



DAVID BRENTON'S TEAM

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The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

The information is deemed reliable, but not guaranteed.

(36)

**DECLARATION OF COVENANTS AND RESTRICTIONS OF
THE MISTY RIDGE OWNERSHIP**

THIS DECLARATION made this 31st day of JULY, 1997, by Community Development III, Inc. (DECLARANT) is the title owners of real estate (hereinafter called DECLARANT).

WITNESSETH:

WHEREAS, the following facts are true:

A. DECLARANT at the time of execution hereof is the sole owner in fee simple of real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A", which is incorporated herein by reference (hereinafter referred to as "TRACT" or "MISTY RIDGE" or "MISTY RIDGE SUBDIVISION").

B. DECLARANT, by execution of this Declaration, assures that all properties which are conveyed which are a part of the "TRACT" shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the "TRACT" and be binding upon all parties having right, title or interest in the "TRACT", or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, DECLARANT hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "APPLICABLE DATE" means the date determined pursuant to Paragraph 8 of this Declaration.
- (b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (d) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.
- (e) "Common Expense" means expenses for the administration of the Corporation, and expenses for the

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upkeep, maintenance, repair and replacement of the Common Areas or the Common Expense Area, and all sums lawfully assessed against the members of the Corporation.

(f) Common Area and/or Common Expense Area.

The following appear as designated upon the Final Plat of the MISTY RIDGE SUBDIVISION.

Detention/Retention Lake and Surrounding Area (Common Area).

A single Detention Lake of approximately 0.71 acres and the surrounding Common Area around the Lake within MISTY RIDGE, including a proposed fountain within the Detention Lake and a gazebo and deck proposed to be in proximity to the Detention Lake, is part of the overall drainage system of the MISTY RIDGE and is one of the "Common Expense Areas" also serving as a recreation area regulated by the HOA hereinafter described, and as an amenity to the Lots of MISTY RIDGE. The "Corporation" later defined and known as MISTY RIDGE Homeowners Association Inc. (hereinafter referred to as "HOA") shall be responsible to maintain this Lake and surrounding area thereto and will be provided ingress and egress, if necessary, to this Lake along with representatives of Marion County who have drainage jurisdiction for inspection and/or maintenance as regards the Common Area as designated on the final plat of MISTY RIDGE.

The ownership of the Lake, which is adjacent to the dedicated public street to be known as Shelbyville Road, shall ultimately be titled in the "HOA" by Deeds of Conveyance from the DECLARANT to the "HOA" on or before the "APPLICABLE DATE" hereinafter defined.

A copy of the final recorded Plat of MISTY RIDGE is attached as Exhibit "B". The use of the Lake, Gazebo and Deck and the surrounding area around the Lake shown on Exhibit "B" and labeled Common Area thereon, shall be as hereinafter detailed unless modified of record by the reservation of Declarant aforesaid. The Lake, Gazebo and Deck and its surrounding area (Common Area in Exhibit "B") shall be subject to rules and regulations adopted and published by the HOA.

DECLARANT MAKES NO REPRESENTATIONS AS TO THE LEVEL OF WATER TO BE MAINTAINED IN THE LAKE.

Fencing and Perimeter Landscaping.

The Declarant proposed privacy fencing at the North perimeter of Exhibit "A", Chain link fencing at the West perimeter of Exhibit "A" and a combination of privacy and chain link fencing at the East perimeter of the Exhibit "A" realty which compliments and integrates existing foliage and proposed supplemental landscaping to provide some screening between Misty Ridge and the condominium community to the East of Misty Ridge. The HOA shall maintain the fencing as a common expense but shall have no obligation relative to the supplemental landscaping herein stated once installed.

Entrance Wall and Aesthetic Landscaping.

The Declarant proposes twin subdivision identification signs tempered by some landscaping at the ingress-egress of Bradstown Way into Misty Ridge Drive with the maintenance obligation for same being in the Homeowners Association.

MAINTENANCE RE: LOTS AND/OR DWELLING.

