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DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

THE GARDENS OF WESTMOUNT AND THE VILLAS OF WESTMOUNT

HORIZONTAL PROPERTY REGIME

(HEREINAFTER COLLECTIVELY REFERRED TO AS "THE VILLAS OF WESTMOUNT")

THIS DECLARATION of The Gardens of Westmount And The Villas Of Westmount ("Declaration") made this 12th day of March, 1996 by Rottlund Homes of Indiana Limited Partnership, a Minnesota Limited Partnership, (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the agent and subsidiary of The Rottlund Company, Incorporated, a Minnesota Corporation, who is the sole owner of the fee simple title to certain real estate and improvements thereon, located in Marion County, Indiana, more particularly described in Exhibit "A" hereto (hereinafter called the "Real Estate"); and

WHEREAS, Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime (the "Regime") upon the Real Estate, subject to the provisions of the Horizontal Property Law of the State of Indiana, (the "Act") and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration, and declares that the Real Estate shall be a "Horizontal Property Regime" as provided in the Act, subject to and in accordance with the following terms and conditions:

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

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- (a) "Act" means the Horizontal Property Law of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 3), as amended (Codified in Ch. 6 Article 1 of Title 32 of the Indiana Code). The Act is incorporated herein by reference.
- (b) "Association" means The Villas of Westmount Co-Owners Association, Inc., an Indiana not-for-profit Corporation, being the Association of the Co-Owners of The Villas of Westmount, more particularly described in Section 11 hereof.
- (c) "Board Of Managers" means the governing body of the Association, being the initial Board Of Managers referred to in the By-Laws or subsequent Board of Managers elected by the Co-Owners in accordance with the By-Laws. The term "Board of Managers", as used herein and in the By-Laws, shall be synonymous with the term "Board Of Directors" as used in the Act.
- (d) "Building" means any structure on the Real Estate in which Common Areas, limited Common Areas or one or more Condominium Units are located. The buildings are more particularly described and identified on the Plans and in Section 2 of this Declaration.
- (e) "By-Laws" means the code of By-Laws of The Villas of Westmount Co-Owners Association, Inc. providing for the administration and management of the Association as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.
- (f) "Common Areas" means the common areas, limited common areas and facilities as defined in Section 5 of this Declaration.
- (g) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other costs and expenses incurred by the Association for the benefit of Common Areas or for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction or initial renovation of

any Building or other Property or improvements or any portion of the Tract, nor any costs of repairs covered by any Warranty of the Declarant as builder of the Condominium Units, nor to any costs or repairs arising out of construction, renovation or other activities on any portion of the Real Estate.

- (h) "Condominium Units" means any one of the living units constituting The Villas Of Westmount, each individual living unit being more particularly described and identified on the Plans and in Sections 3 and 4 of this Declaration. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas pertaining to such unit.
- (i) "Co-Owners" means all of the Owners of all of the Condominium Units in the Regime.
- (j) "Declarant" shall mean and refer to Rottlund Homes of Indiana, L.P. and any successors and assigns of Rottlund Homes of Indiana, L.P. whom it designates in one or more recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of the rights under, or foreclosure of, a mortgage executed by Declarant.
- (k) "Mortgagee" means the holder, insurer or guarantor of a first mortgage loan on a Condominium Unit.
- (l) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns the fee simple title to a Condominium Unit; provided, however, that persons or entities owning a single Condominium Unit as tenants-in-common, joint tenants, tenants by the entirety, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration. Persons or entities owning more than one Condominium Unit shall have the status of an owner for each Condominium Unit owned.
- (m) "Percentage Interest" means that percentage of the total undivided interest accruing to all the Condominium Units which is appurtenant to

each Condominium Unit and accrues to the owner thereof. The Percentage Interest to which each owner shall be entitled on any matter upon which the Co-Owners are entitled to vote shall be the same percentage as the percentage interest appurtenant to such Co-Owners Condominium Unit.

- (n) "Plans" means the floor and building plans of the buildings and condominium units prepared and certified by Morris & Associates, a licensed architect and structural engineer, December 21, 1995 (Westmount Park Villas) and dated January 31, 1995, (Westmount Park Garden Homes) and the site plans, surveys, and elevation plans of the Real Estate and Buildings prepared by Stoepelwerth & Associates, Inc., a licensed engineer under date of May 23, 1995, all of which are incorporated herein by reference, and made a part of the Regime by such references.
- (o) "Property" means the Real Estate and appurtenant easements, the Condominium Units, the Buildings, improvements, and Property of every kind and nature whatsoever, real, personal or mixed, located upon the Real Estate and used in connection with the operation, use and enjoyment of The Villas of Westmount, but does not include the personal property of the owners.
- (p) "The Villas Of Westmount" means the name by which the Horizontal Property Regime shall be known.
- (q) "Tract" means the Real Estate as herein defined.

SECTION 2. Description Of Buildings. There are or will be built, Buildings containing Condominium Units on the Real Estate as shown on the Plans. As of the date of this Declaration, construction is not completed on the Condominium Units. A description of the Buildings and the Condominium Units contained or to be contained therein is set forth in Exhibit "B" attached hereto and hereby made a part hereof by this reference.

SECTION 3. Legal Description And Percentage Interest. Each Condominium Unit is identified on the Plans by a number. The Legal Description for each Condominium Unit shall consist of the identifying number for such Condominium Units as shown on the Plans, and shall be stated as "Condominium Unit" (with identifying number) in The Villas Of Westmount Horizontal Property Regime. The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined in Section 15 below shall be the same percentage of interest as each Condominium Unit.

SECTION 4. Description Of Condominium Units.

- (a) "Appurtenants". Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use, and benefit of the Condominium Units wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operation of any of the Buildings, or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. Also, the interior sides and surfaces of all doors and interior and exterior sills and frames of all windows in the perimeter walls of the Condominium Unit, whether or not located within or partly within the boundaries of the Condominium Unit, and all interior

walls and all the floors and ceilings within the boundaries of the Condominium Unit, are considered part of the Condominium Unit.

- (b) "Boundaries". The boundaries of each Condominium Unit shall be as shown on the Plans and shall be measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Condominium Unit. In the event any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor, or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, declaration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenance easements for exclusive use shall exist in favor of the owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

SECTION 5. Common Areas And Facilities. "Common Areas" shall include the following, except to the extent otherwise specifically designated in this Declaration as being within a Condominium Unit or as a Limited Area:

- (a) The Real Estate, excluding the Condominium Units;
- (b) The foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings;
- (c) The yards, sidewalks, interior and exterior driveways, parking areas, entrances and exits;
- (d) Central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings, excluding those separately metered to a particular Condominium Unit;

- (e) Exterior lighting fixtures and electrical service lighting to the exterior of the Buildings unless separately metered to a particular Condominium Unit; and
- (f) Pipes, ducts, electrical wiring and conduits and public floors, roofs and exterior permanent walls of the Buildings, except to the extent the same are otherwise classified and defined herein as Limited Areas or as part of a Condominium Unit.

