



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.

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
NEW BETH-EL SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEW BETH-EL SUBDIVISION ("Declaration"), made this _____ day of _____, 1998, by Jim Whitis (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

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

WHEREAS, Declarant intends to develop the Real Estate, by subdividing the Real Estate and platting same into residential Lots, which shall be known as New Beth-El Subdivision (hereinafter sometimes referred to as "New Beth-El"); and

WHEREAS, Declarant intends to sell and convey the Lots within New Beth-El and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate; and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas, Utility Easements, Streets and other improvements located on the Real Estate which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain

maintenance and other costs in connection with the operation of New Beth-El;

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 of parts thereof.

ARTICLE I.

General Purpose Of This Declaration

The Real Estate is hereby subject 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 structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may not be harmonious with other improvements on the Real Estate, to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of

certain governmental agencies, all for the purpose of preserving the values of all Lots within New Beth-El and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within New Beth-El.

ARTICLE II.

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 II:

Section 1. Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for New Beth-El to be appointed in accordance with this Declaration.

Section 2. Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot as determined and levied pursuant to the provisions of this Declaration.

Section 3. Association. "Association" means New Beth-El Homeowners' Association, Inc., an Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

Section 4. Common Areas. "Common Areas" means certain areas not amenable to development which may be designed as streets, utility and drainage easements or other such areas shown on the Plat and which are intended for the common benefit of all Lots.

Section 5. Common Expense. "Common Expense" means the actual

or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, streets, certain sewer and water lines, Easements, Drainage System, and other cost or expense incurred by the Association for the benefit of the same.

Section 6. Declarant. "Declarant" means Jim Whitis, or any other person, firm, corporation or partnership which succeeds to the interest of Jim Whitis as developer and/or owner of New Beth-El.

Section 7. Drainage System. "Drainage System" means storm sewers, subsurface drainage tiles, pipes, retention ponds, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over and across New Beth-El.

Section 8. Easements. "Easements" refer to those areas reserved as Easements, on the Plat of New Beth-El.

Section 9. New Beth-El. "New Beth-El" means the Real Estate as it is platted and recorded by Declarant in accordance with the provisions of this Declaration.

Section 10. Lot. "Lot" means any of the separate parcels numbered and identified on the Plat of New Beth-El.

Section 11. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 12. 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 any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 13. Plat. "Plat" means the final Plat recorded for New Beth-El.

Section 14. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

Section 15. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of New Beth-El, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

ARTICLE III.

General Restrictions

Section 1. Maintenance of Premises. In order to maintain the standards of New Beth-El, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All Owners shall maintain

their Lots and improvements situated thereon in a manner so as to prevent the Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.

(d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Lot and/or New Beth-El.

(e) An exception to subparagraphs 1(a)-(d) of this Article III are those areas designated as Utility Easements and Common Areas on the Plat which areas are to be left in a condition so as to appear in their post-development state, normal acts of common maintenance notwithstanding.

Failure to comply shall warrant the Declarant, authorized agents of Marion County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner. The Association shall place and record a lien against said Lot in an amount equal to the expenses therefor and costs which costs may include reasonable attorneys' fees for the placement of

said lien should such be deemed necessary by the Association. Said liens shall be subject and subordinate only to taxes, municipal liens, and the lien of any bona fide mortgage upon any Lot. At the option of the Association, said liens may be foreclosed upon in any court of competent jurisdiction by the Association as Plaintiff for the amount of lien with interest, attorneys' fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws.

Section 2. Residential Purpose. No Lot shall be used except for residential purposes and ancillary home occupations as may be permitted by law and/or ordinance. No other buildings shall be erected, altered, placed or permitted on any Lot until a dwelling not to exceed two (2) stories in height has been erected on said Lot. A dwelling shall have a garage of a size to accommodate at least two (2) cars.

Section 3. Setbacks. No building shall be located on any Lot nearer to the front Lot line or nearer to the edge of the pavement of any street than twenty-five feet (25'). The minimum side yard setback shall be twenty feet (20'). The minimum rear yard setback shall be twenty feet (20') from the rear Lot line. For the purposes of this Covenant, eaves, steps, open porches and cornice overhangs not exceeding two feet (2') shall not be considered as part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 4. Materials. There shall be no vinyl or aluminum siding utilized within New Beth-El.