THE HOA OBLIGATION OF MAINTENANCE TO LOTS AND/OR DWELLINGS AS DETAILED IN ITEM #13 SHALL BE INCLUSIONARY IN THE WORDS "COMMON EXPENSE AREA" AND BE PART OF THE COMMON EXPENSE COMPONENTS COVERED IN THE ASSESSMENTS UNDER ITEM 15.

- (g) "Corporation" also known as HOA means the MISTY RIDGE Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 8 of this Declaration; such Corporation being more particularly described in Paragraph 8 of this Declaration.
- (h) "DECLARANT" shall mean and refer to Community Development III, Inc. 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 "TRACT" pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by DECLARANT.

- (i) "Dwelling Unit" shall refer to one-half of a double separated by a party wall from the other half of a double with each dwelling unit located on its own platted Lot; one-half located _____ (A) Lot and the other half on a _____ (B) Lot. (The blank is a number as shown on the PLAT).
- (j) "Lot" means any plot of ground designated as such upon the recorded Final Plat of MISTY RIDGE, and upon which one (1) Dwelling Unit is constructed or is to be constructed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.
- (k) "Member" means a member of the Corporation.
- (l) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (m) "MISTY RIDGE" or "MISTY RIDGE Subdivision" means the name by which the TRACT, as described in Paragraph A above, which is the subject of this Declaration, and shall be known.
- (n) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

2. Declaration. DECLARANT hereby expressly declares that the "TRACT" shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of "MISTY RIDGE". "MISTY RIDGE" consists of 30 Lots, as designated on the Final Plat.

The legal description for each lot in MISTY RIDGE shall be as follows:

Lot _____ (either A or B - Select One) in MISTY RIDGE, a subdivision in Marion County, Indiana, as per plat thereof recorded _____, 19____, as Instrument No. 97-102401, in the Office of the Recorder of Marion County, Indiana.

4. Ownership of Common Area. The Common Area shown on the recorded plat of MISTY RIDGE are subject to this Declaration and shall be conveyed to the "HOA" and thereafter owned by the Corporation, and shall be held for the use and enjoyment of all the Members. While ownership of the Common Area is in the HOA with maintenance of the Common Area being the responsibility of the HOA. The Common Area rights shall pass with title to every Lot, subject to the provisions of this Declaration, including, but not limited to, the following:

- (a) The right of the Corporation to control construction of improvements thereon.

- (b) The right of the Corporation to suspend any Member from the right to use the Common Area for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.
- (c) The right of the Corporation, upon approval by a written instrument signed by two-thirds (2/3rds) of all Class A Members, two-thirds (2/3rds) of all Class B Members, and by two-thirds (2/3rds) of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.
- (d) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 19.
- (e) The Common Area made subject to this Declaration shall be conveyed by the DECLARANT and thereafter owned by the Corporation no later than when 80% of the Lots in MISTY RIDGE have been transferred to a name other than the DECLARANT.

5. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area to members of his family, his tenants or contract purchasers who reside on any Lot.

6. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, in the Common Area and serving his Dwelling Unit.

7. Easement for Utilities and Public and Quasi-Public Vehicles. An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephone and electricity on the "TRACT"; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by

DECLARANT on the Plat or as thereafter may be approved by DECLARANT or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the "TRACT" and to affix and maintain electrical and telephone wires, circuits and conduits underground and across the "TRACT" within the easements shown on the Plat of MISTY RIDGE. In the event any utility furnishing service should request a specific easement by a separate recordable document, DECLARANT shall have the right to grant such easement on such "TRACT", without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the "TRACT".

8. Corporation; Membership; Voting; Functions.

- (a) Membership in Corporation. DECLARANT and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.
- (b) Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:
- (i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a voted of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (ii) Class B. Class B Members shall be DECLARANT and all successors and assigns of DECLARANT designated by DECLARANT as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to four (4) votes for each Lot of which it is the Owner in all matters requiring a vote of the Members of the Corporation (Lots for this purpose include Lots reflected in a recorded plat. The Class B membership shall cease and terminate upon the APPLICABLE DATE, which shall be the first to occur of:

1. the date upon which the written resignation of the Class B Members is delivered to the resident agent of the Corporation;
2. thirty (30) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or;
3. _____ () years after date of recordation of this Declaration.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, and administration of the Common Area and Common Expense Areas (Item 1(f)) and to pay any other necessary expenses and costs in connection with these areas, and to perform such other functions as may be designated by it to perform under this Declaration.

9. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by DECLARANT as provided in subparagraph (b) of this Paragraph 9.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Mauri Young, David Bertolet and Richard Wyand (hereinafter referred to as the "Initial Board") all of whom have been or shall be appointed by DECLARANT. Notwithstanding anything to the contrary contained in, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the APPLICABLE DATE, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the APPLICABLE DATE, determined as provided above, every such vacancy shall be filled by a person appointed by DECLARANT, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type or juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed DECLARANT as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the APPLICABLE DATE determined as provided above, to exercise all

of said Owner's right to vote, and to vote as DECLARANT determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to DECLARANT shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging the Common Areas titled in the HOA or merger/consolidation of the Corporation with another corporation. This appointment of DECLARANT as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by DECLARANT to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

- (c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.
- (d) Terms of Office and Vacancy. The Initial Board, per subparagraph (b) of this Paragraph, shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the APPLICABLE DATE provided herein. All Directors other than the Initial Board of Directors shall be Members of the Corporation at the time of their election to office and during their term of office as Directors. The Directors other than the Initial Board of Directors shall be elected after the Applicable Date at the annual meeting of the Corporation by the Members and shall hold office for a term of one (1) year or until their successors have been duly elected and qualified if the Board is comprised of less than three (3) Directors. If, however, the Board equals or exceeds five (5) Directors, then the term shall be for three (3) years, except as next qualified. The first election after the Applicable Date of a five (5) or

greater than five (5) member Board shall be comprised of two (2) members of the Board of Directors for a three (3) year term, two for a two (2) year term and one (1) for a one (1) year term to assure continuity of experience. Any vacancy or vacancies occurring on the Board of Directors shall be filled by vote of a majority of the remaining Directors or by vote of the Members if a Director has been removed in accordance with the By-Laws. Any Director elected to fill such vacancy shall serve for the unexpired term of the Director whose vacancy is thus filled.

- (e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.
- (f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, the management, maintenance, repair, upkeep and replacement as required and detailed under this Declaration within the Common Area and Common Expense Areas (Item 1(f)), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Other than the Initial Management under Paragraph 9 any decision thereafter to employ a professional property management agent shall require the prior consent of the Owners of at least fifty-one percent (51%) of the vote and fifty-one percent (51%) of the vote of Mortgagees who are registered as hereinafter detailed. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection, surveillance of the Common Area and Common Expense Areas (Item 1(f)), unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;
 - (ii) the duties delineated under Item 1(f) hereof;
 - (iii) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
 - (iv) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
 - (v) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
 - (vi) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the Common Expense Areas (Item 1(f)) and the business and affairs of the Corporation specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage, at any time during normal business hours;
 - (vii) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under the Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
 - (viii) paying any other necessary expenses and costs in connection with the duties in subsection (ii) hereof; and
 - (ix) to furnish, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (i) to employ a Managing Agent to assist the Board in performing its duties;
 - (ii) to purchase, lease or otherwise obtain for the Corporation to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
 - (iii) to employ legal counsel, architects, contractors, accountants and other as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of

the Corporation;

- (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
 - (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom; and
 - (vi) to open and maintain a bank account or accounts in the name of the Corporation.
- (h) Limitation on Board Action. After the APPLICABLE DATE, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 (adjusted annually for increases or decreases in the Consumer Price Index) but in no event less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:
- (i) contracts for replacing or restoring portions of the Common Area or Common Expense Areas (Item 1(f)) damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
 - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
 - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- (j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have

no personal liability with respect to any contract made by them on behalf of the Corporation.

