- 1. Courtesy Letter or Notice.** When a violation is observed or reported, the Resident generally will be made aware of the infraction by way of a courtesy letter or notice and given a specified period of time, usually 14 days, to correct the violation.
- 2. Final Notice Letter.** If the violation is not corrected by the time period specified in the Courtesy Letter, or in the event of a new infraction of the same nature, a Final Notice letter will be sent informing the Resident that he/she has one final opportunity to correct the violation within 10 days of the date of this letter before the Association turns the matter over to their attorney to pursue legal remedies. This letter will also remind the Resident that he/she will be responsible for any attorney fees charged to the HOA to send a violation letter and/or to pursue legal action to gain compliance with the Declaration or the Rules.
- 3. Attorney Letter.** If the violation is capable of correction but is not corrected within the time period specified in the Final Notice Letter, or in the event of a new violation of the same nature, the Association may elect to have the Association's attorney send a letter informing the Resident that the violation matter has been turned over to his office to pursue any legal action necessary to gain compliance with the Declaration or Rules. The Resident will be responsible for the cost of the Attorney Letter.
- 4. Consideration of Legal Remedies.** If the violation is not corrected immediately after the Association's attorney sends the Resident an Attorney Letter, then the BOD will consider exercising self-help remedies available to it under the Declaration and/or the pursuit of legal action against the Resident, and the Resident will be responsible for all attorney's fees, interest, and other costs, as stated in the Declaration.

- B. Failure to Receive Written Preapproval for Lot Modifications.** If a Resident commences a lot modification without receiving necessary prior written approval from the ACC or BOD, then the above procedures will be followed. The Resident will be asked to submit his/her architectural request form to avoid the matter being turned over to the Association's attorney. If legal action becomes necessary, the Resident will be responsible for all attorney fees and other costs incurred by the Association to gain compliance with the Declaration's procedures regarding architectural approval. Further, the Resident will also bear all costs associated with returning the lot or structure thereon to its pre-modification state, as specified in Section 11.9 of the Declaration, if ACC or BOD rejects the modification. Accordingly, it is in the Resident's best interest to gain written preapproval before any modification is commenced.

C. Annual Assessment Delinquency Policy. The following provision applies to the payment of annual HOA Assessment Fees and late fees for delayed or non-payment of those fees. (This specific policy will be effective January 1, 2009, although the rest of these Rules and Regulations are effective February 1, 2008.)

| | |
|---------------------------------|--|
| January 1st | Annual HOA Assessment Fee due and payable. |
| January 31st | <u>"Delinquency Notice."</u> If payment in full of the annual HOA Assessment Fee is not received by the management company by January 31 st , then the Resident will be sent a delinquency notice and a \$50 late fee will be added to the account at this time. The Resident will be given until February 15 th to make payment in full. |
| February 15th | <u>"Final Delinquency Notice."</u> If payment in full (including the \$50 late fee assessed on January 31 st) is not received by February 15 th , then the Resident will be sent a final delinquency notice demanding full payment and informing the Resident that the matter will be turned over to an attorney for collection if full payment is not received on or before March 1 st . In addition, another \$50 late fee will be added to the account at this time. |
| March 1st | <u>"Attorney Action."</u> If payment in full (including the \$100 in late fees that have accrued to date) is not received by March 1 st , then the matter will be turned over to the HOA's attorney to pursue collection at the owner's expense (see note below). The Resident will also be responsible for any charges assessed to the Association by the management company for processing the delinquent account, and for all attorney fees. |
| Ongoing late fees | Thereafter, for as long as any portion of the annual HOA Assessment Fee and/or any costs or fees related thereto remain outstanding, on the first day of every month an additional \$25 late fee added to the account. |

NOTE: If the matter is turned over to the HOA's designated attorney for collection, this may result in the HOA filing suit to seek a judgment, attachment of assets, garnishment of wages, a lien upon the property, and foreclosure. In addition, all of the fees attributable to the Resident remaining for the fiscal year will be accelerated (as applicable). The Resident will be responsible to pay all HOA fees, late fees, court costs, attorney fees, and the management company collection cost administrative fee. (The latter fee is for the management company's additional time and expense related to dealing with the delinquent account and the Association's attorney.)

D. BOD Not Limited To This Rule Enforcement Procedure. Notwithstanding anything else to the contrary, the BOD may take advantage of any and all legal remedies available to it to enforce the terms of the Declaration and/or these Rules and Regulations.

