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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

WAKEFIELD
Section 1

A subdivision in White River Township,
Johnson County, Indiana

December 6, 1995

Developed by Wakefield Associates, LLC,
200 Century Building
36 South Pennsylvania Street
Indianapolis, IN 46204

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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF WAKEFIELD**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAKEFIELD ("Declaration"), is made this _____ day of _____, 1995, by Wakefield Associates, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described on the attached Exhibit A ("Real Estate"); and

WHEREAS, the Real Estate is being developed as a Subdivision known as WAKEFIELD, described on Exhibit A; and

WHEREAS, Declarant intends to sell and convey Lots within WAKEFIELD and desires to subject WAKEFIELD to certain covenants and restrictions ("Covenants") in order to ensure that the development and use of the various Lots in WAKEFIELD are harmonious and do not adversely affect the use or value of surrounding Lots in WAKEFIELD; and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas and other improvements which are a part of or related to WAKEFIELD and to impose upon the Owners of the various Lots in WAKEFIELD certain obligations, including but not limited to assessments and charges for maintenance and other costs related to the management of those Common Areas;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

GENERAL PURPOSE OF THIS DECLARATION

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other attractive improvements at appropriate locations on the Real Estate, to preserve and maintain proper setbacks from streets and adequate free space between structures, and to provide for adequate and proper maintenance of the Real Estate all in compliance with applicable requirements of relevant governmental agencies.

ARTICLE I

Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article:

Section 1.1. Additional Land. "Additional Land" means any real estate now owned or hereafter acquired by Declarant and located adjacent to the Real Estate as described in Exhibit A or as augmented by any additional real estate subjected to the provisions of this Declaration, which real estate is subject to Declarant's unilateral right reserved above to subject the same to the provisions of this Declaration.

Section 1.2. Adjoining Neighborhood Property. "Adjoining Neighborhood Property" has the meaning set forth in Section 2.1

Section 1.3. Applicable Date. "Applicable Date" shall mean the date which is the earlier of (a) the date on which the written resignation of Declarant as a Class B member is delivered to the Secretary of the Association or (b) the date Declarant no longer owns any Lot.

Section 1.4. Assessment. "Assessment" means the share of the Common Expenses imposed upon and against each Lot as determined and assessed pursuant to the provisions of this Declaration.

Section 1.5. Association. "Association" means Wakefield Homeowner's Association, or an organization of similar name, formed, or to be formed, as an Indiana non-profit corporation, its successors and assigns.

Section 1.6. Architectural Control Committee. "Architectural Control Committee" means a committee composed of up to three members which shall review and approve all plot plans, plans, and specifications prior to the commencement of construction, of any kind, within WAKEFIELD. The Architectural Control Committee shall be appointed by the Declarant prior to the Applicable Date and by the Board of Directors of the Association after the Applicable Date.

Section 1.7. Common Areas. "Common Areas" means all areas shown on any plat of the Real Estate (including improvements thereto) which are not Lots and which are not dedicated to the public. Common Areas shall include all storm drainage facilities and improvements, not dedicated to the public or located in the public right-of-way, including but not limited to all detention areas, inlet structures, open ditches, pipes, swales and paved swales.

Section 1.8. Common Expense. "Common Expense" means the actual or estimated costs of the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, and any other cost or expense incurred by the Association for the benefit of the

Common Areas, or the administration and management of the Association, including but not limited to insurance costs, legal and accounting costs, and costs of other appropriate services.

Section 1.9. Declarant. "Declarant" means Wakefield Associates, LLC, an Indiana limited liability company, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including (but not limited to) any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under a mortgage executed by Declarant.

Section 1.10. Development Period. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (i) the date Declarant no longer owns any Lot within or upon the Real Estate or (ii) the date which is three (3) years after the date on which all improvements and installations have been completed and, if applicable, accepted for public maintenance by any appropriate governmental unit or agency thereof.

Section 1.11. Easements. "Easements" refer to those areas reserved as easements on the plats of the Real Estate.

Section 1.12. Entry Sign. "Entry Sign" means any sign or structure identifying the Real Estate.

Section 1.13. Lot. "Lot" means any numbered parcel of land shown and identified as a Lot on any Plat of the Real Estate.

Section 1.14. Master Declaration. "Master Declaration" means the Declaration of Easements, Covenants and Restrictions of WAKEFIELD as recorded in Book _____, Page _____, as Instrument No. 95023081 in the office of the Recorder of Johnson County, Indiana (as the same may be amended or supplemented from time to time). Reference is made to the Master Declaration for a description of the rights, restrictions and obligations associated with the easements identified on any Plat.

Section 1.15. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 1.16. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of a mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 1.17. Plat. "Plat" means the subdivision plat of the Real Estate (as described in Exhibit A), as hereafter recorded in the Office of the Recorder of Johnson County, Indiana, (as the same may be amended or supplemented from time to time), and any subdivision plat(s) for any

Additional Land hereafter subjected to the provisions of this Declaration, which subdivision plats are hereafter recorded in the Office of the Recorder of Johnson County, Indiana (as the same may be amended or supplemented from time to time).

Section 1.18. Regular Assessments. "Regular Assessments" has the meaning set forth in Section 5.2 of this Declaration.

Section 1.19. Special Assessments. "Special Assessments" has the meaning set forth in Section 5.3 of this Declaration.

ARTICLE II

Easements and Restrictions

Section 2.1. Owners' Easement of Enjoyment of Common Areas. Declarant hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas which shall run with and be appurtenant to each Lot, subject to the following:

(i) the right of the Declarant (prior to conveyance of the Common Areas to the Association) to grant nonexclusive easements appurtenant to and for the benefit of other real estate in the vicinity of the Real Estate ("Adjoining Neighborhood Property") for the use and enjoyment of the Common Areas by the owners from time to time of all or any part of such Adjoining Neighborhood Property upon and subject to the terms and conditions of such grant, which terms and conditions shall include an obligation to contribute to the cost of the maintenance and repair of such Common Areas;

(ii) the right of the Declarant (prior to conveyance of the Common Areas to the Association) to grant easements in and to the Common Areas to any political subdivision or governmental authority or public utility company;

(iii) the right of the Association (after conveyance of the Common Areas to the Association by Declarant) to dedicate or transfer all or any part of the Common Areas to any political subdivision or governmental authority or public utility company for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of two-thirds (2/3) in the aggregate of both classes of members of the Association;

(iv) any other easements declared, created, granted or reserved elsewhere in this Declaration or in any Plat; and

(v) the terms and provisions of this Declaration.

Neither Declarant nor the Association shall be responsible for any loss, damage or injury to property or injury or death to persons arising out of the use of the Common Areas and any equipment and facilities installed by Declarant or the Association therein or thereon. The Common Areas and all such equipment and facilities shall be used at the sole risk of the user.

Section 2.2. Delegation of Use. Any Owner, in accordance with the By-Laws and any reasonable rules and regulations promulgated from time to time by the Board of Directors, may delegate his right of enjoyment of the Common Areas to his family members or tenants who reside on the Lot or to any guests when accompanied by such Owner, family member or tenant.

Section 2.3. Conveyance of Common Areas. Prior to the conveyance of the last Lot by Declarant, Declarant shall convey all of its right, title and interest in and to the Common Areas to the Association by quitclaim deed, and such Common Areas shall then be the property of the Association.

Section 2.4. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat.

A. Declarant's Reserved Rights. Notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby reserves the nonexclusive right, privilege and easement in, on, over, under and across the entirety of the Real Estate, to tie into and/or otherwise connect to 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) cable television service, and drainage lines and facilities constructed or installed in, on, under and/or over all or any portion of the Real Estate.

Section 2.5. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations, not inconsistent with the provisions of this Declaration concerning the use of the Common Areas and the facilities located thereon and for the enforcement of the provisions of this Declaration. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of any such rules and regulations. Such rules and regulations shall be binding upon the Owners, their family members, tenants, guests, invitees and agents until and unless such rules or regulations shall be specifically overruled, canceled or modified by the Board of Directors or by the Association in a regular or special meeting by the vote of members holding a majority of the total votes of the Association. The Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for any violation of such rules and regulations, and monetary fines shall be and constitute a special assessment against the Owner against whom they are imposed and his Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Section 2.6. Restrictions.

A. Lot Use. All Lots shall be used exclusively for residential purposes and for occupancy by a single family. No non-residential building shall be erected on any Lot, and no trade or business

of any kind may be conducted on any Lot. Nothing in this paragraph shall be deemed to preclude an Owner from maintaining an office in his residence for use in connection with the conduct of his business, as long as members of the public are not invited to the office for business purposes, no sign is erected in connection therewith and no employees of the Owner's business work out of the residence.

B. **Minimum Living Space.** The minimum square footage of living space of dwellings within WAKEFIELD, exclusive of porches, garages, or basement shall be as follows:

	<u>Lots</u>	<u>Single Story Dwellings</u>	<u>Two Story Dwellings</u>
R-3	1-60	1,400 square feet	1,500 square feet
R-2	61-62, 180-228	1,250 square feet 1,700	1,850 square feet

C. **Building Height.** The maximum building height of the residence erected on a Lot shall not exceed 35 feet. The maximum building height of any accessory structure erected on a Lot shall not exceed 20 feet. The building height of the residence or accessory structure for purposes of the foregoing restriction shall be the vertical distance measured from the highest point of the proposed finished grade at the perimeter of the residence or accessory structure (as the case may be) to the highest point of the roof of the residence or accessory structure (as the case may be).