- (k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such finding and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statement or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meeting of the Board of Directors.
- (l) Bond. The Board of Directors may provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to one (1) year aggregate

assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

10. Initial Management. The Board of Directors has entered or may hereafter enter into a management agreement with DECLARANT or with a corporation or other entity affiliated with DECLARANT or designated by DECLARANT for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which DECLARANT (or such other corporation or entity as appropriated) will provide supervision, management and maintenance of the Common Area of MISTY RIDGE, and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by DECLARANT (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and DECLARANT (or such other corporation or entity as appropriate) is in effect, DECLARANT (or such other corporation or entity as appropriate) shall have and DECLARANT hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Common Area of MISTY RIDGE and perform all the functions of the Corporation.

11. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot and the Common Area. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the "TRACT" without a breakdown for each Lot and the Common Area, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the "TRACT" which shall be the ratio

that the square footage in his Lot bears to the total square footage of all the land comprising the "TRACT" and shall pay his proportionate share of the real estate taxes assessed on the improvements on the "TRACT" based upon the ratio that the square footage of all improved Lots.

12. Utilities. Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered, if any, shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

13. Maintenance of Common Area/Lots/Dwelling Units.

(a) Maintenance of Common Area. Maintenance of the Common Area, unless the same is otherwise the responsibility or duty of Owners of Lots shall be provided by the Corporation, however, this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board, or any Managing Agent must provide any on-site or roving guards, security service or security system.

(b) Maintenance by Corporation Relative to Lots/Dwelling Units.

Re: Lot. The Corporation shall maintain the lawns on the Lot including fertilizing (2 per year) and mowing of the grass when necessary, but only in an area designated to be grass at the time of transfer of title to a Lot from the Declarant (but not replanting or reseeding of the grass), and the care, fertilizing, trimming, removal and replacement of trees and shrubs planted by the Declarant (excluding those planted as supplemental planting for screening on the East perimeter of Misty Ridge) without any duty to water any such planting and trimming will be determined by the Board and not exceed one trimming per year. It shall not include the care and maintenance of shrubs, trees which are not planted by Declarant, flowers or other plants within the Lot.

The Association may provide snow removal (but no ice removal) if funding exists, for the removal of snow from driveways and sidewalks or the Dwelling Units within the Lot if in the Board's sole determination the accumulation of snow justifies such removal.

The Association shall maintain the perimeter fence of the Subdivision with the Owners assuring the Corporation, or its designated agents, access thereto with the Association solely

determining the color, exterior coating material and manner and degree of maintenance of the fence.

Re: Dwellings. The Board, in its sole discretion, shall determine the need for the exterior painting of the Dwelling Unit and shall control the color, quality and selection of the paint used and provide such painting to the Dwelling Units exterior and should also clean the gutters at least once a year.

- (c) **Maintenance of Individual Lots.** Each owner shall be responsible for maintaining and keeping his Lot and all improvements thereon not provided by the Association in a good, clean and sanitary condition with an appearance which is complementary to the Subdivision. If any Owner shall fail to maintain and keep his property or any part thereof in a good, clean and sanitary condition, with an exterior appearance up to the general standards of the MISTY RIDGE SUBDIVISION, the Corporation may perform any work necessary and charge the Owner thereof for such cost, which shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

Each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work permitted herein.

- (d) **Damage to or Abuse of Common Area or Areas to be Maintained by the Association under (b).** If, due to the willful, intentional or negligent acts or omissions of an Owner, or of a member of the Owner's family, or of a guest, tenant, invitee or other occupant or visitor of the Owner, damage is caused to Common Areas or repairs and maintenance are accelerated relative to the Association's obligations under (b), some maintenance or repairs is required, the Owner shall be required to pay for such damage. Upon demand by the Board, the cost of such repairs shall be immediately due and payable, and if not paid, a lien may attach to the Owner's property, and costs of collection and reasonable attorney fees shall be added to any judgment entered on behalf of the Corporation.