SECTION 6. Limited Areas And Facilities. Limited Areas and those Condominium Units to which use thereof is limited are as follows:

- (a) The front entrance ways, patios, porches, and all exterior sides and surfaces of doors and frames surrounding the same on each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain.
- (b) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

SECTION 7. Ownership Of Common Areas And Percentage Interest.
Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants-in-common with all the other Owners, equal to his or her Condominium Units Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas applicable to each Condominium Unit shall be determined in accordance with the formula set forth in Section 15 hereof. In any computation of Percentage Interests, the figure obtained shall be rounded to the nearest one-thousandth of a percent, and shall be so

presented for all purposes of conveyance and for all purposes contemplated under this Declaration.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to The Villas Of Westmount and the Association upon which the Co-Owners are entitled to vote.

SECTION 8. Encroachments, Easements For Common Areas and Ingress and Egress Easements. If, by reason of the location, the construction, settling or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited 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 located in any of the other Condominium Units and serving his Condominium Unit. Each Owner shall have an easement over the Common Areas for the purpose as of ingress and egress from his Condominium Unit, and to use all Common Areas wherever located, and such easement shall be perpetual and appurtenant to the Condominium Unit.

SECTION 9. Real Estate Taxes. Real Estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. In the event that for any year Real Estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the property as a whole, then each Owner

shall pay his or her proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest.

SECTION 10. Utilities. Each Owner shall pay those utilities which are separately metered to his or her Condominium Unit. Utilities which are not separately metered shall be treated as and paid as a part of the Common Expenses unless otherwise agreed by the majority of the Percentage Interest.

SECTION 11. Association Of Owners. Subject to the rights of Declarant reserved in Section 24 hereof, maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by The Villas Of Westmount Co-Owners Association, Inc., (the "Association"), a not-for-profit Corporation organized under the laws of the State of Indiana. Each Owner of a Condominium Unit shall, automatically upon becoming an owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his or her ownership ceases, but membership shall terminate when such person ceases to be an Owner, and shall be transferred to the new Owner.

The Association shall elect a Board Of Managers annually (except for an initial Board of Managers defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast a vote equal to his Percentage Interest for the election of the Board of Managers, except for such initial Board of Managers who shall serve on the initial Board of Managers, 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 Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Managers and for no other purpose. A person serving on the initial Board of Managers shall not be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose unless he is actually a Owner of a Condominium Unit and thereby is a member of the Association.

The Board of Managers shall be the governing body of the Association, representing all the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Condominium Units.

The Association and any aggrieved Condominium Unit Owner shall have a right of action against any Condominium Unit Owner for failure to comply with the provisions of the Declaration, By-Laws or decisions of the Association which are made pursuant to authority granted the Association in such documents. Condominium Unit owners shall have a similar right of action against the Association.

SECTION 12. Use of Common Areas. The Board of Managers shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate.

The Board of Managers or their designated agents shall have

the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

SECTION 13. Maintenance, Decoration, Repairs And Replacements.

- (a) Common Areas. The Association will be responsible for the maintenance, repair, decoration, restoration, and replacement of the Common Areas. Maintenance, decoration, repairs, and replacements of the Common Areas shall be furnished by the Association and the costs thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a Managing Agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are proved by a majority of the vote present or represented at any meeting of the Association. Declarant or an entity affiliated with Declarant may serve as the Managing Agent for the Regime so long as Declarant retains control of the Association, and may perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association. The Board of Managers has the right to adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas as it deems appropriate, including the appointment of committees to oversee the same. The Board of Managers shall have the exclusive right to determine the outside decor of each Building,

including without limitation the color and type of paint and other decor pertinent to the exterior of each Building.

- (b) Condominium Units. Each Owner shall control and have the right to determine the interior decor of his or her Condominium Unit, but this shall not include the right to make structural changes to the Unit, nor the right to use interior decor which in the discretion of the Board of Managers adversely affects the external appearance of the Condominium Unit, as more particularly set forth in the By-Laws of the Association. No act or omission which constitutes waste shall be committed or suffered in or upon any Condominium Unit, the Common Areas, or Limited Areas. Each Owner shall maintain and repair at his or her sole cost and expense all fixtures, appliances, equipment, and other improvements constituting a part of his or her Condominium Unit under Section 4 hereof, and each Owner shall promptly repair any condition or defect existing or occurring in his or her Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Area. The Board of Managers and the Managing Agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into the Condominium Units and Common Areas adjacent to each Condominium Unit to replace, repair, and maintain such Common Areas. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he or she is responsible and the Board of Managers or the Managing Agent have a reasonable basis for believing that such condition or defect has caused or threatens to cause immediate and/or substantial harm to any person or to any property outside such Owner's Condominium Unit, the Board of Managers and the Managing Agent shall each have the right to enter such Owner's Condominium Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith (including attorney's fees) shall be payable by such Owner upon demand by the Board of Managers or the Managing Agent. Nothing herein contained shall be construed to represent a contractual liability to any Owner

on the part of the Declarant, the Association, or the Board of Managers for maintenance, repair, or replacement of any Condominium Unit, Common Areas, or Limited Areas, and the liability of the Association, the Board of Managers and the Managing Agent in this regard shall be limited to damages resulting from gross negligence, recklessness, or intentional misconduct, unless otherwise provided in the management contract in the case of the Managing Agent.

SECTION 14. Alterations, Additions And Improvements. No Owner shall make any alterations or additions to or which would affect, the Common Areas or Limited Areas without the prior written approval of the Board of Managers, nor shall any Owner make any alteration in or to his respective Condominium Unit and within the boundaries thereof which would affect the safety of structural integrity of the Building in which Condominium Unit is located. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units for so long as Declarant owns the Condominium Units so altered. No such change shall increase the number of Condominium Units or change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

SECTION 15. Percentage Interest. The Owner of each Condominium Unit shall have a Percentage Interest appurtenant to his Condominium Unit based upon the size in square footage of his

Condominium Unit divided by the total square footage of all of the Condominium Units in the Regime at that time in accordance with Section 7(a)(1) of the Act (hereinafter called the "Formula"). In order to determine the Percentage Interests in accordance with the Formula, the square footage figures shall be taken from the Plans, which are filed herewith, as such Plans may be amended from time to time. The total Percentage Interests shall at all times equal one hundred percent (100%), or as close to one hundred percent (100%) as is mathematically possible, after taking into account the rounding thereof as required by Section 7.

SECTION 16. Insurance.