D. **Building Placement: Setbacks.** Building setback lines are established by the Johnson County Zoning Ordinance as that ordinance may be amended from time to time. As of the date of this Declaration, the applicable setback lines, as imposed by the current Johnson County Zoning Ordinance, are as follows:

<u>Lots</u>	<u>Minimum Side Yards</u>	<u>Minimum Aggregate Side Yard</u>
1-60	8 10 feet	20 25 feet
61-62, 180-228	10 8 feet	25 20 feet

Revised

No building shall be erected or maintained between the established setback line and the lot lines of said Lot. Irrespective of the requirements of the Johnson County Zoning Ordinance, as amended, no building shall be erected within eight feet (8') of the side lot line of any Lot. In the event a building is erected on more than one Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

E. **Mail Boxes.** Mailboxes and the posts on which they are mounted shall be of uniform size, height, design, and color as specified by the Declarant. Owners shall be prohibited from altering the appearance of their mailboxes or the posts on which they are mounted, except to make repairs to and maintain or replace the mailboxes or the posts on which they are mounted in a manner which is consistent with the uniform appearance as specified by the Declarant. Owners shall keep their mailboxes in a good state of repair at all times.

delete

F. Yard Lights. Post lights shall be mounted in each yard in a standard location as specified by the Declarant, and shall be operated by photoelectric cells, installed as a part of the original development of each Lot. Owners shall be prohibited from removing or altering the appearance of the post lights in any manner except to repair, maintain, or replace the post lights as necessary to maintain the uniform appearance as specified by the Declarant. Owners shall keep their yard lights in good repair at all times.

G. Driveways. All driveways shall be hard-surfaced from the point of connection with the abutting street to the point of connection with the garage apron and shall be totally completed prior to occupancy of the residence.

H. Windows. All residences shall have windows on each side of such residence unless the Committee grants a special exception based on architectural features or landscaping along such side of the residence.

I. Swimming Pools. No above-ground swimming pools shall be permitted on any Lot.

J. Garages and Accessory Structures. All residences shall have an attached garage which will accommodate at least two (2) automobiles. No structure shall be erected, placed or permitted to remain upon any Lot, except a single family residence. No detached storage structure (i.e., minibarns and similar structures) shall be erected or placed on any Lot.

K. Exterior Materials. The colors of exterior building materials may be limited by the Committee to a certain color range or palette. Loud or garish colors of brick, trim, siding or roofing are prohibited.

L. Diligence in Construction. Construction of residences shall be completed within twelve (12) months after the beginning of construction. No residence which is partially or totally destroyed by fire or other casualty shall be allowed to remain in such state for more than forty-five (45) days from the time of such destruction or damage.

M. Maintenance of Lots and Improvements. The Owner of a Lot shall at all times maintain the Lot and the exterior of any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly, and, specifically, such Owner shall:

(i) Mow and water the grass on the Lot and on any portion of the public right-of-way adjacent to the Lot (i.e., that portion of the public right-of-way between the curb and the Lot line) and provide fertilizer and weed control at such times as may be reasonably required in order to prevent the growth of weeds or other unsightly vegetation.

(ii) Remove all debris or rubbish from the Lot.

- (iii) Cut down and remove dead or diseased trees from the Lot.
- (iv) Keep the exterior of all improvements on the Lot in good repair and condition.
- (v) Prevent the existence of any other condition on the Lot that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate.

In addition, the Owner shall maintain trees planted in the public right-of-way adjacent to such Owner's Lot and replace the same if they die or become diseased.

In the event the Owner of any Lot fails to so perform his maintenance obligations pursuant to this paragraph in a manner satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to perform such obligations at the Owner's expense. Any costs incurred by the Association shall constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed pursuant to this paragraph.

N. Nuisances. No noxious or offensive activities shall be permitted on any Lot; nor shall anything be done on any Lot which may be or become an unreasonable annoyance or nuisance to the Owner of any other Lot. Any violation of this paragraph shall constitute a nuisance which may be abated by the Association in any manner provided at law or in equity. The cost or expense of abatement, including court costs and attorneys' fees, shall constitute a special assessment against such Lot and the Owner thereof, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the Owner for any damage which may result from any work performed hereunder.

O. Occupancy of Partially Completed Residence Prohibited. No residence constructed on any Lot shall be occupied or used for residential purposes until it shall have been substantially completed. The determination of whether the residence shall have been substantially completed shall be made by the Committee, and such decision shall be binding on all parties.

P. General Prohibitions. In addition to any restrictions or limitations contained elsewhere in this Declaration, the following limitations, restrictions and prohibitions shall apply to the use and occupancy of the Real Estate:

- (i) **Signs.** No signs or advertisements shall be displayed or placed on any Lot other than signs provided by Declarant or the Association and/or one sign of not more than six (6) square feet for the purpose of advertising the Lot and/or residence thereon for sale.

(ii) **Decorative Structures.** No decorative structures, statues, or ornaments shall be permitted on any Lot. This section shall not preclude Owners from decorating their Lots or residences during appropriate holiday seasons in a manner that is not offensive or disruptive to the other Owners as may be determined by the Board of Directors of the Association in its sole discretion.

(iii) **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not bred, kept or maintained for any commercial use and are confined, at all times, within the boundaries of their Owner's Lot, unless restrained by a leash and attended by their Owner. No outdoor kennels, doghouses, or other structures designed or used as a shelter for any such pets shall be permitted on any Lot. In every case, dogs, cats, and other household pets which are excepted under this section, shall be kept in a manner that does not constitute an annoyance to the Owners of other Lots, and does not adversely affect their use and enjoyment of their property.

(iv) **Trucks, Boats, Recreational Vehicles.** No heavy equipment, tractors, commercial vehicles, semi-trucks, trailers, mobile homes, recreational vehicles, boats, boat and utility trailers, or other similar vehicles and equipment shall be permitted to be kept on any Lot, Common Area, street, easement or right-of-way unless entirely kept within a closed garage.

(v) **Inoperative Parked Vehicles.** At no time shall any unlicensed or inoperative vehicle be permitted on any Lot or Common Area, street, easement or right-of-way unless kept entirely within a garage.

(vi) **Garbage, Trash, and Other Refuse.** No Owner shall burn garbage or other refuse on his Lot, nor shall any such Owner accumulate out-of-doors any such refuse on his Lot. Rubbish, garbage or other waste shall at all times be kept in sanitary containers.

(vii) **Outside Storage.** Except for construction materials and equipment used by the builder during the construction of the residence on the Lot, all construction materials and equipment, lawn equipment and similar items shall be stored at all times when not in use in enclosed storage areas.

(viii) **Temporary Structures.** No trailers or temporary storage sheds shall be erected or situated on any Lot, except those used by the builder during the construction of the residence on the Lot.

(ix) **Satellite Dishes and Outside Speakers.** No satellite dishes or outside speakers shall be installed or permitted on any Lot, except satellite dishes eighteen

(18) inches or less in diameter which may be installed only at locations approved by the Committee.

(x) Antennas and Solar Panels. Except as approved by the Committee, no exposed antennas or solar panels or other apparatus shall be installed or permitted on any Lot.

(xi) Awnings. No metal, fiberglass or similar type material awnings or patio covers shall be permitted on any Lot.

(xii) Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the Committee prior to their construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front Lot line than the front building setback line.

(xiii) Corner Lot. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 8 feet above roadways shall be placed or permitted on any corner Lot within the triangular area formed by the street property line and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersections of the street lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

(xiv) Lot Access. All Lots shall be accessed from the interior street areas of the subdivision.

(xv) Tree Preservation. No trees, other than dead or diseased trees, shall be removed from any Lot without the prior written approval of the Committee.

(xvi) Field Tiles. Any field tile or underground drain which is on any Lot must be allowed to perpetuate.

(xvii) Wells And Septic Tanks. No water wells shall be drilled on any Lot. Septic tanks shall be prohibited on all Lots.

(xviii) Sump Pumps and Drains. Sump pumps, gravity drains and other drains serving individual residences on Lots shall outfall only into drainage swales or storm structures included in the storm drainage system for the subdivision.

Q. Prohibition Against Granting Other Easements. Without the prior written approval of the Committee, an Owner shall not grant any easements to any third party, including public utility companies, political subdivisions or governmental authorities, for the purposes of providing water, sanitary sewer or storm water drainage for a property other than such Owner's Lot; provided nothing in this paragraph shall be deemed to restrict or otherwise limit Declarant's rights under Section 2.4A of this Declaration.

Section 2.7. Street Lighting. Declarant may (but shall not be obligated to) provide street lighting for any streets located within the Real Estate in connection with the initial development of the Real Estate. If Declarant provides such street lighting, any additional street lighting desired by the Owners shall be installed by the Association at its cost, which cost shall be paid by the Association as a Common Expense.

ARTICLE III

ASSOCIATION

Section 3.1. Membership. Each Owner shall be a member of the Association throughout the entire term of his ownership.

Section 3.2. Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) **Class A Members.** Class A members shall be all Owners other than Declarant (unless the Class B membership has been converted to Class A membership as provided in the following paragraph (ii), in which event Declarant shall then be a Class A member).

(ii) **Class B Members.** The Class B member shall be the Declarant. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is defined in Section 1.3 hereof).