Section 5. Easements. Easements for installation and maintenance of utilities, drainage facilities, and ingress-egress are reserved as shown on the recorded Plat.

Section 6. Inoperable Vehicles. At no time shall any unlicensed and/or inoperable vehicle be permitted on any Lot, Common Area, street or easement unless kept entirely within a garage.

Section 7. Trucks and Recreational Vehicles. No semi-truck, trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any Lot unless kept entirely within a garage.

Section 8. Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

Section 9. Outdoor Storage. No large machinery or equipment shall be permitted to be kept or stored on any Lot except within the dwelling.

Section 10. Drainage Ditches. Drainage swales (ditches) along roadways and within the right-of-way, or on dedicated easements, and including the Springer-McGauley legal drain, are not to be altered, dug out, filled in, tiled or otherwise changed without the

written permission of authorized agents of Marion County. Notwithstanding the above, storm water drainage in New Beth-El is to feed into a retention pond located on Lots 6 through 10 from which the storm water will be released into the Springer-McGauley legal drain.

Any Owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Marion County may cause said repairs to be accomplished and the bill for the cost of said repairs will be sent to the affected property Owner for the immediate payment.

Section 11. Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) professionally manufactured sign of not more than five (5) square feet advertising the property for sale.

Section 12. Mining Operations. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 13. Animals. Dogs, cats, or other household pets, or pets of the agricultural variety may be kept on a Lot provided that

they are not bred, kept or maintained for any commercial use.

Section 14. Rubbish, Trash and Garbage. Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any Lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day.

Section 15. Corner Lot. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 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 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. 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.

Section 16. Field Tiles. Any field tile or underground drain which is on any Lot must be allowed to perpetuate and all owners of the Lots in this Subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

Section 17. Minimum Living Space. The minimum square footage of living space of dwellings within New Beth-El, exclusive of porches, garages or basements shall be no less than 2,000 square feet of liveable space.

Section 18. Outbuildings. No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be maintained on any Lot.

Section 19. Carports. No carports are permitted. Only garages capable of storing at least two (2) vehicles shall be permitted.

Section 20. Communication Devices. Satellite disks of no more than two feet (2') in diameter will be the only antennae permitted. This restriction may be reviewed and is subject to alteration pursuant to the By-Laws as technology advances.

Section 21. Mailboxes. All mailboxes in New Beth-El shall be uniform in appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the mailboxes approved by the ACC. Owners shall be responsible to keep the mailboxes in a good state of repair and to replace them with a substantially identical one if necessary.

Section 22. Wells and Septic Tanks. Water wells may be used as a primary source of water to the Lots. Initially, the first seven (7) Lots to be developed shall be designed with two (2) separate septic fields (with the exception of Lot 2 which shall be given right to a septic area easement on Lot 3). At a point in time set out in Article VIII, Section 4 use of septic systems is to be discontinued and each Lot shall be required to connect to an available sanitary sewer system.

Section 23. Swimming Pools. Above-ground swimming pools are prohibited.

Section 24. Construction, Earth-Moving, Excavation. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Lot without first having any development plans approved by the Architectural Control Committee.

Section 25. Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to 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.

Section 26. Decorative Structures. No decorative structure, statue, or other structure may be placed on the Lot closer to the front Lot line than the front building setback line.

ARTICLE IV.

Declarant's/Association's Right to Guarantee Compliance

Section 1. In the event that the Owner of any Lot in New Beth-El shall fail to maintain that Lot or any of its improvements situated thereon in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any,

conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from the Owner of said Lot. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon.

ARTICLE V.

New Beth-El Architectural Control Committee

Section 1. Appointment of Architectural Control Committee.

The Board of Directors of the Association, or Declarant if the Association is not yet incorporated, shall appoint the members of the Architectural Control Committee (hereinafter sometimes referred to as "ACC"). However, initially the Architectural Control Committee shall consist of Jim Whitis, Cindy Whitis and Monty Trask. The offices of this initial Architectural Control Committee shall be: Jim Whitis, Chairman; Cindy Whitis, Treasurer; and Monty Trask, Secretary. The term Jim Whitis, Cindy Whitis and Monty Trask shall serve on the ACC shall be that period of time leading up to the sale and construction of the residential structure on the twelfth (12th) and final Lot. Thereafter, the ACC shall consist of three (3) members who shall be appointed by the Association. The term of any Association appointed member of the ACC shall be one (1) year in length.