- (a) The Co-Owners, through the Association, shall purchase a master casualty insurance policy issued in the name of the Association for the use and benefit of the Owners affording fire and extended coverage insurance insuring the Property in an amount consonant with the full replacement value of the Property and improvements including the individual Condominium Units, the Common Areas and Limited Areas and facilities, and further including fixtures, building service equipment and common personal property and supplies belonging to the Association. For all Condominium Units which are subject to a first mortgage, the insurance must cover fixtures, equipment and other personal property inside individual Condominium Units if they are secured by a first mortgage. Certificates of Insurance shall be issued to each Condominium Unit Owner and each Mortgagee upon request and no such policy shall be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to each Mortgagee listed as Mortgagee in the policies. The insurance policy must contain the standard mortgage clause and must name the Mortgagee or the servicer of the Mortgagee. If a servicer is named as Mortgagee, its name should be followed by the phrase "its successors and

assigns." The Board of Managers shall obtain an inflation guard endorsement if available. The Board of Managers shall also obtain "all risk" coverage if available. The Board of Managers shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Managers may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the following terms and conditions:

- (1) All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Managers, who shall act as the insurance trustee and hold such proceeds for the benefit of the insured parties. In the event that the Board of Managers has not posted surety bonds for the faithful performance of its duties as such Managers or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Property resulting in a loss, the Board of Managers shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by the majority of the Owners but not to exceed One Hundred Twenty-Five percent of the loss, before the Board of Managers shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose elsewhere stated herein, and for the benefit of the Owners and their respective Mortgagees.

The proceeds shall be used or disbursed by the Association or Board of Managers, as appropriate, only in accordance with the provisions of this Declaration.

- (ii) The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of each damaged Owner to the damages of all Owners directly damaged by any event insured under said master casualty insurance policy.
- (b) Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (i) waives its right to subrogation as to any claim against the Association, the Board of Managers, its agents and employees, Owners, their respective agents and guests, and (ii) waives any defense based on invalidity arising from the acts or omissions of the individual Condominium Unit Owners that are not under the control of the Association, and providing further, (iii) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted and (iv) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Section 17 of this Declaration.
- (c) The Co-Owners, through the Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time; however, such coverage shall be for at least Two Million Dollars (\$2,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such compensation public liability insurance policy shall cover the Association, the Board of Managers, any committee or organ of the Association of Board of Managers, any Managing Agent appointed or employed by the

Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to The Villas of Westmount, all owners of Condominium Units and all other portions of The Villas Of Westmount. Coverage under this policy shall include, without limitation, legal liability of the insureds for the property damage, bodily injuries and deaths of the persons in connection with the operation, maintenance or the use of the Common Areas and Limited Areas, and if available, legal liability arising out of law suits related to employment contracts of the Association. No insurance coverage as described hereinabove shall be prejudiced by the act or neglect of an individual Condominium Unit Owner who was not in control of the Owners collectively. Such policies shall also provide that it may not be cancelled or substantially modified by any party without at least thirty (30) days prior written notice to the Association and to each holder of a first mortgage on any Condominium Unit in the Property which is listed as a scheduled holder of a first mortgage in the insurance policy.

- (d) The Co-Owners, through the Association, shall also obtain any other insurance required by law to be maintained, including but not limited to, worker's compensation insurance, flood insurance, and such other insurance as the Board of Managers shall from time to time deem necessary, advisable or appropriate, including but not limited to, comprehensive liability insurance on vehicles owned by the Association, officers' and directors' liability policies, contractual and all-written contract insurance, and employer's liability insurance. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, The Board of Managers and any Managing Agent acting on behalf of the Association.
- (e) Each Owner shall deem to have appointed the Board of Managers to represent each owner in any proceedings, negotiations, settlements or agreements with the insurance companies to

adjust all losses under policies purchased by the Board of Managers.

- (f) The premiums for all such insurance hereinabove described shall be paid by the Association as part of Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the attainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.
- (g) In no event shall any distribution of proceeds be made by the Board of Managers directly to an Owner where there is a mortgage endorsement on the Certificates of Insurance. In such event any remittance shall be to such Owner and Mortgagee jointly.
- (h) Each Owner shall be solely responsible for, and may obtain, such additional insurance as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon his personal property, contents of the Owner's Condominium Unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by the Owner) and the Owner's personal property stored elsewhere on the Property, and for the Owner's personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions of the master casualty insurance policy to be obtained by the Association. Each owner may obtain casualty insurance at the Owner's own expense upon the Owner's Condominium Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable in the insurance purchased by the Association pursuant to this paragraph, due to proration of insurance purchased by an Owner under this paragraph the Owner agrees to

assign the proceeds of this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided. Notwithstanding any other foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, an authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Condominium Unit Owner hereby appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and the following additional purposes: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability related thereto; the execution of all documents necessary in connection therewith; and the performance of all other acts necessary to accomplish such purposes.

- (i) All of the aforescribed insurance shall be procured by generally acceptable insurance carriers.

SECTION 17. Casualty And Restoration; Condemnation; And Termination.

- (a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all the Buildings" (hereinafter defined) it shall only be done in accordance with provisions hereinafter set forth. As used herein, the term "complete destruction of all the Buildings" means a determination, made by a vote of two-thirds of all Co-Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has

occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings. If such a meeting is not called and held within such ninety (90) day period, or if the determination of whether or not there has been a complete destruction of all the Building has not been made within such ninety (90) day period, then it shall be conclusively presumed that the Co-Owners determine that there was not a complete destruction of all the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

- (b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty disaster are not adequate to cover the costs of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the costs for restoring the damage, repairing or reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of the insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in proportion to the ratio that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any such amounts payable by the Co-Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided in the Act.
- (c) For purposes of Subsection (a) and (b) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Condominium Units as near as possible the same condition as they existed immediately prior to the damages or destruction and with the same type of architecture.
- (d) If, under Subsection (a) above, it is determined by the Co-Owners as the special meeting of the Association referred to therein that there has been a complete destruction of all the Buildings, the Co-Owners shall, at such same special meeting, vote to determine whether or not such complete destruction of

all the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-Owners at said special meeting that there has been a complete destruction of all of the Buildings, unless by a vote of two-thirds of all the Co-Owners a decision is made to rebuild, reconstruct and repair the Buildings. If two-thirds of all of the Co-Owners vote and decide that the Buildings are to be rebuilt, reconstructed and repaired, insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any received by the Association shall be contributed and paid as hereinabove provided in subsection (a) and (b).

(e) If, in the case of the complete destruction of all of the Buildings, less than two-thirds of all of the Co-Owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be rebuilt, reconstructed and repaired, and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Section 28 of the Act and in accordance with Section 21 of the Act:

(i) The property shall be deemed to be owned in common by the Condominium Unit Owners;

(ii) The undivided interest in the Property owned in common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas and facilities;

(iii) Any liens affecting the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Condominium Unit Owner in the Property; and

(iv) The Property shall be subject to an action for partition at the suit of

any Condominium Unit Owner, in which event the net proceeds of sale, together with the net proceeds of insurance on the Property, if any, shall be considered as one fund and shall be divided among all Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Owner of the Property after first paying out of the respective shares of Condominium Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest and the Property owned by each Condominium Unit Owner.