Section 3.3. Voting Rights. Each class of membership of the Association shall have the respective voting rights set forth in this Section 3.3.

(i) Except for matters which this Declaration expressly provides shall be approved by both classes of members of the Association and until the Applicable Date, the Class B membership shall exercise all voting rights with respect to any matter submitted to a vote of the members of the Association.

(ii) From and after the Applicable Date and for each matter which this Declaration expressly provides shall be approved by both classes of members of the

Association, each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to such Lot. Until the Applicable Date, except for each matter which this Declaration expressly provides shall be approved by both classes of members of the Association, the Class A membership shall have no votes with respect to any matter submitted to a vote of the members of the Association. For those matters which this Declaration expressly provides shall be approved by both classes of members of the Association, the Declarant shall have one (1) vote for each Lot owned by the Declarant.

Section 3.4. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the Bylaws. The Board of Directors shall manage the affairs of the Association.

Section 3.5. Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association 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, on written notice of ninety (90) days or less.

Section 3.6. Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to:

(i) The administration and enforcement of the covenants and restrictions contained in this Declaration.

(ii) The maintenance and upkeep of the Common Areas (including the landscape islands located in any public right-of-way within and upon the Real Estate), the Entry Signs and, except to the extent the same is the responsibility of an Owner pursuant to the terms of this Declaration.

(iii) The maintenance and upkeep of the storm drainage facilities and improvements, not dedicated to the public or located in the public right-of-way, including but not limited to all detention areas, inlet structures, open ditches, pipes, swales and paved swales, all of which have been incorporated and defined as part of the Common Areas pursuant to Section 1.8 herein.

(iii) Procuring and maintaining for the benefit of the Association, its Board of Directors and the Owners the insurance coverages required by this Declaration and such other insurance as the Association deems necessary or advisable.

(iv) Payment of taxes, if any, assessed against and payable with respect to the Common Areas.

(v) Assessment and collection from the Owners of the Common Expenses and collection of expenses of the maintenance and repair of the Common Areas from the owners of the Adjoining Neighborhood Property if such owners have been granted the right to use the Common Areas by Declarant as provided in Section 2.1.

(vi) Contracting for such services as management, snow removal, security control, trash removal or other services as the Association deems necessary or advisable. Nothing contained herein shall be construed to require the Association to provide snow removal or other services.

(vii) From time to time, adopting, amending or rescinding such reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, as the Association deems necessary or advisable, and enforcement of the same. As part of such rules and regulations, the Association may provide for reasonable interest and late charges on past due installments of any assessments or other charges against any Lot. Copies of such rules and regulations shall be furnished by the Association to the Owners prior to the time when the same shall become effective.

Section 3.7. Compensation. No director of the Association shall receive compensation for his services as such director.

Section 3.8. Non-Liability of Directors and Officers. Neither the directors or officers of the Association nor any members of the Committee shall be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as said directors, officers or Committee members, except for their own individual willful misconduct or gross negligence.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.1. Creation. There is hereby created and established an Architectural Control Committee to perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members appointed by Declarant, from time to time, and who shall be subject to removal by Declarant, at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed by the Board of Directors of the Association, from time to time.

Section 4.2. Purposes and Powers of Committee. The Committee shall regulate the exterior design, appearance and location of residences, structures and other improvements placed on any Lot and the installation and removal of fences, walls and landscaping on any Lot in such a manner as to preserve and enhance the value and integrity of the Real Estate for the benefit of each Owner. The Committee shall have the right to promulgate, modify and amend at any time and from time to time reasonable rules and regulations for the submission of matters to the Committee for approval. The rules and regulations in effect from time to time shall be available upon request to all Owners and builders who seek to engage in construction upon all or any portion of the Real Estate. Such rules and regulations may set forth additional requirements to those set forth in this Declaration, as long as the same are not inconsistent with this Declaration, and shall be binding on all Owners of any Lots.

(i) **In General.** No residence, structure, fence, wall, patio, or other improvement of any type or kind ("Improvements") shall be erected, constructed, placed, modified or altered on any Lot and no clearing, excavation, grading or other site work shall take place on any Lot until plans therefor have been approved in writing by the Committee. Such approval shall include approval of the exterior design and exterior colors and materials. No change shall be made in the exterior colors or materials of any improvement located on a Lot without the prior written approval of the Committee, unless such colors are specifically set forth on the approved list of colors published from time to time by the Committee. Approval of fences or walls may be conditioned upon installation of additional landscaping in order to screen such fence or wall from the view of adjoining property and the set back of such fence from the Lot line. Approval of the Committee shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting such approval. Such written application shall be in the manner and form prescribed from time to time by the Committee and, in the case of new construction or the modification or alteration of existing improvements, shall be accompanied by two (2) complete sets of plans for any such proposed construction, modification or alteration. Such plans shall include (a) site plans showing the location of all improvements existing upon the Lot and the location of the improvement(s) proposed to be constructed or placed upon the Lot, including any sidewalk required to be installed by the Owner pursuant to the Master Declaration, each properly and clearly designated, (b) exterior elevations of all buildings proposed to be constructed upon such Lot, (c) a list of all exterior surface materials to be utilized (with samples), (d) a grading and drainage plan for the Lot, if applicable, and (e) a landscaping plan, and, if applicable, a tree removal plan showing existing trees which will be required to be removed in connection with the proposed construction, together with any information that the Committee may request.

(ii) **Power of Disapproval.** The Committee may refuse to grant approvals required under this Article or elsewhere in this Declaration when:

(a) The plans or other information submitted are inadequate or incomplete or show the proposed improvement to be in violation of any provision of this Declaration;

(b) the exterior design (including the roof pitch) of the proposed improvement is not, in the opinion of the Committee, consistent with adjacent improvements or consistent with the general development of the Real Estate as a development of residences having traditional design features;

(c) the exterior finishes are not, in the opinion of the Committee, compatible with finishes on adjacent improvements or appropriate for a development of the type contemplated on the Real Estate or the color range of such finishes is not consistent with the range or palette established by the Committee for the development;

(d) the grading and drainage plan is not, in the opinion of the Committee, compatible with the general storm water drainage plan for the Real Estate;

(e) the landscaping is not, in the opinion of the Committee, appropriate or sufficient; or

(f) the proposed construction, modification or alteration or the proposed tree removal would, in the opinion of the Committee, be contrary to the interests of any other Owner of inconsistent with the preservation and enhancement of the value of the Real Estate.

Section 4.3. Duties of Committee. The Committee shall approve or disapprove any matters submitted to it for approval within fifteen (15) days after all required information is submitted to it. One copy of submitted material shall be maintained by the Committee for its permanent files. All notifications to applicants shall be in writing. In the event that any plans or parts thereof are disapproved, the Committee shall specify the reason or reasons for such disapproval.

Section 4.4. Liability of Committee. The Committee or any member thereof or the Declarant, the Association or any office, director, agent or employee of any of the foregoing shall not be liable in any way for (i) any defects in any plans, specifications or other materials submitted to it, (ii) any defects in any work done according thereto or (iii) any damages arising out of or in connection with the approval or disapproval of any matter by the Committee.

Section 4.5. Inspection. The Committee may inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article IV.

Section 4.6. Nonapplication to Declarant. Notwithstanding the provisions of this Article IV or any other provisions of this Declaration requiring the approval of the Committee, the Declarant, or any entity related to Declarant, shall not be required to apply for or secure the approval of the

Committee in connection with any construction, modification or alteration on the Real Estate by Declarant or any entity related to Declarant.

ARTICLE V

ASSESSMENTS

Section 5.1. Creation of Lien and Personal Obligation. Declarant, for each Lot now or hereafter owned by it, hereby covenants, and each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). The Regular Assessments may include an amount to be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any capital improvements which the Association is required to maintain. All such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided and shall be due and payable without relief from valuation and appraisal laws. Such assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and reasonable attorneys' fees, shall also be the personal obligations of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association shall, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

Section 5.2. Regular Assessments. The Board of Directors shall have the right, power and authority, without any vote of the members of the Association, to fix, from time to time, the Regular Assessments against each Lot at any amount not in excess of the maximum Regular Assessment hereinafter provided:

(i) Until December 31, 1996, the maximum Regular Assessment for a calendar year on any Lot shall not exceed One Hundred Twenty-Five Dollars (\$125.00).

(ii) From and after January 1, 1997, the maximum Regular Assessment on a Lot for any calendar year may be increased by not more than ten percent (10%) above the Regular Assessment for the previous calendar year, except as provided in the following subparagraph (iii).

(iii) From and after the Applicable Date, the Board of Directors may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above with the approval of a majority of the members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

Section 5.3. Special Assessments. The Board of Directors may impose Special Assessments against each Lot for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any operating deficits which the Association may from time to time incur after the Applicable Date only with the approval of a majority, in the aggregate, of both classes of members of the Association who are voting in person or by proxy at a meeting of the members of the Association duly called for such purpose.

Section 5.4. Uniform Rate of Assessment. The Regular Assessments and Special Assessments levied by the Association, respectively, shall be uniform for all Lots.