14. **Architectural Control.**

- (a) The Architectural Review Board ("Review Board"). As a standing committee of the Corporation there shall be, and hereby is, established an Architectural Review Board consisting of the Board of Directors of the HOA. Until the date hereinafter referred to in Item 8, the Architectural Review Board shall be the Initial Board of Directors unless the Initial Board of Directors relinquishes this responsibility in writing to the HOA at an earlier date. The Successor Architectural Review Board to the Initial Board shall be appointed by the Initial Board of Directors at such time as all platted lots in the TRACT hereof have been transferred by the Declarant to a title holder other than Declarant.
- (b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use and location of improvements on the Real Estate in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.
- (c) Conditions. No improvements, alterations, repairs, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the DECLARANT to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit or change in the Common Area or Common Expense Areas (Item 1(f)), or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.
- (d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3rds) vote of the Directors then serving. The

Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

- (e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design of the Dwelling Units nor for maintaining the Common Area or Common Expense Areas (Item 1(f)) without the prior written approval of 2/3rds of all Owners and 2/3rds of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

15. Assessments.

- (a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.
- (b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by following generally accepted accounting principles

applied on consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement of the Common Area and Common Expense Areas (Item 1(f)), which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement for the Common Area (Item 1(f)), shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred ten percent (110%) of such last approved budget, as a temporary budget.

- (c) Regular Assessment. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses on the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove

provided. The Regular Assessment against each Lot shall be paid in advance on an annual basis commencing on the first day of the first month of each fiscal year. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget, then:

- (i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid within thirty (30) days of written notice to said effect.
- (ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment of the Regular Assessment coming due, until the entire amount of such excess has been so credited.

The Regular Assessment for the current fiscal year of the corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from Payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 16 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. The Regular Assessments shall be due and payable automatically on its due date

without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3rd) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the DECLARANT shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 7 of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the APPLICABLE DATE. During the period that Dwelling Units are being constructed within the "TRACT", it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the APPLICABLE DATE to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the APPLICABLE DATE, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this subparagraph.

The Corporation may enter into a management agreement with DECLARANT (or a corporation or other entity designated by DECLARANT) (hereinafter referred to as "Management

Agent" or "Managing Agent") in accordance with the provisions of Paragraph 9 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessment shall be paid by Owners to Management Agent. The Regular Assessment per owner will be Forty Dollars (\$40.00) per month. The funds obtained by Regular Assessment are not intended to include, and do not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or if sufficient the replacement reserve fund, if any such fund exists.

That portion of the Regular Assessment collected by DECLARANT prior to the APPLICABLE DATE applicable to any replacement reserve if any such reserve is created, funds shall be held by the initial Board and if required, applied to the replacement required in the Common Area and Common Expense Areas (Item 1(f)). To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the APPLICABLE DATE. Payment of Regular Assessment prior to the APPLICABLE DATE with respect to each Dwelling Unit (that is not owned by DECLARANT) shall commence on the date of conveyance by DECLARANT to such new owner. The first payment shall commence and be payable on the 1st day of the month following date of conveyance and thereafter, payment of the Regular Assessment shall be paid the first day of each month. DECLARANT SHALL NOT BE RESPONSIBLE FOR REGULAR ASSESSMENTS FOR LOTS OWNED BY DECLARANT PRIOR TO THE APPLICABLE DATE. But DECLARANT shall be responsible for any shortfall to cover common expenses prior to the Applicable Date.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 9 of this Declaration and to adhere to and abide by the same.

- (f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area and/or Common

Expense Areas (Item 1(f)) or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments. The Owner and any occupant of the Lot and/or Dwelling Unit shall be jointly and severally liable for the payment to the Corporation and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and/or Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and/or Dwelling Unit costs and expenses of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessment were due until paid at the rate equal to the prime interest rate then being charged by NBD of Indianapolis to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another National Bank in Marion County, Indiana selected by the Board of Directors). The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage.

- (g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale

in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and/or Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessment thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special 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).