- (f) Immediately after a fire or other casualty or disaster causing damage to any Property for which the Board of Managers or Association has the responsibility of maintenance and repair, the Board of Managers shall obtain reliable and detailed estimates of the cost to place the damaged Property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Managers desires.
- (g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Managers from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:
 - (i) If the amount of the estimated cost of reconstruction repair is less than Five Thousand Dollars (\$5,000.00) then the construction fund shall be disbursed in payment of such costs upon order of the Board of Managers; provided, however, that upon request of the Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the

following Subsection (ii).

- (ii) If the estimated costs of reconstruction and repair of the Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Managers to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materialmen furnished by various contractors, subcontractors, material, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services or materials furnished; (2) that there is no other outstanding indebtedness known to the architect for services and materials described; and (3) that the costs estimated by the architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum requested.
- (h) Encroachments upon or in favor of Condominium Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Building stands.
- (i) In the event that there is any surplus of

monies in the construction fund or the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board of Managers as a reserve or may be used in the maintenance or operation of the Common Areas, or, in the discretion of the Board of Managers, it may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial Owners of the fund. The action of the Board of Managers in proceeding to repair or reconstruction damage shall not constitute a waiver of any rights against an owner for committing willful or malicious damage.

- (j) In the event of the condemnation of all or any part of the Common Areas or all or any part of the Building(s), Condominium Unit(s) or lot(s), the Board of Managers is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Areas, Buildings or Condominium Units. For the purpose of such negotiation and/or contest of such award to the Board of Managers as to Buildings and Condominium Units and lots, the Board of Managers is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board of Managers shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board of Managers.

Awards for the taking of all or part of a Building, Condominium Unit or lot shall be collected by the Board of Managers and distributed to the affected Owner(s). To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among the Owner(s) affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator,

the Board of Managers acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator. The majority decision of the arbitrators shall be binding on all Owners and shall be enforceable in a court of competent jurisdiction.

SECTION 18. Covenants And Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owner or Owners. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to, any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the applicable date as defined in Article III of the By-Laws, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the additional Real Estate not then part of the Regime, 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, reconstruction or rehabilitation of Condominium Units and sale of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model sales offices, management offices and business offices. At no time shall any facility so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall the right to remove the same from the property at any time.

SECTION 19. Sale, Lease or Other Transfer Of Condominium Unit By Owner. For the purpose of maintaining the congenial and residential character of The Villas Of Westmount, and for the protection of the Owners with regard to insuring having financially responsible residents, the lease of any Condominium Unit by any Owner shall be subject to the following conditions and restrictions:

- (a) Lease. No Owner shall lease his or her Condominium Unit or enter into any other rental or letting agreement for his or her Condominium Unit for a term of less than one hundred eighty (180) days. In any event, Owner shall use the lease form which has been approved by the Board of Managers, and a copy of such lease shall be provided by Owner to the Board of Managers promptly after execution thereof.
- (b) Sale. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his or her Condominium Unit free of any such restriction.

SECTION 20. Amendment Of Declaration. Except as otherwise

provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered, including any annual meetings.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Managers or Owners having in the aggregate at least a majority of the Percentage Interest.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed Material Amendment (as hereinafter defined) to this Declaration must be approved by a vote of not less than two-thirds of the Percentage Interest. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee (hereinafter referred to as "Eligible Mortgagee") shall be notified of the meeting and the proposed Material Amendment in the same manner as an Owner if the Eligible Mortgagee has given prior notice of the its mortgage interest to the Board of Managers in accordance with the By-Laws, and any proposed Material Amendment must be approved by a vote of not less than a majority of the Eligible Mortgagees. An Eligible Mortgagee who receives a written request to approve amendments and does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

A change to any of the following shall be deemed to be Material Amendment:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;

- (iv) Responsibility for maintenance and repair;
- (v) Reallocation of interests in Common Areas or Limited Areas, or rights to their use;
- (vi) Boundaries of any Condominium Unit;
- (vii) Convertability of Condominium Units into Common Areas or vice versa;
- (viii) Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Condominium Units;
- (xi) Imposition of any restrictions on a Condominium Unit Owner's right to sell or transfer his or her Condominium Unit;
- (xii) A decision by the Association to establish self-management when a professional management had been required previously by an Eligible Mortgage holder;
- (xiii) Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- (xiv) Any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or
- (xv) Any provision that expressly benefits mortgage holders, insurers or guarantors.

(e) **Recording.** Each Amendment to the Declaration shall be executed by the President and Secretary of the Association, or the Declaration, if required, and shall be recorded in the Office of the Recorder of

Marion County, Indiana, and such amendment shall not become effective until so recorded.

(f) Amendments By Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-Owners, the Association, the Board of Managers, any Mortgagees or any other person, to amend or supplement this Declaration, the By-Laws or other documents from time to time if (i) such amendment or supplement is necessary to confirm this Declaration to the Act, as amended from time to time, (ii) such amendment or supplement is made 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, the Veterans Administration 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, (iii) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or, (iv) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Section 20 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, or other instrument affecting a Condominium Unit and acceptance thereof shall be deemed to be grant and acknowledgement of, and a consent to the reservation of, the power of 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 Section 20 shall terminate at such time as Declarant no longer holds or controls title to any part or portion of the Real Estate.

(g) Additional Restrictions On Amendments:

(1) The consent of Owners of Condominium Units to which at least sixty-seven

percent (67%) of the votes in the Association are allocated and the approval of the eligible holders of first mortgages on Condominium Units to which at least sixty-seven percent (67%) of the votes of the Condominium Units subject to a mortgage appertain shall be required to terminate the Condominium Regime for reasons other than substantial destruction or condemnation of the Property.

- (2) As used in this Section, the term "eligible holder" shall mean a holder, insurer or guarantor of a first mortgage on the Condominium Unit who has requested notice in accordance with the provisions of Section 8.03(a) of the By-Laws.

SECTION 21. Acceptance And Ratification. All present and future owners, mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Managers as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by each such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations,

partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

SECTION 22. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Owner's own negligence or by that of any member of the Owner's family, their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, occupancy or abandonment of the Owner's Condominium Unit or its appurtenants or of the Common Areas or Limited Areas.

SECTION 23. Granting Of Easements. The Board of Managers of the Association is granted the authority to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as it deems appropriate.