Section 5.5. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments shall commence for each Lot on the first day of the first calendar month following the conveyance of such Lot by Declarant; provided, however, that Declarant may in its sole and absolute discretion delay the starting date for Regular Assessments for any Lot for as long as Declarant deems appropriate, but Regular Assessments shall in all events be payable commencing on the first day of the first calendar month following the date the Lot is occupied for residential purposes. Such first annual Regular Assessment for such Lot shall be prorated based on the number of calendar months then remaining in the annual assessment period. Until the Applicable Date, and notwithstanding anything else contained herein, no Regular Assessments or Special Assessments shall be owed or payable by Declarant with respect to any Lot or shall become a lien on any Lot while such Lot is owned by Declarant, but Declarant shall be obligated to pay any operating deficits the Association may incur prior to the Applicable Date. The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of the annual assessment period. Written notice of the Regular Assessment, any Special Assessments, and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. All assessments shall be due and payable in such manner and on such schedule as the Board of Directors may provide. The Board of Directors may provide for reasonable interest and late charges on past due assessments.

Section 5.6. Failure of Owner to Pay Assessments

(i) If any Owner shall fail to pay any assessment (or periodic installment of an assessment, if applicable) when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to pay any assessment (or a periodic installment of an assessment, if

applicable) when due, the Board of Directors may in its discretion accelerate the entire balance of any unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same.

(ii) Notwithstanding anything contained in this Section 5.6 or elsewhere in this Declaration, any sale or transfer of a Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments (or periodic installments, if applicable) which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any assessments (or periodic installments of such assessments, if applicable) thereafter becoming due or from the lien therefor. Such unpaid share of any assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot from which it arose).

ARTICLE VI

INSURANCE

Section 6.1. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any and all Common Areas. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives all rights of subrogation on any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or

administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' assessments on all Lots in WAKEFIELD, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, or as such guidelines may be amended thereafter.

ARTICLE VII

DAMAGE TO COMMON AREAS

Section 7.1. Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a special Assessment to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and constitute a special assessment against such Owner and his Lot to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

Section 7.2. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value

due to damage to the Common Areas; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

ARTICLE VIII

MORTGAGES

Section 8.1 Notice to Association Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary of the Association, and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 8.2. Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate specifying unpaid assessments and any other defaults of the Owner of such Lot under this Declaration or any other applicable documents known to the Association.

Section 8.3. Mortgagees' Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE IX

AMENDMENT

Section 9.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the Bylaws.

(iv) **Adoption.** Any proposed amendments to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of both classes of members of the Association; provided, however, that any such amendments shall require the prior written approval of Declarant so long as Declarant owns any Lots within and upon the Real Estate. Any Mortgagee that has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing Section 8.1 shall be entitled to notice of the meeting and the proposed amendment in the same manner as an Owner.

(v) **Amendments of a Material Nature.** No amendment to this Declaration shall be adopted pursuant to this Section 9.1 which constitutes an Amendment of a Material Nature (as such term is hereinafter defined) unless approved by a vote of two-thirds (2/3) in the aggregate of both classes of members of the Association and fifty-one percent (51%) of all Mortgagees who have given prior notice to the Board of Directors of the Association in accordance with the provisions of the foregoing Section 8.1. For purposes of this Section 9.1(v), the term "Amendment of a Material Nature" means any amendment to this Declaration that:

- (a) changes or reduces the voting rights of the Class A members;
- (b) allows the Board of Directors to increase the maximum Regular Assessment on a Lot for any calendar year prior to the calendar year in which the Applicable Date occurs by more than twenty-five percent (25%) above the Regular Assessment for the previous calendar year;
- (c) changes the procedure for imposing Special Assessments;
- (d) releases the Association from its obligations to maintain and repair the Common Areas;
- (e) terminates the rights of the Owners to use any of the Common Areas;
- (f) changes the boundaries of any Lot;
- (g) permits any Lot to be converted to a Common Area;

- (h) allows the Declarant to withdraw property from the Real Estate;
- (i) changes hazard insurance requirements;
- (j) imposes any new restrictions on an Owner's right to sell or lease his Lot; or
- (k) permits the repair or restoration of any improvements to the Common Areas other than to their original condition.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear in person or by proxy at the meeting in which such amendment is to be considered.

Section 9.2. By Declarant. Declarant hereby reserves the right, so long as Declarant or any entity related to Declarant owns any Lot, 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 Declarant into compliance with the requirements of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof, or to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration or any other governmental agency relating to the purchase, assignment, transfer, insuring, or guaranteeing of first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment hereto; provided, that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, or which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

Section 9.3. Recording. All amendments to this Declaration shall be recorded in the Office of the Recorder of Johnson County, Indiana, and no amendment shall become effective until so recorded. Any amendments which may be made by the Declarant without any further consent or approval shall be executed by an authorized representative of the Declarant. All other amendments shall be executed by the President or Vice President and Secretary of the Association. Any amendments prior to the Applicable Date shall be effective only upon Declarant's written consent.

ARTICLE X

GENERAL PROVISIONS

Section 10.1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 10.2. Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, Covenants, and conditions contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 10.3. Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision hereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 10.4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 10.5. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 10.6. Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 10.7. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 10.8. Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after the Class B membership has been converted to Class A membership pursuant to Section 3.2 herein.

Section 10.9. Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants and Restrictions For Wakefield pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana",

and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

Section 10.10. Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 10.11. Governing Law. This Declaration of Covenants shall be governed and interpreted pursuant to the laws of the State of Indiana.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

WAKEFIELD ASSOCIATES, LLC

By: *Harry F. McNaught*
Harry F. McNaught, President

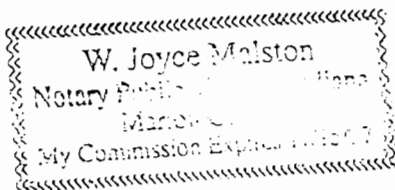
STATE OF INDIANA)
)SS:
COUNTY OF MARION)

On this 8th day of December, 1995, before me, a Notary Public, personally appeared **Harry F. McNaught**, personally known to me to be the same person described in and who executed the foregoing Declaration of Covenants, Conditions and Restrictions of Wakefield, and the same person duly acknowledged to me that he executed the same.

My Commission Expires:

November 15, 1997

W. Joyce Malston
Notary Public, W. Joyce Malston
Resident of Marion County, IN



This document prepared by: J. Lee Robbins, Attorney at Law, VAN VALER WILLIAMS & HEWITT, 300 S. Madison Ave., Suite 400, P.O. Box 405, Greenwood, IN 46142, (317) 888-1121.

LEGAL DESCRIPTION

WAKEFIELD SECTION ONE

JUNE 13, 1995

A part of the Southeast Quarter of the Southwest Quarter and a part of the Southeast Quarter of Section 33, Township 14 North, Range 3 East, Johnson County, Indiana, described as follows: Beginning at the railroad spike at the southeast corner of the Southwest Quarter of said section, said corner being South 88 degrees 40 minutes 04 seconds West 2,682.45 feet from the railroad spike at the southeast corner of said section; thence South 88 degrees 35 minutes 29 seconds West 1,342.26 feet along the south line of the Southwest Quarter of said section to the southwest corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 00 degrees 01 minute 35 seconds East 1,043.79 feet along the west line of said quarter-quarter section; thence North 19 degrees 52 minutes 21 seconds East 305.90 feet to the north line of the Southeast Quarter of the Southwest Quarter of said section; thence North 88 degrees 33 minutes 50 seconds East 394.09 feet along said north line; thence South 7 degrees 16 minutes 32 seconds East 282.11 feet; thence South 43 degrees 09 minutes 00 seconds West 160.19 feet; thence South 49 degrees 39 minutes 27 seconds East 160.05 feet; thence South 50 degrees 52 minutes 42 seconds East 50.00 feet; thence Northeasterly 34.96 feet along an arc to the right and having a radius of 575.00 feet and subtended by a long chord having a bearing of North 40 degrees 51 minutes 48 seconds East and a length of 34.95 feet; thence South 49 degrees 59 minutes 38 seconds East 172.01 feet; thence North 33 degrees 15 minutes 07 seconds East 75.66 feet; thence North 42 degrees 55 minutes 03 seconds East 146.12 feet; thence Southeasterly 20.49 feet along an arc to the left and having a radius of 475.00 feet and subtended by a long chord having a bearing of South 48 degrees 19 minutes 05 seconds East and a length of 20.48 feet; thence North 47 degrees 21 minutes 49 seconds East 156.63 feet; thence North 38 degrees 00 minutes 30 seconds West 65.42 feet; thence North 30 degrees 10 minutes 35 seconds West 62.86 feet; thence North 29 degrees 40 minutes 18 seconds West 62.66 feet; thence North 22 degrees 25 minutes 54 seconds West 57.90 feet; thence North 6 degrees 30 minutes 39 seconds West 69.37 feet; thence North 1 degree 26 minutes 10 seconds West 80.00 feet to the north line of the Southeast Quarter of the Southwest Quarter of said section; thence North 88 degrees 33 minutes 50 seconds East 466.67 feet along said north line to the northeast corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 00 degrees 03 minutes 24 seconds East 70.00 feet along the east line of the Southwest Quarter of said section; thence South 74 degrees 24 minutes 40 seconds East 180.97 feet; thence Northerly 78.30 feet along an arc to the left and having a radius of 475.00 feet and subtended by a long chord having a bearing of North 7 degrees 02 minutes 36 seconds East and a length of 78.21 feet; thence South 87 degrees 40 minutes 46 seconds East 50.00 feet; thence South 68 degrees 44 minutes 35 seconds East 134.58 feet; thence South 53 degrees 56 minutes 28 seconds East 273.34 feet; thence South 61 degrees 48 minutes 03 seconds East 78.24 feet; thence South 74 degrees 57 minutes 55 seconds East 21.75 feet; thence South 45 degrees 01 minute 22 seconds East 28.90 feet; thence South 54 degrees 57 minutes 21 seconds East 57.55 feet; thence South 74 degrees 29 minutes 08 seconds East 56.27 feet; thence South 5 degrees 49 minutes 40 seconds East 179.42 feet; thence Easterly 35.79 feet along an arc to the left and having a radius of 365.00 feet and subtended by a long chord having a bearing of North 80 degrees 52 minutes 31 seconds East and a length of 35.78 feet; thence South 11 degrees 56 minutes 02 seconds East 150.55 feet; thence South 00 degrees 36 minutes 15 seconds West 589.82 feet; thence South 1 degree 19 minutes 56 seconds East 175.46 feet to the south line of the Southeast Quarter of said section; thence South 88 degrees 40 minutes 04 seconds West 876.15 feet along said south line to the point of beginning and containing 60.000 acres, more or less. Bearings and section data in this description are based upon a land title and boundary survey prepared by Woolpert Consultants for Alton Partners dated February 17, 1994 (Job No. 65-19173-01) recorded in File M, page A-3 and recorded as Instrument No. 94018329 in the Office of the Recorder of Johnson County, Indiana.