Appendices:

A. *Architectural Modification Guidelines* (promulgated by ACC and Approved by BOD in December 2007, and revised by BOD in November 2008)

Appendix A

The Preserve At Eagle Creek
Architectural Control Committee
Guidelines for Modifications, Additions,
or Alterations To Existing Lots

Adopted by:
Preserve At Eagle Creek Board of Directors
Effective February 1, 2008

**Preserve At Eagle Creek
Architectural Control Committee
Architectural Modification Guidelines
(Revised)**

Effective January 1, 2009

AUTHORITY

Pursuant to Article XI of the Declaration of Covenants, Conditions, Easements and Restrictions of the Preserve At Eagle Creek (hereinafter "Covenants"), and pursuant to the authority delegated to the Board of Directors ("BOD") of The Preserve At Eagle Creek Homeowners Association, Inc. on March 27, 2007 by the Development Control Committee, the BOD has enacted the following Architectural and Landscaping Modification Guidelines (hereinafter "Architectural Modification Guidelines").

PURPOSE

The purpose of the Architectural Modification Guidelines is to provide guidance to members of The Preserve At Eagle Creek Homeowners Association, Inc. ("HOA") concerning modifications, additions, or alterations to existing Lots or structures thereon or any open space appurtenant thereto, so as to help eliminate frustration in requesting a modification that is not allowed, and to assist in making a successful application. *These Architectural Modification Guidelines are **in addition to the Architectural Guidelines attached as Exhibit D to the Covenants, and are meant to supplement and expound upon, and not supplant or replace, the Architectural Guidelines** as they pertain to modifications, additions, or alterations made on or to existing Lots or structures thereon and the open space, if any, appurtenant thereto.* Please read this document in conjunction with those Architectural Guidelines.

PHILOSOPHY

One of the reasons people buy in a covenant-controlled community is for the preservation of certain common-interest and expectations for the community that such covenants provide. The use and appearance of one home affects everyone else the community to one degree or another, not only in terms of home resale value of neighboring properties, but also in the general experience of the neighborhood itself. Covenants, therefore, are a contractual way of providing assurance to home owners, when they make what for most is the largest financial commitment they will ever personally make in their lifetimes, that certain standards will be maintained for the collective benefit of all.

Ironically then, many of the people who choose such a community for this very benefit are the first to attempt to modify, dig, plan, paint, install, add-on, and otherwise change the exterior appearance of their homes and the grounds surrounding them in a manner inconsistent with the covenants to which they originally agreed when they purchased their homes. Furthermore, while it is nearly

unanimous that home owners believe in strict enforcement of covenants, rules, and regulations in the abstract, this belief mysteriously changes when it comes time to seek approval for their own projects, or when their own covenant violations are pointed out to them specifically. In such instances, they sometimes forget the promises and commitments they made when moving into the neighborhood and, instead, desire to pursue their own individual interests at the expense of the rest of the community.

Please bear in mind that most of the people who purchased property in THE PRESERVE AT EAGLE CREEK did so because of its appearance and the lifestyle it represented. Any modifications to that appearance, or any violation the covenants designed to maintain the neighborhood's appearance, must necessarily be looked at by the BOD, and the Architectural Control Committee ("ACC") it has appointed, as affecting the entire community, and not just for the convenience or lifestyle of one homeowner.

The members of the BOD and the ACC have volunteered their time to represent the collective interests of our neighborhood's home owners as expressed in the covenants to which we all agreed when we moved into this neighborhood. We take our role in this regard seriously and consider it an important responsibility that the HOA has entrusted to us. We strive hard to balance each of our individual interests to do with our properties as we desire, on the one hand, with our collective interest to maintain the integrity of our community and the commitments we collectively made to be a part of it, on the other. To that end, your BOD and ACC members are committed to work on your behalf and to provide timely responses to your requests and concerns.

PROCEDURE

Requirements For Lot Modification Requests

Article IX, section 11.1 of the Covenants states in relevant part:

"No construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, and no planting or removal of plants, trees, or shrubs, fences, walls or other structures shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the [BOD]* has been obtained."

Accordingly, nearly any exterior alteration of any lot or structure thereon, no matter how minor or slight, must be approved by the BOD through the ACC.

Requests to make exterior modifications to your Lot must be made in writing to the ACC either on a paper form available from the HOA's management company or by submission online through the Association's website at www.ThePreserveAtEagleCreek.com.

* Per authority delegated to the BOD on March 27, 2007 by the DCC.

Within fifteen (15) days of the ACC's receipt of your complete and fully compliant application, your application will be either: (a) approved entirely;(b) approved with limitations, changes, or conditions; (c) returned to you for further information or clarification; or (d) denied.

Any modification or change to an approved application must be resubmitted to the ACC for approval of the change.