SECTION 24. Reservation Of Rights To Use The Common Areas. Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and

otherwise servicing utility equipment, facilities and installations to serve the Real Estate, to provide access to and ingress and egress to and from the Real Estate, to make improvements to and within the Real Estate, and to provide for the rendering of public and quasi public services to the Real Estate. The foregoing easement shall be a transferable easement and Declarant may at anytime and from time to time grant similar easements, rights or privileges to other persons and parties for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easement, easements or rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility services to the Real Estate and any portions of the Regime which are not part of the Real Estate and to permit public and quasi public vehicles, including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the streets, the Common Areas, and to the extent necessary, the Limited Areas of The Villas of Westmount in the performance of their duties.

SECTION 25. Initial Management. As set forth in the By-Laws, the initial Board of Managers consist and will consist of persons selected by Declarant. Prior to the applicable date, as defined in Article III of the By-Laws, all contracts or leases including any management agreement entered into by the Board of Managers shall provide a right of termination without cause or penalty, at any

time after the Applicable Date upon ninety (90) days notice to the other party. The Board of Managers has entered or will hereafter enter into a management agreement with - to be decided - (the "Managing Agent") for a term which will expire not later than - to be decided, 19____ unless earlier terminated or extended by agreement of the parties under which the Managing Agent will provide supervision, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all the duties and obligations of the Association. Such Management Agreement is or will be subject to termination by Declarant at any time prior to the expiration of its term, in which event the Association shall upon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage the Property and to perform all the functions of the Association:

SECTION 26. Master Association. This Association is a Member Association of Westmount Park Master Association, Inc., a master association, and is subject to the Declaration of Covenants, Conditions, Easements and Restrictions of Westmount Park Master Association, Inc.

(a) Easement. An easement is hereby granted in favor of Westmount Park Master Association, Inc., its successors and assigns on, over and across the Common Areas located within the

Real Estate, for purposes of permitting Westmount Park Master Association, Inc., to perform its duties to repair, maintain and replace as set out in the Declaration of Covenants, Conditions and Restrictions and the By-Laws of Westmount Park Master Association, Inc.

SECTION 27. Costs And Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover interest, its costs and reasonable attorneys' fees incurred in connection with the default or failure.

SECTION 28. Failure Of Owner To Pay Assessments.

- (a) No Owner may become exempt from liability for contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of the Owner's Condominium Unit. Each Owner shall be personally liable for the payment of all assessments by the Association.
- (b) Upon failure by any Owner to make any payment of assessment on the date when due, the lien against the Owner's Condominium Unit may be foreclosed against as provided for by Section 5.05 of the By-Laws and applicable law. Any lien for assessments becoming payable after the recordation of a first mortgage on Owner's Condominium Unit shall be subordinate to the first mortgage on the Owner's Condominium Unit as more fully set forth in Section 5.05(b) of the By-Laws.

SECTION 29. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws filed herewith shall not impair or

This Instrument prepared by Cameron F. Clark, Attorney at Law,
Clark, Quinn, Moses & Clark, One Indiana Square, Suite 2200,
Indianapolis, IN 46204, 317/637-1321.