EXHIBIT "A"

FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAKEFIELD SECTION 1

This First Amendment to the Declaration of Covenants, Conditions and Restrictions for Wakefield Section 1 is executed on this 18 day of February, 1998.

WHEREAS, the Declarations of Covenants, Conditions and Restrictions for Wakefield Section 1 (the "Declaration"), a Subdivision in White River Township, Johnson County, Indiana was recorded in the Office of the Johnson County Recorder on December 8, 1995, as Instrument #95023081, in Plat Book C, Pages 743 A, B, C, and D, as Instrument #95023082; and

WHEREAS, Wakefield Associates, LLC, an Indiana limited liability company, is identified as the Declarant in Section 1.9 of the Declaration; and

WHEREAS, pursuant to Section 9.2 of the Declaration, the Declarant has reserved the right, so long as Declarant or any entity related to Declarant owns any lot, to make such amendments to the Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity to, among other things, correct clerical or typographical errors in the Declaration; and

WHEREAS, typographical errors appear in Article II Sections 2.6B and 2.6D of the Declaration; and

WHEREAS, Declarant is executing and recording this First Amendment for the purpose of correcting those typographical errors.

IN WITNESS WHEREOF, the Declaration is hereby amended as follows:

- 1. Article II, Section 2.6B, as it appears in the original Declaration, reads as follows:

Minimum Living Space. The minimum square footage of living space of dwellings within WAKEFIELD, exclusive of porches, garages, or basement shall be as follows:

Table with 3 columns: Lots, Single Story Dwellings, Two Story Dwellings. Rows include lot numbers 1-61 and 62, 180-228 with corresponding square footage requirements.

Article II, Section 2.6B is hereby amended to read as follows:

Minimum Living Space. The minimum square footage of living space of dwellings within WAKEFIELD, exclusive of porches, garages, or basement shall be as follows:

<u>Lots</u>	<u>Single Story Dwellings</u>	<u>Two Story Dwellings</u>
1-28, 37-48, 55-60	1,400 square feet	1,500 square feet
61, 62 and 180-228	1,700 square feet	1,850 square feet

2. Article II, Section 2.6D, as it appears in the original Declaration, reads as follows:

Building Placement: Setbacks. Building setback lines are established by the Johnson County Zoning Ordinance as that ordinance may be amended from time to time. As of the date of this Declaration, the applicable setback lines, as imposed by the current Johnson County Zoning Ordinance, are as follows:

<u>Lots</u>	<u>Minimum Side Yards</u>	<u>Minimum Aggregate Side Yard</u>
1-61	10 feet	25 feet
62, 180-228	8 feet	20 feet

No building shall be erected or maintained between the established setback line and the lot lines of said Lot. Irrespective of the requirements of the Johnson County Zoning Ordinance, as amended, no building shall be erected within eight feet (8') of the side lot line of any Lot. In the event a building is erected on more than one Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

Article II, Section 2.6D is hereby amended to read as follows:

Building Placement: Setbacks. Building setback lines are established by the Johnson County Zoning Ordinance as that ordinance may be amended from time to time. As of the date of this Declaration, the applicable setback lines, as imposed by the current Johnson County Zoning Ordinance, are as follows:

<u>Lots</u>	<u>Minimum Side Yards</u>	<u>Minimum Aggregate Side Yard</u>
1-28, 37-48, 55-60	8 feet	20 feet
61, 62 and 180-228	10 feet	25 feet

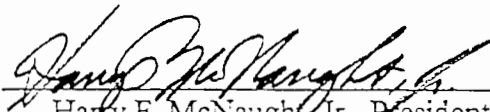
No building shall be erected or maintained between the established setback line and the lot lines of said Lot. Irrespective of the requirements of the Johnson County Zoning Ordinance, as amended, no building shall be erected within eight feet (8') of the side lot line of any Lot. In the event a building is erected on more than one Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

3. All provisions of the Declaration not specifically amended herein shall remain unchanged and in full force and effect.

4. This Amendment shall be effective upon being recorded with the Johnson County Recorder's Office.

Dated: Feb. 18, 1998

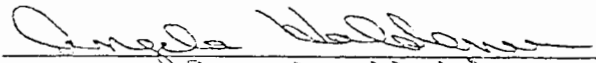
WAKEFIELD ASSOCIATES, LLC

By: 
Harry F. McNaught, Jr., President

STATE OF INDIANA)
)SS:
COUNTY OF Johnson)

On this 18 day of Feb, 1998, before me, a Notary Public, personally appeared **Harry F. McNaught, Jr.**, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that he executed the same.

My Commission Expires:
2-19-99


Notary Public, Angela Haldeman
Resident of Johnson County, IN

This instrument prepared by J. Lee Robbins, Attorney at Law, Williams Hewitt & Robbins, LLP, 300 S. Madison Avenue, Suite 400, Greenwood, IN 46142.
T:\P\WAKEFIELD.LLC COVENANT.S\AMENDMEN.1

**SECOND DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF WAKEFIELD**

THIS SECOND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAKEFIELD ("Declaration"), is made this 23rd day of February, 1998, by Wakefield Associates, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described on the attached Exhibit A ("Real Estate"); and

WHEREAS, the Real Estate described on Exhibit A is being developed as a Subdivision known as WAKEFIELD; and

WHEREAS, the Declarant on December 8, 1995 recorded with the Johnson County Recorder, under Instrument #95023081 the Declaration of Covenants, Conditions, and Restrictions for Wakefield Section 1 (the "Original Declaration"); and

WHEREAS, the Original Declaration was amended pursuant to the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Wakefield Section 1, which was recorded on February 20, 1998 under Instrument #98-4395; and

WHEREAS, the Original Declaration relates and refers only to Wakefield Section 1 as described therein and as described on Exhibit "B" attached hereto and incorporated herein; and

WHEREAS, the Declarant has platted the real estate described on Exhibit "C" attached hereto and incorporated herein as Wakefield Section 2 and intends to sell and convey lots within Wakefield Section 2; and

WHEREAS, Declarant desires to subject all of the lots in Wakefield Section 2 to the Original Declaration and all of the separate covenants, conditions, and restrictions which are a part thereof, except for specific covenants from which Wakefield Section 2 may be excluded as stated herein; and

WHEREAS, at the same time Declarant desires to subject all of the Real Estate, described on Exhibit "A", which is not a part of Wakefield Section 1 or Wakefield Section 2 (the "Remaining Real Estate") to the Original

Declaration and all of its separate covenants, conditions, and restrictions which are a part thereof, with the exception of any specific provisions from which the remaining Real Estate may be excluded, as stated herein; and

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate described on Exhibit "A" which includes Wakefield Section 1, Wakefield Section 2, and any and all future Sections of Wakefield, shall be held, conveyed, encumbered, leased, rented, used, occupied and improved, pursuant to the Original Declaration and shall subject to all of its separate covenants, conditions, and restrictions, with the exception of the following:

1. Except for Wakefield Section 1 as described in Exhibit "B", none of the Real Estate shall be subject to Subparagraphs F and H of Section 2.6 of the Original Declaration entitled "Yard Lights" and "Windows", respectively.

2. Section 2.6(B) of the Original Declaration as it relates to the lots within Wakefield Section 2 shall impose minimum square footage of living space requirements as follows:

<u>Lots</u>	<u>Single Story Dwellings</u>	<u>Two Story Dwellings</u>
29-36, 49-54	1,400 square feet	1,500 square feet
63-117	1,700 square feet	1,850 square feet

3. Section 2.6(D) of the Original Declaration as it relates to the lots within Wakefield Section 2 shall impose building setback lines as follows:

<u>Lots</u>	<u>Minimum Side Yards</u>	<u>Minimum Aggregate Side Yard</u>
63-117	10 feet	25 feet
29-36, 49-54	8 feet	20 feet

4. Minimum Living Space Requirements per Section 2.6(B) of the Original Declaration for the Remaining Real Estate shall be based on the zoning classification of each separate lot as follows:

<u>Lots</u>	<u>Single Story Dwellings</u>	<u>Two Story Dwellings</u>
R-3 Zoning Classification	1,400 square feet	1,500 square feet
R-2 Zoning Classification	1,700 square feet	1,850 square feet

5. Building Placement; Setbacks per Section 2.6(D) of the Original Declaration for the Remaining Real Estate shall be based on the zoning classification of the various lots as follows:

<u>Lots</u>	<u>Minimum Side Yards</u>	<u>Minimum Aggregate Side Yard</u>
R-2 Zoning Classification	10 feet	25 feet
R-3 Zoning Classification	8 feet	20 feet

6. All covenants, conditions, and restrictions of the Original Declaration for which no exceptions are specifically provided herein, shall apply to and may be enforced against Wakefield Section 2 and the Remaining Real Estate as if Wakefield Section 2 and the Remaining Real Estate had been included in and as a part of the Original Declaration at the time of its recording.