Section 2. Construction Approvals. No construction of any

building or structure of any kind, including additions, alterations, swimming pools, fences, screens and walls shall begin within New Beth-El until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

Once the Architectural Control Committee has approved a set of plans and specifications, the applicant/Owner shall begin construction of the project which is the subject of approved plans and specifications within one (1) year of obtaining the Architectural Control Committee approval. After said project has commenced, the project must be completed within a time period determined by the Architectural Control Committee. A purchaser of an undeveloped Lot must submit plans and specifications for residential development and begin construction of said residence

within one (1) year of closing on the purchase of said undeveloped Lot.

The plans and specifications submitted to Declarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be complete at the time of completion of the building, or as soon as weather and season permit. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

Section 3. Duties of ACC. The ACC shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor.

Section 4. Liability of ACC. Neither the ACC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 5. Inspection. The ACC or its agents may inspect work being performed to assure compliance with the approved plans and

this Declaration.

ARTICLE VI.

Covenants for Maintenance Assessments

Section 1. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Lots within New Beth-El and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvements, fencing, operation, and maintenance of the Common Areas, Utility Easements, and Drainage System, including, but not limited to, the payment of taxes and insurance thereon and for the costs of labor, equipment, material, and management furnished with respect to the Common Areas and Utility Easements; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each owner hereby covenants and agrees to pay the Association:

- (a) A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided; and
- (b) A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2. Liability for Assessments. All Assessments shall be a prior lien on the Lots with respect to which said Assessments are in favor of the Association, subject and subordinate only to

taxes, municipal liens, and to the lien of any bona fide mortgage upon any Lot, and at the option of the Association Assessments may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of the Assessment with interest, attorneys' fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws. Each Owner of any of said Lots from the time of obtaining title thereto shall be held to have covenanted personally to pay to the Association all charges and Assessments provided herein which were due and unpaid at the time he/she obtained title and all such charges and Assessments thereafter made or falling due during his/her ownership thereof.

Each Owner, by accepting title to any Lot or Lots and by accepting membership in the Association shall be held to have vested the Association with the right and power in its own name to fix charges and levy Assessments and to prosecute all suits, legal or equitable or otherwise which may, in the opinion of the Association, be necessary or advisable for the collection of such charges and Assessments.

Section 3. Pro-Rata Share. The pro-rata share of each Owner for purposes of this Article VI shall be the percentage obtained by dividing one by the total number of Lots within New Beth-El multiplied by the number of Lots owned by each Owner.

Section 4. Basis of Annual Assessment. The Board of Directors of the Association shall establish an annual budget prior to the

beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days of the beginning of each fiscal year of the Association.

Section 5. Basis of Special Assessment. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessment.

Section 6. Notice of Meetings. Written notice of any meeting called for the purpose of taking action to authorize Assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 7. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessment provided for herein shall commence as to all Lots on the first day of the month

following the conveyance of the Common Area to the Association. Declarant shall be responsible for all Common Expenses prior to its conveying the Common Area to the Association. The first annual Assessment for each Lot shall be pro-rated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 8. Duties of the Association.

(a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as

promptly as practicable and in the event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(b) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessment has been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

(c) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws of this Declaration which is not cured within forty-five (45) days.

(d) The Association shall, upon notification of conveyance of a Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

Section 9. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

ARTICLE VII.

Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with New Beth-El Homeowners Association, Inc.'s Articles of Incorporation, Code of By-Laws and Declaration of Covenants, Conditions and Restrictions which have been filed or will be filed by Declarant.

Section 2. Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in New Beth-El provided that, in the event that any one Lot shall be owned by more

than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one (1) member for voting purposes. Owners shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 3. Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. Board Members. Initially, the Board of Directors shall consist of two (2) members, those persons being Jim Whitis, President, and Monty Trask, Secretary/Treasurer (hereinafter referred to as "Initial Board"). The Initial Board shall serve as said Board members until fifty percent (50%) of the Lots in New Beth-El have been sold and developed. Thereafter, the Board shall consist of three (3) members who shall be Association members and to be elected by the Association membership. The Board membership may not consist of persons who have an interest in a common Lot. Each Board member shall serve a three (3) year term. However, the first Board members elected by the Association shall serve terms as follows:

- (a) 1 newly elected Board member shall serve a one year term;
- (b) 1 newly elected Board member shall serve a two year term;
- (c) 1 newly elected Board member shall serve a three year

term.