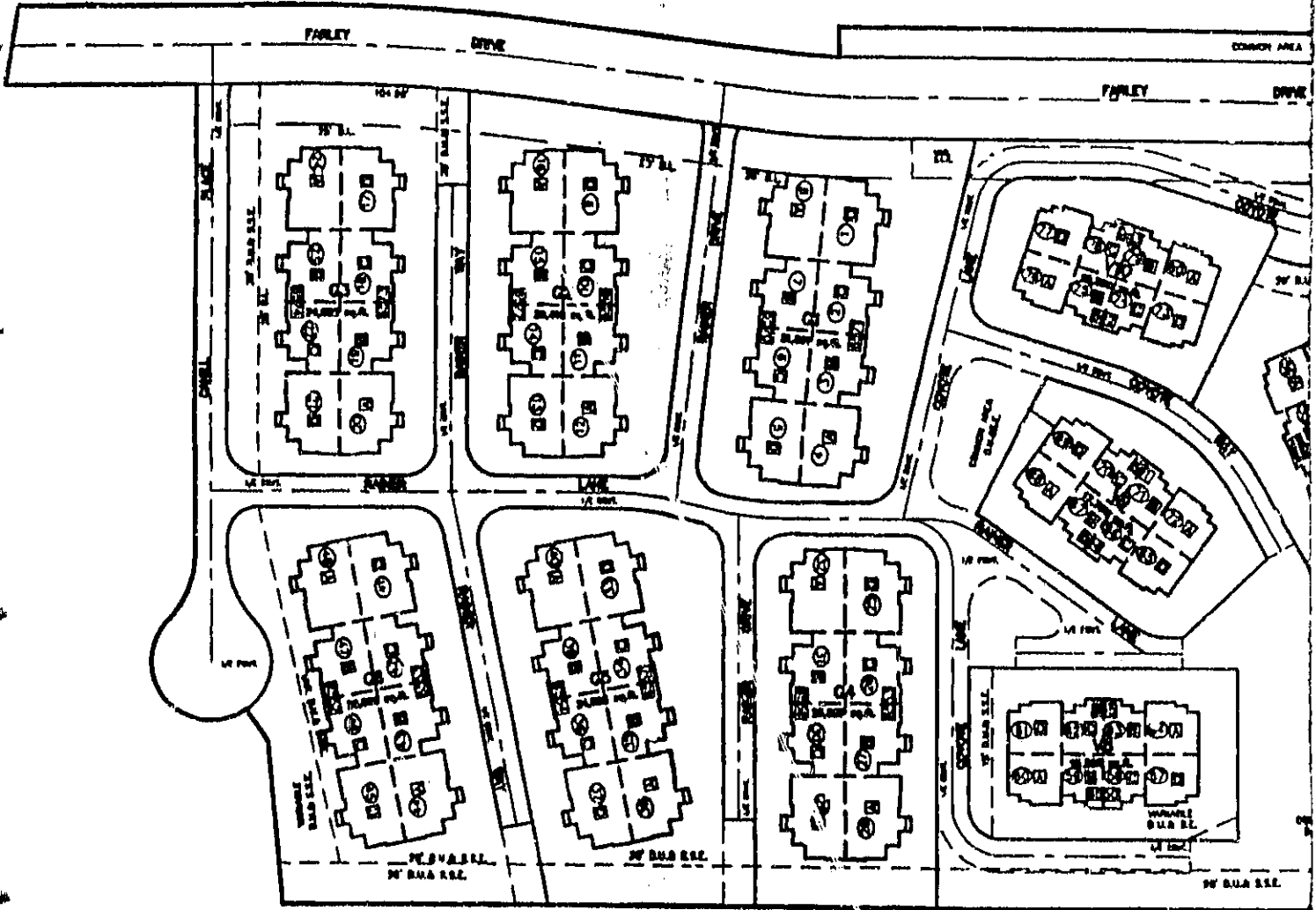
THE GARDENS AND VILLAS OF WESTMOUNT

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line thereof 160.00 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 24 minutes 01 seconds West 313.18 feet; thence North 89 degrees 19 minutes 33 seconds East 160.00 feet to a point on the East line of said Half Quarter Section; thence South 00 degrees 24 minutes 01 seconds West along said East line 1162.38 feet; thence South 85 degrees 12 minutes 33 seconds West 102.31 feet; thence South 54 degrees 59 minutes 13 seconds West 24.36 feet to a point on a curve concave northwesterly, the radius point of said curve being South 54 degrees 59 minutes 13 seconds West 38.00 feet from said point; thence southerly and westerly along said curve 112.32 feet to the point of tangency of said curve the radius point of said curve being North 44 degrees 20 minutes 45 seconds East 38.00 feet from said point; said point also being the point of curvature of a curve concave southwesterly, the radius point of said curve being South 44 degrees 20 minutes 45 seconds West 62.00 feet from said point; thence westerly along said curve 47.55 feet to the point of tangency of said curve, the radius point of said curve being South 00 degrees 24 minutes 01 seconds West 62.00 feet from said point; thence North 89 degrees 35 minutes 59 seconds West 297.88 feet; thence South 00 degrees 15 minutes 57 seconds East 117.06 feet to a point of curvature of a curve concave westerly, the radius point of said curve being South 89 degrees 44 minutes 03 seconds West 1025.00 feet from said point; thence southerly along said curve 5.87 feet to a point on said curve, the radius point of said curve being North 00 degrees 06 minutes 07 seconds West 1025.00 feet from said point; thence North 79 degrees 30 minutes 50 seconds West 50.88 feet; thence North 00 degrees 15 minutes 57 seconds West 182.03 feet to the point of curvature of a curve concave easterly, the radius point of said curve being North 89 degrees 44 minutes 03 seconds East 1025.00 feet from said point; thence northerly along said curve 147.57 feet to the point of tangency of said curve, the radius point of said curve being South 82 degrees 01 minutes 02 seconds East 1025.00 feet from said point; thence North 07 degrees 58 minutes 58 seconds East 161.78 feet to the point of curvature of a curve concave westerly, the radius point of said curve being North 82 degrees 01 minutes 02 seconds West 375.00 feet from said point; thence northerly along said curve 33.52 feet to a point on said curve, the radius point of said curve being North 87 degrees 08 minutes 18 seconds West 375.00 feet from said point; thence South 89 degrees 19 minutes 33 seconds West 18.76 feet; thence North 00 degrees 31 minutes 46 seconds East 1112.00 feet to a point on the North line of the aforesaid Half Quarter Section; thence North 89 degrees 19 minutes 33 seconds East along said North line 393.96 feet to the place of beginning, containing 18.375 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

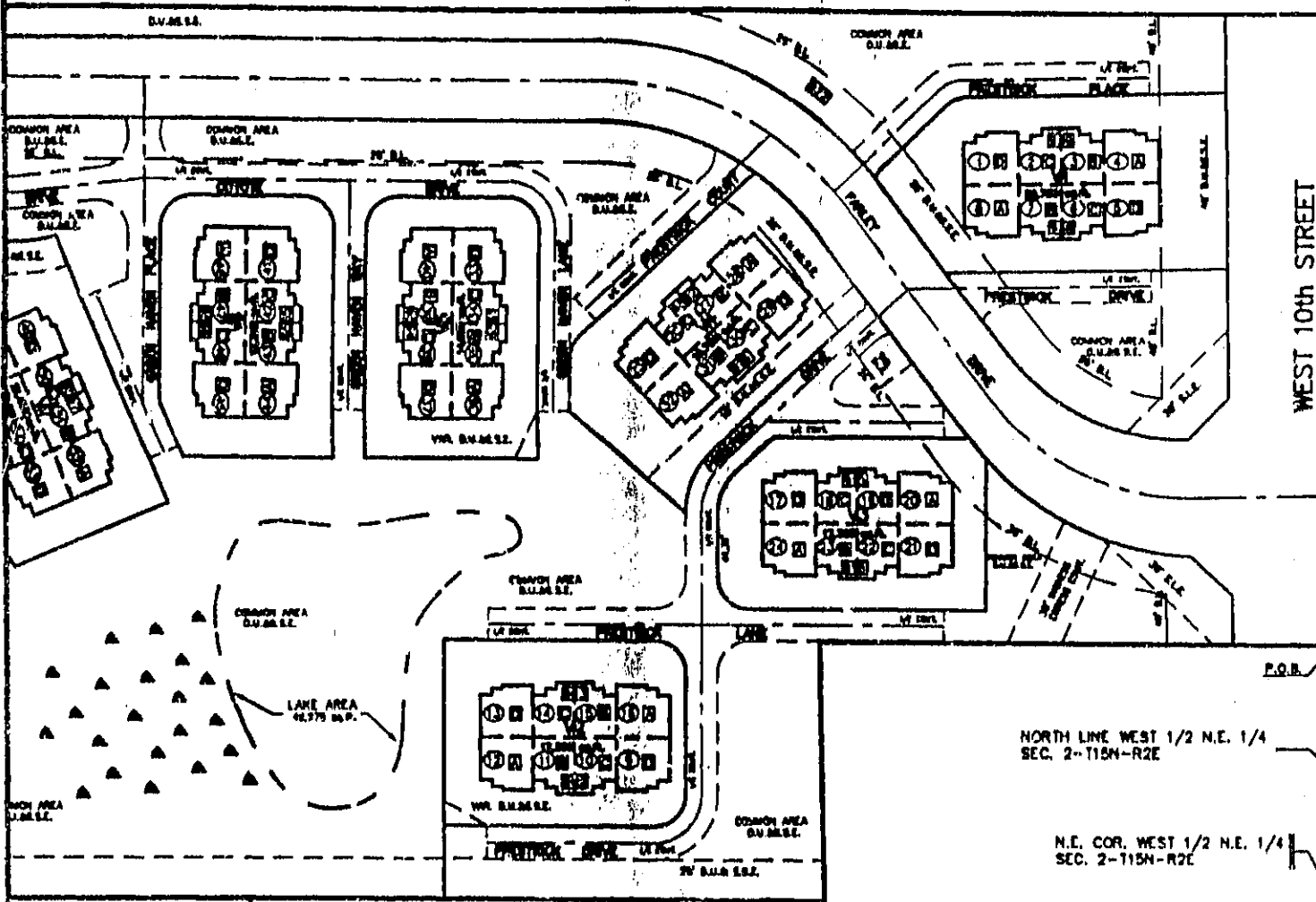
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02/05/96

EXHIBIT "A"



THE GARDENS OF WESTMOUNT ——— THE VILLAS OF

EXHIBIT "B"



WESTMOUNT

EAST LINE WEST 1/2 N.E. 1/4
SEC. 2-115N-R2E

NORTH LINE WEST 1/2 N.E. 1/4
SEC. 2-115N-R2E

N.E. COR. WEST 1/2 N.E. 1/4
SEC. 2-115N-R2E

P.O.B.