IN WITNESS WHEREOF, the Declarant has caused this Second Declaration to be executed on the date first written above.

WAKEFIELD ASSOCIATES, LLC

By: *Harry F. McNaught, Jr.*
Harry F. McNaught, Jr., President

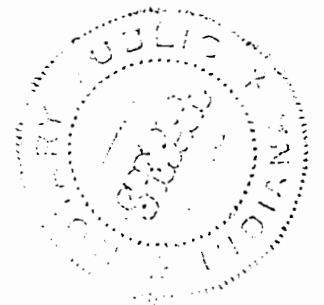
STATE OF INDIANA)
)SS:
COUNTY OF MARION)

On this 23rd day of February, 1998, before me, a Notary Public, personally appeared **Harry F. McNaught, Jr.**, personally known to me to be the same person described in and who executed the foregoing Declaration of Covenants, Conditions and Restrictions of Wakefield, and the same person duly acknowledged to me that he executed the same.

My Commission Expires: 12/20/99
Notary Public, *J. D. Cross*
Resident of *Johnson* County, IN

This document prepared by: J. Lee Robbins, Attorney at Law, WILLIAMS HEWITT & ROBBINS, LLP, 300 S. Madison Ave., Suite 400, P.O. Box 405, Greenwood, IN 46142, (317) 888-1121.

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June 27, 1995

A part of Section 33, Township 14 North, Range 3 East, Johnson County, Indiana, being a part of that property described in a survey by Woolpert Consultants on February 17, 1994 and known as Job No. 65-19173-01 Wakefield, being more completely described as follows: Beginning at the southeast corner of the Southwest Quarter of said section, said corner being marked by a railroad spike; thence South 88 degrees 35 minutes 29 seconds West 1,342.26 feet along the south line of said quarter section to the southwest corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 0 degrees 01 minute 35 seconds East 1,043.80 feet along the west line of said quarter-quarter section to a point which is South 0 degrees 01 minute 35 seconds West 285.08 feet from the northwest corner of said quarter-quarter section; thence North 19 degrees 52 minutes 21 seconds East 305.90 feet to a point on the north line of said quarter-quarter section, said point being North 88 degrees 33 minutes 50 seconds East 103.89 feet from the northwest corner of said quarter-quarter section; thence North 88 degrees 33 minutes 50 seconds East 1,239.09 feet along said north line to the northeast corner of said quarter-quarter section and the west line of the Southeast Quarter of said section; thence North 0 degrees 03 minutes 24 seconds East 1,329.54 feet along said west line to the northwest corner of said quarter section; thence North 88 degrees 30 minutes 02 seconds East 1,338.35 feet along the north line of said quarter section to the northeast corner of the West Half of the Southeast Quarter of said section; thence South 0 degrees 00 minutes 26 seconds East 976.35 feet along the east line of said half-quarter section to the southwest corner of the 15 acres off the north end of the West Half of the East Half of the Southeast Quarter of said section; thence North 88 degrees 30 minutes 02 seconds East 669.72 feet along the south line of said 15 acres to the southeast corner of said 15 acres and the east line of the West Half of the East Half of the Southeast Quarter of said section; thence South 0 degrees 02 minutes 20 seconds East 1,688.49 feet along said east line to the southeast corner of said half-half-quarter section and the south line of the Southeast Quarter of said section; thence South 88 degrees 40 minutes 04 seconds West 2,011.84 feet along said south line to the point of beginning and containing 148.390 acres, more or less.

Subject to all easements, restrictions, and rights-of-way of legal record.

WAKEFIELD SECTION ONE

JUNE 13, 1995

A part of the Southeast Quarter of the Southwest Quarter and a part of the Southeast Quarter of Section 33, Township 14 North, Range 3 East, Johnson County, Indiana, described as follows: Beginning at the railroad spike at the southeast corner of the Southwest Quarter of said section, said corner being South 88 degrees 40 minutes 04 seconds West 2,682.45 feet from the railroad spike at the southeast corner of said section; thence South 88 degrees 35 minutes 29 seconds West 1,342.26 feet along the south line of the Southwest Quarter of said section to the southwest corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 00 degrees 01 minute 35 seconds East 1,043.79 feet along the west line of said quarter-quarter section; thence North 19 degrees 52 minutes 21 seconds East 305.90 feet to the north line of the Southeast Quarter of the Southwest Quarter of said section; thence North 28 degrees 33 minutes 50 seconds East 394.09 feet along said north line; thence South 7 degrees 15 minutes 32 seconds East 282.11 feet; thence South 43 degrees 09 minutes 00 seconds West 160.19 feet; thence South 49 degrees 39 minutes 27 seconds East 160.05 feet; thence South 50 degrees 52 minutes 42 seconds East 50.00 feet; thence Northeasterly 34.95 feet along an arc to the right and having a radius of 575.00 feet and subtended by a long chord having a bearing of North 40 degrees 51 minutes 48 seconds East and a length of 34.95 feet; thence South 49 degrees 59 minutes 38 seconds East 172.01 feet; thence North 33 degrees 15 minutes 07 seconds East 75.66 feet; thence North 42 degrees 55 minutes 03 seconds East 146.12 feet; thence Southeasterly 20.49 feet along an arc to the left and having a radius of 475.00 feet and subtended by a long chord having a bearing of South 48 degrees 19 minutes 05 seconds East and a length of 20.49 feet; thence North 47 degrees 21 minutes 49 seconds East 156.63 feet; thence North 38 degrees 00 minutes 30 seconds West 65.42 feet; thence North 30 degrees 10 minutes 35 seconds West 62.86 feet; thence North 29 degrees 40 minutes 18 seconds West 62.86 feet; thence North 22 degrees 25 minutes 54 seconds West 57.90 feet; thence North 5 degrees 30 minutes 39 seconds West 69.37 feet; thence North 1 degree 26 minutes 10 seconds West 80.00 feet to the north line of the Southeast Quarter of the Southwest Quarter of said section; thence North 88 degrees 33 minutes 50 seconds East 456.67 feet along said north line to the northeast corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 00 degrees 03 minutes 24 seconds East 70.00 feet along the east line of the Southwest Quarter of said section; thence South 74 degrees 24 minutes 40 seconds East 180.97 feet; thence Northerly 78.30 feet along an arc to the left and having a radius of 475.00 feet and subtended by a long chord having a bearing of North 7 degrees 02 minutes 36 seconds East and a length of 78.21 feet; thence South 87 degrees 40 minutes 46 seconds East 50.00 feet; thence South 68 degrees 44 minutes 35 seconds East 134.58 feet; thence South 53 degrees 56 minutes 28 seconds East 273.34 feet; thence South 61 degrees 48 minutes 03 seconds East 78.24 feet; thence South 74 degrees 57 minutes 55 seconds East 21.75 feet; thence South 45 degrees 01 minute 22 seconds East 28.90 feet; thence South 54 degrees 57 minutes 21 seconds East 57.55 feet; thence South 74 degrees 29 minutes 08 seconds East 56.27 feet; thence South 5 degrees 49 minutes 40 seconds East 179.42 feet; thence Easterly 35.79 feet along an arc to the left and having a radius of 365.00 feet and subtended by a long chord having a bearing of North 80 degrees 52 minutes 31 seconds East and a length of 35.78 feet; thence South 11 degrees 56 minutes 02 seconds East 150.55 feet; thence South 00 degrees 36 minutes 15 seconds West 589.82 feet; thence South 1 degree 19 minutes 56 seconds East 175.46 feet to the south line of the Southeast Quarter of said section; thence South 88 degrees 40 minutes 04 seconds West 876.15 feet along said south line to the point of beginning and containing 60,000 acres, more or less. Bearings and section data in this description are based upon a land title and boundary survey prepared by Woolpert Consultants for Alton Partners dated February 17, 1994 (Job No. 65-19173-01) recorded in File M, page A-3 and recorded as Instrument No. 94018329 in the Office of the Recorder of Johnson County, Indiana.