All subsequent Board members shall serve three (3) year terms.

Section 5. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name of, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the termination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration.

Section 6. Liability of Association. Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, unless such act or failure to act is in the nature of willful or reckless disregard of the rights of the Owners or in the nature of the willful, intentional, fraudulent, or reckless misconduct.

Section 7. Amendment of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be

amended during the first twenty (20) year period by an instrument signed by not less than sixty-six and two-thirds percent (66 2/3%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any Amendment must be recorded.

Section 8. 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 or all Common Areas or Easements. The Association shall also maintain in force adequate insurance, insuring all Common Property against windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount sufficient to cover any foreseeable maintenance, removal or replacement costs in the event of damage attributable to such hazards. 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 any right to be subrogated to 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 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 against 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 New Beth-El, 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.

Section 9. 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 Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority of votes 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. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 10. Mortgagees' Rights. The Mortgagee shall have the right, at their option, jointly and 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 immediately reimbursement therefor from the Association.

ARTICLE VIII.

Sewage System

Section 1. The first seven (7) Lots to be developed shall be designed with two (2) separate septic fields.

Section 2. At the commencement of the development of the

eighth Lot, a public sewer system line shall be caused to be brought to the perimeter of the New Beth-El Subdivision. The cost of bringing said sewer system line to the perimeter of New Beth-El Subdivision shall be borne by the then Owners of Lots number 3 through 10 on the Plat of New Beth-El Subdivision which cost shall be allocated by assigning twelve and one-half percent (12-1/2%) of the cost to each Lot 3 through 10. Owners of any of such Lots shall be responsible for twelve and one-half percent (12-1/2%) of the cost for each Lot owned.

Section 3. Once the sewer system line has been brought to the perimeter of New Beth-El Subdivision, said sewer line shall then be brought to and stubbed at each Lot within New Beth-El Subdivision. The cost for this portion of the sewer system shall be born by each Owner of Lots in New Beth-El Subdivision on a pro-rata basis as defined in Article VI, Section 3 herein and further set out in Section 5 immediately below.

Section 4. After said sewer system is in place, each Owner of Lots developed or to be developed shall then connect thereto at the Owner's sole expense and discharge all sewage generated on their Lot(s) to said sewer system. Those Lots using a septic system at this time shall discontinue the use of the septic system once connection to the sewer system is complete.

Section 5. A reserve fund shall be established in order to help pay for the cost of that portion of the sewer system described in Section 3 immediately above. This fund is identified and funded

as described in Section 8.05 of the By-Laws for New Beth-El Subdivision. Contributions to said reserve fund are made on a pro-rata basis. In the event the amount in the reserve fund is insufficient to pay for said cost the Owners shall make up the difference by way of special Assessment as herein described.

ARTICLE IX.

Streets

Section 1. Initially all streets within New Beth-El Subdivision shall be installed by Declarant and shall consist of a gravel material. The installation of the streets will be at Declarant's expense.

Section 2. Within five (5) years of platting New Beth-El Declarant shall, at Declarant's expense, provide an asphalt topping to the streets to a depth of two inches (2").

Section 3. After the portion of the sewer system set out in Article VIII Section 3 has been completed the streets shall be upgraded to meet Marion County standards for local streets. The cost of this upgrade shall be born by the Association.

Section 4. A reserve fund shall be established in order to help pay for the cost of that portion of the streets upgrade set out in Section 3 immediately above. This fund is identified and funded as described in section 8.04 of the By-Laws of New Beth-El Subdivision. Contributions to said reserve fund are made on a pro-rata basis. In the event the amount in the reserve fund is insufficient to pay for said cost the owners shall make up the

difference by way of special Assessment as herein described.

ARTICLE X.