WEST 10th STREET

EXHIBIT B

<u>BLDG. #</u>	<u>UNIT #</u>	<u>ADDRESS</u>
V-1	1	939 Prestwick Place, Unit D
	2	939 Prestwick Place, Unit C
	3	939 Prestwick Place, Unit B
	4	939 Prestwick Place, Unit A
	5	938 Prestwick Drive, Unit D
	6	938 Prestwick Drive, Unit C
	7	938 Prestwick Drive, Unit B
	8	938 Prestwick Drive, Unit A
V-2	9	902 Prestwick Drive, Unit D
	10	902 Prestwick Drive, Unit C
	11	902 Prestwick Drive, Unit B
	12	902 Prestwick Drive, Unit A
	13	903 Prestwick Lane, Unit D
	14	903 Prestwick Lane, Unit C
	15	903 Prestwick Lane, Unit B
	16	903 Prestwick Lane, Unit A
V-3	17	915 Prestwick Drive, Unit D
	18	915 Prestwick Drive, Unit C
	19	915 Prestwick Drive, Unit B
	20	915 Prestwick Drive, Unit A
	21	918 Prestwick Lane, Unit D
	22	918 Prestwick Lane, Unit C
	23	918 Prestwick Lane, Unit B
	24	918 Prestwick Lane, Unit A
V-4	25	6562 Prestwick Court, Unit D
	26	6562 Prestwick Court, Unit C
	27	6562 Prestwick Court, Unit B
	28	6562 Prestwick Court, Unit A
	29	916 Prestwick Drive, Unit D
	30	916 Prestwick Drive, Unit C
	31	916 Prestwick Drive, Unit B
	32	916 Prestwick Drive, Unit A

EXHIBIT B

Page 2 of 4

<u>BLDG.#</u>	<u>UNIT #</u>	<u>ADDRESS</u>
V-5	33	6561 Green Haven Lane, Unit D
	34	6561 Green Haven Lane, Unit C
	35	6561 Green Haven Lane, Unit B
	36	6561 Green Haven Lane, Unit A
	37	6564 Green Haven Way, Unit D
	38	6564 Green Haven Way, Unit C
	39	6564 Green Haven Way, Unit B
	40	6564 Green Haven Way, Unit A
V-6	41	6565 Green Haven Way, Unit D
	42	6565 Green Haven Way, Unit C
	43	6565 Green Haven Way, Unit B
	44	6565 Green Haven Way, Unit A
	45	6566 Green Haven Place, Unit D
	46	6566 Green Haven Place, Unit C
	47	6566 Green Haven Place, Unit B
	48	6566 Green Haven Place, Unit A
V-7	49	6567 Green Haven Place, Unit D
	50	6567 Green Haven Place, Unit C
	51	6567 Green Haven Place, Unit B
	52	6567 Green Haven Place, Unit A
	53	808 Coyote Way, Unit D
	54	808 Coyote Way, Unit C
	55	808 Coyote Way, Unit B
	56	808 Coyote Way, Unit A
V-8	57	6550 Coyote Lane, Unit D
	58	6550 Coyote Lane, Unit C
	59	6550 Coyote Lane, Unit B
	60	6550 Coyote Lane, Unit A
	61	805 Rainer Lane, Unit D
	62	805 Rainer Lane, Unit C
	63	805 Rainer Lane, Unit B
64	805 Rainer Lane, Unit A	

EXHIBIT B

BLDG. #	UNIT #	ADDRESS
V-9	65	804 Rainer Lane, Unit D
	66	804 Rainer Lane, Unit C
	67	804 Rainer Lane, Unit B
	68	804 Rainer Lane, Unit A
	69	801 Coyote Way, Unit D
	70	801 Coyote Way, Unit C
	71	801 Coyote Way, Unit B
	72	801 Coyote Way, Unit A
V-10	73	802 Coyote Way, Unit D
	74	802 Coyote Way, Unit C
	75	802 Coyote Way, Unit B
	76	802 Coyote Way, Unit A
	77	803 Coyote Drive, Unit D
	78	803 Coyote Drive, Unit C
	79	803 Coyote Drive, Unit B
	80	803 Coyote Drive, Unit A
	G-1	1
2		6571 Coyote Lane, Unit C
3		6571 Coyote Lane, Unit B
4		6571 Coyote Lane, Unit A
5		6570 Rainer Drive, Unit D
6		6570 Rainer Drive, Unit C
7		6570 Rainer Drive, Unit B
8		6570 Rainer Drive, Unit A
G-2	9	6569 Rainer Drive, Unit D
	10	6569 Rainer Drive, Unit C
	11	6569 Rainer Drive, Unit B
	12	6569 Rainer Drive, Unit A
	13	6572 Rainer Way, Unit D
	14	6572 Rainer Way, Unit C
	15	6572 Rainer Way, Unit B
	16	6572 Rainer Way, Unit A

<u>BLDG.#</u>	<u>UNIT#</u>	<u>ADDRESS</u>
G-3	17	6573 Rainer Way, Unit D
	18	6573 Rainer Way, Unit C
	19	6573 Rainer Way, Unit B
	20	6573 Rainer Way, Unit A
	21	6574 Cahill Place, Unit D
	22	6574 Cahill Place, Unit C
	23	6574 Cahill Place, Unit B
	24	6574 Cahill Place, Unit A
G-4	25	6553 Coyote Lane, Unit D
	26	6553 Coyote Lane, Unit C
	27	6553 Coyote Lane, Unit B
	28	6553 Coyote Lane, Unit A
	29	6556 Rainer Drive, Unit D
	30	6556 Rainer Drive, Unit C
	31	6556 Rainer Drive, Unit B
	32	6556 Rainer Drive, Unit A
G-5	33	6557 Rainer Drive, Unit D
	34	6557 Rainer Drive, Unit C
	35	6557 Rainer Drive, Unit B
	36	6557 Rainer Drive, Unit A
	37	6554 Rainer Way, Unit D
	38	6554 Rainer Way, Unit C
	39	6554 Rainer Way, Unit B
	40	6554 Rainer Way, Unit A
G-6	41	6553 Rainer Way, Unit D
	42	6553 Rainer Way, Unit C
	43	6553 Rainer Way, Unit B
	44	6553 Rainer Way, Unit A
	45	6552 Cahill Place, Unit D
	46	6552 Cahill Place, Unit C
	47	6552 Cahill Place, Unit B
	48	6552 Cahill Place, Unit A

Phase 11
Garden 4
8

**SUPPLEMENTAL DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP
WESTMOUNT PARK
GARDEN AND VILLA HORIZONTAL PROPERTY REGIME**

THIS SUPPLEMENTAL DECLARATION made this 30th day of OCTOBER, 1996 by Rottlund Homes of Indiana, L.P, a Minnesota Limited Partnership, an agent and subsidiary of The Rottlund Company, Inc., a Minnesota Corporation (the "Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to the following described real estate located in Marion County, Indiana, to-wit:

B. On the 12th day of March, 1996, Declarant executed a Declaration of Horizontal Property Ownership for The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime which was recorded in the Office of the Recorder of Marion County, Indiana on the 15th day of March, 1996 as Instrument No. 1996-0035045, (the "Declaration"). Attached to the Declaration is the Code of By-Laws of The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime. The Declaration and By-Laws are incorporated herein by reference and all the terms and definitions as described therein are hereby adopted and shall have the same meaning in this Supplemental Declaration.