LAND DESCRIPTION
(Wakefield Section II - 14 lot section)

A part of the Southeast Quarter of the Southwest Quarter of Section 33, Township 14, North, Range 3 East, in Johnson County, Indiana, described as follows:

Commencing at a railroad spike at the Southeast corner of said Southwest Quarter Section; thence South 88 degrees 35 minutes 29 seconds West along the South line of said Southwest Quarter Section and the South line of Wakefield Section I recorded in Plat Cabinet C, Pages 743A, 743B, 743C, and 743D in the Office of the Recorder of Johnson County, Indiana, a distance of 1342.26 feet to the Southwest corner of the Southeast Quarter of said Southwest Quarter Section and the Southwest corner of said Wakefield- Section I (the following three courses are along the westerly and northerly lines of said Wakefield Section I); (1) thence North 00 degrees 01 minutes 35 seconds East a distance of 1043.79 feet; (2) thence North 19 degrees 52 minutes 21 seconds East a distance of 305.90 feet to the Northwest corner of said Wakefield Section I; (3) thence North 88 degrees 33 minutes 50 seconds East a distance of 394.09 feet to the Point of Beginning (the following sixteen courses are along the northerly lines of said Wakefield Section I) (1) thence South 07 degrees 16 minutes 32 seconds East a distance of 282.11 feet; (2) thence South 43 degrees 09 minutes 00 seconds West a distance of 160.19 feet; (3) thence South 49 degrees 39 minutes 27 seconds East a distance of 160.05 feet; (4) thence South 50 degrees 52 minutes 42 seconds East a distance of 50.00 feet to curve to the right having a radius of 575.00 feet, the radius point of which bears South 50 degrees 52 minutes 42 seconds East; (5) thence northeasterly along said curve an arc distance of 34.95 feet to a point which bears North 47 degrees 23 minutes 42 seconds West from said radius point; (6) thence South 49 degrees 59 minutes 38 seconds East 172.01 feet; (7) thence North 33 degrees 15 minutes 07 seconds East a distance of 75.66 feet; (8) thence North 42 degrees 55 minutes 03 seconds East a distance of 146.12 feet to a curve to the left having a radius of 475.00 feet, the radius point of which bears North 42 degrees 55 minutes 03 seconds East; (9) thence southeasterly along said curve an arc distance of 20.49 feet to a point which bears South 40 degrees 26 minutes 47 seconds West from said radius point; (10) thence North 47 degrees 21 minutes 49 seconds East a distance of 156.63 feet; (11) thence North 38 degrees 00 minutes 30 seconds West a distance of 65.42 feet; (12) thence North 30 degrees 10 minutes 35 seconds West a distance of 62.86 feet; (13) thence North 29 degrees 40 minutes 18 seconds West a distance of 62.66 feet; (14) thence North 22 degrees 25 minutes 54 seconds West a distance of 57.90 feet; (15) thence North 06 degrees 30 minutes 39 seconds West a distance of 69.37 feet; (16) thence North 01 degrees 26 minutes 10 seconds West a distance of 80.00 feet to the North line of the aforesaid Southeast Quarter of the Southwest Quarter Section; thence South 88 degrees 33 minutes 50 seconds West along said North line a distance of 378.33 feet to the Point of Beginning containing 5.16 acres, more or less.

LAND DESCRIPTION

(Wakefield Section II - 55 lot section)

A part of the Southeast Quarter of Section 33, Township 14 North, Range 3 East, in Johnson County, Indiana, described as follows:

Commencing at a railroad spike at the southwest corner of said Southeast Quarter Section; thence North 88 degrees 40 minutes 04 seconds East along the South line of said Southeast Quarter Section and the South line of Wakefield Section I per plat recorded in Plat Cabinet C, Pages 743A, 743B, 743C, and 743D in the Office of the Recorder of Johnson County, Indiana a distance of 876.15 feet to the southeast corner of said Wakefield Section I (the following sixteen courses are along the easterly and northerly lines of said Wakefield Section I); (1) thence North 01 degrees 19 minutes 56 seconds East a distance of 175.46 feet; (2) thence North 00 degrees 35 minutes 15 seconds West a distance of 589.82 feet; (3) thence North 11 degrees 56 minutes 02 seconds West a distance of 100.55 feet to the Point of Beginning; (4) thence North 11 degrees 56 minutes 02 seconds West a distance of 50.00 feet to a curve to the right having a radius of 355.00 feet, the radius point of which bears North 11 degrees 56 minutes 02 seconds West; (5) thence westerly along said curve an arc distance of 35.79 feet to a point which bears South 05 degrees 18 minutes 55 seconds East from said radius point; (6) thence North 05 degrees 49 minutes 40 seconds West a distance of 179.42 feet; (7) thence North 74 degrees 29 minutes 08 seconds West a distance of 56.27 feet; (8) thence North 54 degrees 57 minutes 21 seconds West a distance of 57.55 feet; (9) thence North 45 degrees 01 minutes 22 seconds West a distance of 28.90 feet; (10) thence North 74 degrees 57 minutes 55 seconds West a distance of 21.75 feet; (11) thence North 61 degrees 48 minutes 03 seconds West a distance of 78.24 feet; (12) thence North 53 degrees 56 minutes 28 seconds West a distance of 273.34 feet; (13) thence North 63 degrees 44 minutes 35 seconds West a distance of 134.58 feet; (14) thence North 87 degrees 40 minutes 46 seconds West; (15) thence southerly along said curve an arc distance of 78.30 feet to a point which bears South 76 degrees 14 minutes 03 seconds East from said radius point; (16) thence North 74 degrees 24 minutes 40 seconds West a distance of 180.97 feet to the Northwest corner of Lot 52 in said Wakefield Section I and the West line of said Southeast Quarter Section; thence North 00 degrees 03 minutes 24 seconds East along said West line a distance of 679.61 feet; thence South 79 degrees 53 minutes 32 seconds East a distance of 135.77 feet to a curve to the left having a radius of 278.43 feet, the radius point of which bears North 10 degrees 08 minutes 28 seconds East; thence easterly along said curve an arc distance of 57.43 feet to a point which bears South 01 degrees 42 minutes 36 seconds East from said radius point; thence North 88 degrees 17 minutes 24 seconds East a distance of 110.68 feet to a curve to the right having a radius of 325.00 feet, the radius point of which bears South 01 degrees 42 minutes 36 seconds East; thence easterly along said curve an arc distance of 12.50 feet to a point which bears North 00 degrees 29 minutes 36 seconds East from said radius point; thence North 23 degrees 14 minutes 53 seconds East a distance of 193.08 feet; thence South 46 degrees 29 minutes 15 seconds East a distance of 103.72 feet; thence North 43 degrees 30 minutes 45 seconds East a distance of 90.00 feet; thence South 46 degrees 29 minutes 15 seconds East a distance of 68.15 feet; thence North 26 degrees 27 minutes 23 seconds East a distance of 19.57 feet; thence North 45 degrees 29 minutes 52 seconds East a distance of 69.37 feet; thence North 66 degrees 43 minutes 33 seconds East a distance of 116.45 feet; thence South 80 degrees 49 minutes 44 seconds East a distance of 59.86 feet; thence South 48 degrees 26 minutes 22 seconds East a distance of 155.66 feet; thence South 06 degrees 59 minutes 11 seconds East a distance of 60.86 feet; thence South 00 degrees 00 minutes 26 seconds East a distance of 270.00 feet; thence North 39 degrees 59 minutes 34 seconds East a distance of 217.00 feet; thence South 00 degrees 00 minutes 26 seconds East a distance of 109.00 feet; thence North 89 degrees 56 minutes 34 seconds East a distance of 167.00 feet; thence South 00 degrees 00 minutes 26 seconds East a distance of 16.34 feet; thence South 01 degrees 29 minutes 58 seconds East a distance of 227.07 feet to a curve to the right having a radius of 1175.00 feet, the radius point of which bears South 02 degrees 03 minutes 57 seconds East; thence easterly along said curve an arc distance of 160 feet to a point which bears North 01 degrees 59 minutes 16 seconds West from said radius point; thence South 01 degrees 29 minutes 58 seconds East a distance of 179.95 feet; thence South 87 degrees 20 minutes 25 seconds West a distance of 165.84 feet to a curve to the right having a radius of 415.00 feet, the radius point of which bears South 88 degrees 10 minutes 31 seconds West; thence southwesterly along said curve an arc distance of 576.66 feet to the Point of Beginning (said point of beginning bears South 11 degrees 56 minutes 02 seconds East from said radius point), containing 26.25 acres, more or less.

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF WAKEFIELD**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WAKEFIELD ("Declaration"), is made this 30th day of December, 1998, by Wakefield Associates, LLC, an Indiana limited liability company (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, the Declarant on December 8, 1995 recorded with the Johnson County Recorder, under Instrument #95023081 the Declaration of Covenants, Conditions, and Restrictions for Wakefield Section 1 (the "Original Declaration"); and

WHEREAS, the Original Declaration was amended pursuant to the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Wakefield Section 1, which was recorded on February 20, 1998 under Instrument #98-4395; and

WHEREAS, the Original Declaration, as recorded, related and referred only to Wakefield Section 1 as described therein; and

WHEREAS, since the recording of the Original Declaration, the Declarant has platted Sections II and III of Wakefield; and

WHEREAS, on February 25, 1998, Declarant recorded with the Johnson County Recorder's Office as Instrument #98004808 the Second Declaration of Covenants, Conditions and Restrictions of Wakefield (the "Second Declaration") to subject all subsequent Sections of the Wakefield Subdivision to the Original Declaration; and

WHEREAS, attached hereto and incorporated herein as Exhibit "A" is a legal description entitled the "Wakefield Overall Description" that was attached as Exhibit "A" to the Second Declaration, and that describes all of the real estate that has been platted as Sections I, II, and III of Wakefield, the proposed future Sections of Wakefield and an additional approximately six (6) acres that Declarant intends to develop as a commercial subdivision (the "Commercial Real Estate"); and

WHEREAS, attached hereto and incorporated herein as Exhibit "B" is a description of that real estate that has been or will be platted as part of the Wakefield Residential Subdivision; and

WHEREAS, that real estate that is included in the description attached hereto as Exhibit "A" and excluded from the legal description attached hereto as Exhibit "B" represents the Commercial Real Estate; and

WHEREAS, the Commercial Real Estate should not be subject to the Original Declaration and should not have been included as a part of the real estate described on Exhibit "A" to the Second Declaration; and

WHEREAS, the purpose of this Second Amendment is to exclude and release from the Original Declaration the Commercial Real Estate and to substitute and replace Exhibit "A" attached to the Second Declaration with Exhibit "B" attached hereto.