General Provisions

Section 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 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 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 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 thereof, 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 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 5. Rights of Mortgagees. Except to the extent otherwise provided in Article VI no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration and any liens for past due assessments on the Real Estate shall be canceled and no longer providing a secured interest in said Real Estate. Similarly, if the Real Estate is transferred by way of deed-in-lieu of foreclosure any lien on the Real Estate for past due assessments shall be canceled and cease to provide a secured interest in the property to the

lienor. The provisions of Article VII hereinabove notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

Section 6. 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 7. 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 Owners define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 8. 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, as listed in the roster of Owner's names and addresses referred to in Article VI; or (b) seventy-two (72) 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 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, Conditions and Restrictions for New Beth-El pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Marion County, Indiana",

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

Section 10. Provisions 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 11. Reservations of Declarant. The provisions of Article VI hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least six (6) Lots within New Beth-El, without the approval or consent of the Owners or Mortgagees of the Lots; provided that

Declarant shall not be entitled to make any amendment which has materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

Section 12. Owners' Easement of Enjoyment. Each Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of Common Areas by an Owner for any period during which any Assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of any published rules and regulations;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Owners of at least two-thirds (2/3) of the Lots has been recorded.

Section 13. Rights to Common Areas. Title to all Common Areas shall be held in the Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, a right of access to his Lot over the Streets, and the right of proper

utilization and benefit of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Lot; provided, however, that no Owner shall materially interfere with any other Owner in exercising his rights hereunder. In the event that any Owner's use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

Section 14. Transfer of Control of Owner's Association and Delivery of Warranty Deed to Common Areas. Declarant shall transfer control of the Owner's Association to the Lot Owners and give a Warranty Deed conveying the Common Areas to the Association free and clear of encumbrances no later than the earlier of (a) four (4) months after one-half (½) of the Lots have been conveyed to Lot purchasers or (b) seven (7) years after the first Lot is conveyed.

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

DECLARANT:

JIM WHITIS

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Jim Whitis, the _____ day of _____, 1998, who acknowledged the execution of the foregoing, and who having

been duly sworn upon his oath, stated that the representations therein contained are true.

Notary Public, _____
Resident _____ County, IN
Commission Expires _____

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LEGAL DESCRIPTION

A part of the West Half of the Southeast Quarter and a part of the East Half of the Southwest Quarter of Section 29, Township 15 North, Range 5 East and a part of the West Half of the Northeast Quarter of Section 32, Township 15 North, Range 5 East of the Second Principal Meridian, Marion County, Indiana more particularly described as follows:

BEGINNING at the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 32; thence South 00 degrees 00 minutes 00 seconds West on and along the East line of said Quarter-Quarter Section a distance of 693.03 feet; thence South 89 degrees 03 minutes 55 seconds West a distance of 939.28 feet; thence North 00 degrees 05 minutes 24 seconds West a distance of 691.00 feet to a point on the South line of the Southwest Quarter of the Southeast Quarter of said Section 29; thence South 88 degrees 56 minutes 31 seconds West on and along said South line a distance of 379.00 feet to the Southeast corner of the East Half of the Southwest Quarter of said Section 29; thence North 00 degrees 48 minutes 03 seconds West on and along the East line of said Half Quarter Section a distance of 300.00 feet; thence North 89 degrees 17 minutes 57 seconds East a distance of 90.00 feet; thence North 00 degrees 48 minutes 03 seconds West a distance of 164.40 feet; thence South 89 degrees 17 minutes 57 seconds West a distance of 219.90 feet to a point on the approximate centerline of Vandergriff Road; thence North 38 degrees 48 minutes 29 seconds East on and along said approximate centerline a distance of 146.19 feet; thence South 87 degrees 33 minutes 32 seconds East a distance of 412.12 feet; thence North 15 degrees 56 minutes 38 seconds East a distance of 223.82 feet; thence North 88 degrees 21 minutes 08 seconds East a distance of 390.23 feet; thence North 03 degrees 02 minutes 33 seconds West a distance of 246.32 feet; thence North 89 degrees 13 minutes 22 seconds East a distance of 500.00 feet to a point on the East line of the Southwest Quarter of the Southeast Quarter of said Section 29; thence South 00 degrees 46 minutes 38 seconds East on and along said East line a distance of 1014.06 feet to the Point of Beginning containing 38.963 acres more or less.

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