C. Phase 11 is part of the real estate described in paragraph A of the recitals of the Declaration. The Declaration provides that all or part of the real estate may be annexed to The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime, incorporated into the Declaration and the Owners thereof become members of The Gardens of Westmount and the Villas of Westmount Horizontal Property Regime and the filing of the Supplemental Declaration by execution of this Supplemental Declaration, hereby incorporates Phase 11 into The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime.

NOW, THEREFORE, Declarant makes this Supplemental Declaration as follows:

1. Declaration. Declarant hereby expressly declares that Phase 11 and all appurtenant easements, Condominium Units, Buildings, Improvements and property every kind and nature whatsoever, real, personal and mixed, located thereon is hereby annexed to and becomes a part of The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime as if such originally had been included in the Declaration, and shall hereafter be held,

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transferred, sold, conveyed and occupied subject to the covenants, restrictions and provisions of the Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors, as each may be amended from time to time. Phase 11 hereafter and for all purposes shall be included in the definition of "Tract" as defined in paragraph 1q. of the Declaration.

2. Description of Buildings. There shall be one (1) Building containing eight Condominium Units in Phase 11 as shown on the Supplemental Plans for Phase 11. The Building is identified and referred to in the Supplemental Plans and in this Supplemental Declaration as Building G-4. The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime or the "Tract" now has 11 Buildings.

3. Percentage of Interest. The Percentage of Interest of each Condominium Unit in the Tract (as now defined) is as set forth in Exhibit B attached hereto and made part hereof. Exhibit B as attached hereto is the correct listing of the Buildings and Units in The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime, such Buildings being Buildings V-10,G-2,V-8,V-9,G-3,V-7,G-6,V-6,G-5,V-5,G-4.

4. Acceptance and Ratification. The acceptance of a deed of conveyance of the act of occupancy of a Condominium Unit shall constitute an agreement that the provisions of this Supplemental Declaration, the Declaration, the Act, the By-Laws and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by each Owner, tenant and occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest of estate in a Condominium Unit of the Property as if those provisions were recited and stipulated at length in each and every deed, conveyance, mortgage of lease thereof.

5. Supplemental Plans The Supplemental Plans include floor and building plans and elevations of the Building and Condominium Units prepared by Morris and Associates by Ed Morris, a Registered Professional Engineer in the State of Indiana, Seal No. 15515, and a site plan of Phase 11 and the Building thereupon prepared by Stoepfelwerth and Associates certified by David Stoepfelwerth, a Registered Professional Engineer and Surveyor in the State of Indiana, Seal No. 19358, all of which is incorporated herein by reference. The Supplemental Plans setting forth the layout, location, identification and dimensions of the Condominium Units identified in this incorporated into the Declaration, added to the plans filed with the Declaration, and have been filed in the Office of the Recorder of Marion County, Indiana in Horizontal Plan File as of 10/30, 1996 as Instrument No. 96-0153077.

EXECUTED the day and year first above written.

Rottlund Homes of Indiana, L.P.,
A Minnesota Limited Partnership

By: *Thomas E. Repass Sr.*
Printed: Thomas E. Repass Sr.
Title: vice-president



State of Indiana)
) SS:
County of Marion)

Before me, a Notary Public in and for said County and State, personally appeared Thomas E. Repass Sr., as Vice-President, and acknowledged the execution of the foregoing "Supplemental Declaration" for The Gardens of Westmount and The Villas of Westmount Horizontal Property Regime as his voluntary act and deed.

WITNESS my hand and Notarial Seal this 3rd day of October, 1996.

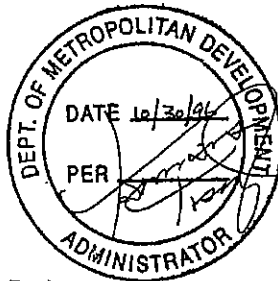
Maxine H. Webb
Notary Public

MAXINE H. WEBB
Printed Signature

My Commissions Expire:
12/12/99

My County of Residence:
Hamilton

WAYNE TOWNSHIP
ASSESSOR
PLAT APPROVED
Date: 10-30-96
By: *Charles R. Spears*
CHARLES R. SPEARS
ASSESSOR



This Instrument Prepared by Stoepelwerth & Associates, Inc.

PHASE 11 - GARDENS 4

A part of the West Half of the Northeast Quarter of Section 2, Township 15 North, Range 2 East in Wayne Township, Marion County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 89 degrees 19 minutes 33 seconds West along the North line of said Half Quarter section 553.95 feet; thence South 00 degrees 31 minutes 46 seconds West 1026.70 feet; thence South 89 degrees 28 minutes 14 seconds East 69.07 feet; thence South 76 degrees 57 minutes 52 seconds East 154.08 feet; thence North 13 degrees 02 seconds 08 minutes East 20.00 feet; thence South 76 degrees 57 minutes 52 seconds East 99.20 feet to the POINT OF BEGINNING; thence North 00 degrees 24 minutes 01 seconds East 13.23 feet; thence South 89 degrees 28 minutes 14 seconds East 235.58 feet; thence South 00 degrees 24 minutes 01 seconds West 124.34 feet; thence North 89 degrees 35 minutes 59 seconds West 235.58 feet; thence North 00 degrees 24 minutes 01 seconds East 111.64 feet to the place of beginning, containing 0.673 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

21766P11
October 1, 1996

EXHIBIT "B"
SCHEDULE OF PERCENT OF INTEREST
THE GARDENS OF WESTMOUNT AND THE VILLAS OF WESTMOUNT
HORIZONTAL PROPERTY REGIME

BUILDING #	UNIT #	
G-1	G8	
	G7	
	G6	
	G5	
	G4	
	G3	
	G2	
	G1	
V-4	V32	
	V31	
	V30	
	V29	
	V28	
	V27	
	V26	
	V25	
V-3	V24	
	V23	
	V22	
	V21	
	V20	
	V19	
	V18	
V-1	V17	
	V8	
	V7	
	V6	
	V5	
	V4	
	V3	
	V2	
	V1	