No work can commence prior to approval by the ACC. Modifications done without prior approval are subject to removal and/or legal action. In the event that a homeowner fails to comply, or the removal and repairs do not meet with the ACC's approval, the HOA's BOD has the authority to remove the modification at the homeowner's expense, as well as charge the homeowner for all costs, including but not limited to legal fees, associated with the removal of the modification and restoration of the structure or lot to its pre-modification status.

NOTE: Do not assume that a modification you wish to make will be approved based on what you see a neighbor has done. Your neighbor's modification may have been made without approval and may be (or may soon be) subject to an order of removal from the BOD. Or, the modification may have been made prior to the HOA receiving authority from the DCC to approve or reject modification requests, and therefore may have been approved under different standards than now exist. If you assume incorrectly, you stand to lose a substantial amount of money in returning the lot or structure to its pre-modification status and any attorney fees incurred by the HOA in forcing you to do so, which the Covenants clearly state is a real possibility and which the BOD will not hesitate to pursue when necessary.

Specific Architectural Modification Guidelines

Air conditioners, window- Window air conditioner units are not permitted.

Air conditioners, central- Applications for the installation of central air conditioning units will be approved subject to the following:

Unit must be a standard residential type unit.

Color must be factory color; gray, green, or tan

Unit must be installed on a concrete or fiberglass base.

Unit must be installed where indicated by the design of each model.

Installation may not encroach upon lawn areas.

Antennas and satellite dishes - Radio antennas are not permitted. A television antennae or satellite dish no bigger than 30" is permitted with prior approval of location by the ACC. If possible, T.V. antennas and dishes should be mounted in such a way that it is not visible from any street running adjacent to the home.

Awnings- Retractable patio awnings will likely be approved by the ACC under the following conditions: (1) Color and design must complement building colors; (2) Awnings can only located on the rear of the home; (3) Awnings must be retracted when not in use; and (4) Window awnings are not allowed.

Basketball goals- Basketball goals will likely be approved by the ACC under the following conditions: (1) They are permanently affixed to the ground by concrete; (2) The pole is black, brown or dark green in color; and (3) The backboard is transparent. The ACC reserves the right to disapprove the location of all basketball goals.

Clotheslines- Clotheslines, whether permanent or temporary, are not permitted.

Exterior lighting- Lamppost lights or yard lights are not permitted. Low-voltage landscape lighting will be permitted, but must illuminate white or amber, cannot be directed toward either a neighbor's house or the street, and must be at ground-level only. Colored filters may temporarily be placed on landscape lights during holiday periods.

Fencing – See Architectural Guidelines.

Flags- The display of flags or banners will likely be permitted as long as the hanger is mounted on the individual house or the pole is permanently affixed to the ground.

Hanging items- Clotheslines are not permitted. Hanging of clothes is not permitted at any time. Also see: *flags*.

Insect lights – Electric lights designed to attract and kill insects that emit a “zap” noise when touched by an insect are not permitted. Lights that produce natural flames and are designed to deter insects, such as tiki torches or citronella candles, are permitted on patios and decks located in a homeowner’s backyard, but caution should be exhibited in the placement and use of such devices so as to prevent fires.

Lawn ornaments- Only tasteful lawn ornaments that are of earth tones are permitted. The lawn ornaments must blend with the surrounding landscaping.

Patio covers- see: *awnings*.

Play Structures- Play sets must be permanently affixed to the ground and must be predominantly made of wood. They cannot predominantly be made of metal or plastic, although individual components or parts may be (such as a slide, the chains of a swing, a teter-totter, etc). Per the Architectural Guidelines, play sets not more than six (6) feet in height need not be approved by the ACC, provided they otherwise comply with these provisions and every reasonable effort is made to screen or shield the play set from adjacent properties. Play sets higher than six (6) feet must be approved by the ACC.

Removal- Removal of any architectural or landscape feature of a home already installed by the builder, such as shutters or other such features, cannot be removed without prior approval.

Removal of any tree 4½ inches or greater in caliper that is not already dead is **not** permitted without prior approval from the ACC, and any such removal will only be approved when the Lot Modification Plan includes the reestablishment of trees on the lot consistent with the trees lost. (E.g., if two 5 inch caliper trees are removed, then a tree of ten inches in caliper, or multiple trees totaling ten inches in caliper, must be planted to replace the removed trees).

Homeowners are responsible for the removal of any dead tree on their properties, including the stump, as they can be a hazard and are unsightly.

Storm doors/screen doors- High quality storm and screen doors are permitted provided that they are painted to complement the color scheme of the home and front door.

Storm door must be full view style, with the kick panel no taller than twelve inches. Bare aluminum storm or screen doors are not permitted.