16. Mortgages.

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

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16 hereof.
- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation (1) to pay any charges against the Common Area and Common Expense Areas (Item 1(f)) which are in default and (2) to pay any overdue premiums on hazard insurance for the above areas or to secure new hazard insurance for the above areas on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.
- (d) Notice of Condemnation or Casualty Loss. Mortgagee shall be timely notified of any condemnation loss which affects a material portion of the "TRACT". Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.
- (e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.
17. Insurance.
- (a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring, if possible and practical, the Corporation's improvements within the Common Area (Item 1(f)) in an amount consonant with the full replacement value of these improvements. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least

annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall otherwise be solely responsible for loss or damage to his Dwelling Unit, the contents of his dwelling Unit and Lot however caused and his personal property stored elsewhere on the "TRACT" and the Corporation shall have no liability to the Owner for loss or damage to the Dwelling Unit, the contents of any Dwelling Unit or any personal property stored elsewhere on the "TRACT". Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

- (b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time

to time, but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the "TRACT". Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.

- (c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained including, but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Corporation the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.
- (d) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

18. Restoration of Common Areas and/or Common Expense Areas (Item 1(f)) ("Improvements"). In the event of damage to or destruction of any of the "Improvements" herein titled due to fire or any other casualty or disaster, the Corporation shall attempt to promptly cause the same to be repaired and reconstructed to the extent of proceeds of insurance and other funds available but without making the HOA insolvent. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

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

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the "Improvements" to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

19. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units, Common Areas and Common Expense Areas (Item 1(f)) shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by an Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and shall be limited as stated in Plat Covenant #10 which is repeated therefrom for ease of reference as follows:

10. No one under the age of Fifty-five (55) years of age shall be a resident of a dwelling on a Lot other than the following exceptions:
 - A. A live-in caretaker who does not meet the age requirement may be permitted to dwell in Willow Pond if required due to the resident-owner's poor health or handicap. If the resident dies or no longer needs a caretaker, the caretaker must vacate the residence within thirty (30) days of such occurrence. The Board defined in the Declaration may verify the need of a caretaker in such cases through requirement of an attending physician's statement or other such proof of need.
 - B. A non-ambulatory and/or developmentally disabled dependent child or a resident Lot owner who meets the age restriction requirement, may live with the parent(s) in

Willow Pond regardless of child's age. The child's condition and need is subject to verification by the Board.

- C. A spouse of a resident Lot owner who is under the age of fifty-five may live in Willow Pond as long as the title owner spouses is at least fifty-five years of age. The underage spouse may jointly own the Lot in Willow Pond.

Any deviation from this restriction and exceptions will require the unanimous vote of the Lot owners of Willow Pond and shall not be subject to the Amendment Section Item #20.

- (b) No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Areas and/or Common Expense Areas (Item 1(f)) which will result in a cancellation of insurance or increase in insurance because of any such action, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (c) No nuisance shall be permitted and no waste shall be permitted in any Dwelling Unit, the Common Areas and/or Common Expense Areas (Item 1(f)) or on any Lot. The Board of Directors determination as to what is a nuisance shall be conclusive.
- (d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board.
- (e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Areas and/or Common Expense Areas (Item 1(f)) except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit (unless otherwise stated herein), provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Customary household pet does not include pot-bellied or midget pigs or hogs, exotic animals and/or other animals that would normally be considered livestock or zoo animals. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an owner shall be fully liable for any injury or damage to persons or property, including the Common Areas and/or Common

Expense Areas (Item 1(f)) caused by his pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the "TRACT" within ten (10) days after written notice from the Board to the respective Owner to do so.