WHEREAS, the Declarant has entered into an agreement with James R. Stutzman (the "Stutzman Easement") to establish and maintain a drainage detention pond on property (the "Stutzman Real Estate") located adjacent to the north of the real estate described on Exhibit "B" which will serve the Wakefield Subdivision; and

WHEREAS, pursuant to the Stutzman Easement, the Declarant shall transfer and convey the easement to the Association; and

WHEREAS, pursuant to the Stutzman Easement the Declarant shall maintain the drainage detention pond and surrounding area (collectively the "Pond Easement Area") in the same manner as the drainage ponds in the Wakefield Subdivision are maintained until such time as the Stutzman Real Estate becomes the subject of a subdivision plat.

WHEREAS, upon the Stutzman Real Estate being platted, the Pond Easement Area shall be maintained by an association or other entity identified by the plat of the Stutzman Real Estate as being responsible for maintenance of the drainage areas and facilities; and

WHEREAS, upon a subdivision plat of the Stutzman Real Estate being recorded, maintenance responsibility of the Pond Easement Area shall be transferred to the Association related to the plat of the Stutzman Real Estate and the Declarant or the Association shall release the Stutzman Easement; and

WHEREAS, the Declarant deems it necessary and appropriate to refer to the drainage detention pond to be established and maintained on the Stutzman Real Estate in the Original Declaration such that the Association will have the obligation to maintain that Pond Easement Area and the assess owners of lots in Wakefield those costs incurred by the Association to maintain the Pond Easement Area until those maintenance obligations are transferred to an association related to a plat of the Stutzman Real Estate.

NOW THEREFORE, Declarant hereby amends the Original Declaration as follows:

1. The real estate described on Exhibit "B" is and shall be subject to the Original Declaration and all of the separate covenants, conditions, and restrictions thereof, as amended.
2. The Commercial Real Estate that is included in the legal description attached to the Second Declaration as Exhibit "A" and specifically excluded from the legal description attached hereto as Exhibit "B" is hereby released from the Original Declaration.
3. The following sentence shall be added to the end of Section 3.6, paragraph (iii):

Also, the maintenance and upkeep of the Pond Easement Area and the drainage detention pond established by the Declarant pursuant to a separate agreement between the Declarant and James R. Stutzman until such time as the maintenance obligations for that Pond Easement Area and drainage detention pond are transferred to an association formed in relationship to a plat of the Stutzman Real Estate.

4. All covenants, conditions, and restrictions of the Original Declaration not specifically amended herein or previously amended shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Second Amended Declaration to be executed on the date first written above.

WAKEFIELD ASSOCIATES, LLC

By: *Harry F. McNaught, Jr.*
Harry F. McNaught, Jr., President

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

On this 30th day of December, 1998, before me, a Notary Public, personally appeared **Harry F. McNaught, Jr.**, personally known to me to be the same person described in and who executed the foregoing Second Amendment to Declaration of Covenants, Conditions and Restrictions of Wakefield, and the same person duly acknowledged to me that he executed the same.

My Commission Expires:

12-20-99

Jo D. Cross
Notary Public, *Jo D. Cross*
Resident of *Johnson* County, IN

This document prepared by: J. Lee Robbins, Attorney at Law, WILLIAMS HEWITT & ROBBINS, LLP, 300 S. Madison Ave., Suite 400, P.O. Box 405, Greenwood, IN 46142, (317) 888-1121.

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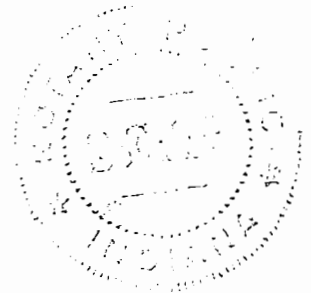


Exhibit "A"

WAKEFIELD OVERALL DESCRIPTION
June 27, 1995

A part of Section 33, Township 14 North, Range 3 East, Johnson County, Indiana, being a part of that properly described in a survey by Woolpert Consultants on February 17, 1994 and known as Job No. 65-19173-01 Wakefield, being more completely described as follows: Beginning at the southeast corner of the Southwest Quarter of said section, said corner being marked by a railroad spike; thence South 88 degrees 35 minutes 29 seconds West 1,342.26 feet along the south line of said quarter section to the southwest corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 0 degrees 01 minute 35 seconds East 1,043.80 feet along the west line of said quarter-quarter section to a point which is South 0 degrees 01 minute 35 seconds West 285.02 feet from the northwest corner of said quarter-quarter section; thence North 19 degrees 52 minutes 21 seconds East 305.90 feet to a point on the north line of said quarter-quarter section, said point being North 88 degrees 33 minutes 50 seconds East 103.89 feet from the northwest corner of said quarter-quarter section; thence North 88 degrees 33 minutes 50 seconds East 1,239.09 feet along said north line to the northeast corner of said quarter-quarter section and the west line of the Southeast Quarter of said section; thence North 0 degrees 03 minutes 24 seconds East 1,329.54 feet along said west line to the northwest corner of said quarter section; thence North 88 degrees 30 minutes 02 seconds East 1,338.36 feet along the north line of said quarter section to the northeast corner of the West Half of the Southeast Quarter of said section; thence South 0 degrees 00 minutes 26 seconds East 975.36 feet along the east line of said half-quarter section to the southwest corner of the 15 acres off the north end of the West Half of the East Half of the Southeast Quarter of said section; thence North 88 degrees 30 minutes 02 seconds East 669.72 feet along the south line of said 15 acres to the southeast corner of said 15 acres and the east line of the West Half of the East Half of the Southeast Quarter of said section; thence South 0 degrees 02 minutes 20 seconds East 1,608.49 feet along said east line to the southeast corner of said half-half-quarter section and the south line of the Southeast Quarter of said section; thence South 88 degrees 40 minutes 04 seconds West 2,011.84 feet along said south line to the point of beginning and containing 148.390 acres, more or less.

Subject to all easements, restrictions, and rights-of-way of legal record.

WAKEFIELD PRELIMINARY RE-PLAT DESCRIPTION

A part of Section 33, Township 14 North, Range 3 East, Johnson County, Indiana, being a part of that property described in a survey by Woolpert Consultants on February 17, 1994 and known as Job No. 65-19173-01 Wakefield, being more completely described as follows: Beginning at the southeast corner of the Southwest Quarter of said section, said corner being marked by a railroad spike; thence South 88 degrees 35 minutes 26 seconds West 1,342.26 feet along the south line of said quarter section to the southwest corner of the Southeast Quarter of the Southwest Quarter of said section; thence North 0 degrees 01 minute 35 seconds East 1,043.80 feet along the west line of said quarter-quarter section to a point which is South 0 degrees 01 minute 35 seconds West 255.03 feet from the northwest corner of said quarter-quarter section; thence North 19 degrees 52 minutes 21 seconds East 305.90 feet to a point on the north line of said quarter-quarter section, said point being North 88 degrees 33 minutes 50 seconds East 103.89 feet from the northwest corner of said quarter-quarter section; thence North 88 degrees 33 minutes 50 seconds East 1,239.05 feet along said north line to the northeast corner of said quarter-quarter section and the west line of the Southeast Quarter of said section; thence North 0 degrees 03 minutes 24 seconds East 1,329.54 feet along said west line to the northwest corner of said quarter section; thence North 88 degrees 30 minutes 02 seconds East 1,338.35 feet along the north line of said quarter section to the northeast corner of the West Half of the Southeast Quarter of said section; thence South 0 degrees 00 minutes 25 seconds East 976.36 feet along the east line of said half-quarter section to the southwest corner of the 15 acres off the north end of the West Half of the East Half of the Southeast Quarter of said section; thence North 88 degrees 30 minutes 02 seconds East 559.72 feet along the south line of said 15 acres to the southeast corner of said 15 acres and the east line of the West Half of the East Half of the Southeast Quarter of said section; thence South 0 degrees 02 minutes 20 seconds East 345.05 feet to the Northwest corner of the Wakefield Associates, LLC tract of land recorded in Deed Book 280, page 281 in the Office of the Recorder of Johnson County, Indiana; thence South 00 degrees 02 minutes 20 seconds East along said west line a distance of 471.23 feet; thence South 88 degrees 30 minutes 02 seconds West a distance of 350.34 feet; thence South 01 degree 29 minutes 58 seconds East a distance of 490.00 feet; thence South 20 degree 45 minutes 18 seconds East a distance of 207.54 feet; thence South 01 degrees 19 minutes 55 seconds East a distance of 184.18 feet to the south line of the Southeast Quarter of said Section; thence South 88 degrees 40 minutes 04 seconds West 2,011.84 feet along said south line to the point of beginning and containing 142.0 acres, more or less.

Subject to all easements, restrictions, and rights-of-way of legal record.

EXHIBIT "B"