- (f) The Common Areas and Common Expense Areas (Item 1(f)) shall be kept free and clear of rubbish, debris and other unsightly materials.
- (g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the "TRACT".
- (h) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the "TRACT", and Lot or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the DECLARANT and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the "TRACT" in connection with any unsold or unoccupied Lots and Dwelling Units.
- (i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Areas (except where heretofore limited to surrounding Lot owners for specified lake under Item 1(f)), or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas and/or Common Expense Areas (Item 1(f)).
- (j) The use of the Lake and the area surrounding same (Common Area) shall be according to published Rules and Regulations.
- (k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas and/or Common Expense Areas (Item 1(f)), except with express permission from the Board.
- (l) The Common Areas and Common Expense Areas (Item 1(f)) shall be used and enjoyed only for the

purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

- (m) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.
- (n) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.
- (o) A motor vehicle that is inoperative or unlicensed and not being used for normal transportation is not permitted to remain on any Lot, outside of the attached garage.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, DECLARANT shall have the right to use and maintain any Lots and Dwelling Units owned by DECLARANT and other portions of the "TRACT" (other than individual Dwelling Units and Lots owned by persons other than DECLARANT), all of such number and size and at such locations as DECLARANT in its sole discretion may determine, as DECLARANT may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. DECLARANT shall have the right to relocate any or all of the same from time to time as it desires. DECLARANT shall have the right to remove the same from the "TRACT" at any time.

20. Amendment of Declaration.

- (a) Generally. 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 of 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 duly called and held in accordance with the provisions of the By-Laws.

- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less a majority in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
 - (v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 17 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 18 of this Declaration with respect to reconstruction or repair of the Common Areas and Common Expense Areas (Item 1(f)) in the event of fire or any other casualty or disaster, or (4) the provision of Paragraph 14 of this Declaration establishing the Architectural Review Board and providing for its functions, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.
 - (vi) Additional Special Amendments. No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for, and responsibility for, maintenance, repair and replace of the Common Areas and Common Expense Areas, or (3) right to use the Common Areas and Common Expense Areas, or (4) termination of the applicability of this Declaration, or (5) any provisions which are for the express benefit of Mortgagees without the consent of at least two-thirds (2/3rds) of the votes of the Owners for the first ten (10) years after recording of this Declaration and thereafter at least a majority of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages whose mortgage interest have been made known to the Board of Directors as heretofore detailed.
 - (vii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.
 - (viii) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.
- (b) Amendments by DECLARANT ONLY. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the DECLARANT shall have and hereby reserves the right and power, acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal

Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements, or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, or (e) adopt amendments prior to the APPLICABLE DATE which are not materially adverse to the owners. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the DECLARANT to vote in favor of, make, or consent to any amendments described in this Paragraph on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the DECLARANT to vote in favor of, make, execute and record any such amendments. The right of the DECLARANT to act pursuant to rights reserved or granted under this Paragraph shall terminate at such time as the DECLARANT no longer holds or controls title to any part or portion of the "TRACT".

- (c) Amendment Prior to the APPLICABLE DATE. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the APPLICABLE DATE without the consent and approval of DECLARANT.

21. Party Walls.

- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.
- (c) Destruction by Fire or other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 21, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party the Board of Directors of the Corporation shall elect an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

22. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an

agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or "TRACT" as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporation, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the "TRACT" in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

23. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his misuse of the Common Areas and/or Common Expense Areas.

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

25. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and/or Common Expense Areas or by abandonment of his Lot.

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

27. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context

clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

28. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

29. The Plat. The Final Plat of the portions of the "TRACT" detailed in Item 3 hereof is incorporated into this Declaration by reference to the Instrument number thereof, filed in the Office of the Recorder of Marion County, Indiana.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

**"DECLARANT FEE OWNERS"
OF EXHIBIT "A" REALTY**

COMMUNITY DEVELOPMENT III, INC.

By:

Mauri G. Young
Mauri G. Young

Capacity: President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Mauri G. Young, by me known, and by me known to be the President of **Community Development III, Inc.**, who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of MISTY RIDGE OWNERSHIP" on behalf of said Corporation.

WITNESS my hand and Notarial Seal this 6th day of AUGUST, 1997.

Barbara Lawson

Notary Public

My Commission Expires:

11-6-98

BARBARA B. LAWSON

(Printed)

County of Residence: Johnson

This Instrument Prepared by:
Raymond Good, #7201-49
SCHNORR, GOOD, SCAHILL & MAIER
144 North Delaware Street
Indianapolis, IN 46204-2551
317/264-3636

#1-Young\Misty Ridge\Declaration