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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND BYLAWS

OF

SANDY POINT

RECEIVED FOR RECORD
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<p>FINAL APPROVAL PLAT COMMITTEE METROPOLITAN DEVELOPMENT COMMISSION DIVISION PLANNING & ZONING MARION COUNTY, INDIANA</p> <p>APRIL 16 1984</p> <p>PROPER PUBLIC NOTICE OF THE HEARINGS HAS BEEN PUBLISHED</p> <p><i>George M. Kipton</i> Chairman</p> <p><i>Mr. [Signature]</i> MEMBER</p>

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BEFORE 3-28-86

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SANDY POINT

THIS DECLARATION, made on the date hereinafter set forth by BAY DEVELOPMENT CORP. (hereinafter called "Declarant"), an Indiana corporation, having its principal office at 7858 Bay Shore Drive, Indianapolis, Indiana 46240,

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate in Indianapolis, County of Marion, State of Indiana, which is more particularly described on Exhibit "A" (subject to certain Easements for utilities servicing the property), attached hereto and made a part hereof. The real estate described on Exhibit "A" is hereinafter called Sandy Point or "Properties"; and

WHEREAS, Declarant intends to develop the Properties by subdividing the predominant portion of the Properties into "Sections" that are to be used for residential purposes and will contain common area real estate that is owned by a homeowners association to which the owner of a dwelling in the Properties must belong and pay lien-supported maintenance assessments; and

WHEREAS, the subject of this Declaration consists of Section One of Sandy Point and shall contain not more than eighteen (18) Lots. The legal description of Section One of Sandy Point is described in Exhibit B, attached hereto and by this reference incorporated herein, and consists of a maximum of eighteen (18) Lots as more particularly defined in the Conditional Final Plat of the Lots in Section One approved by the Plats Committee of the Department of Metropolitan Development and recorded in the Office of Recorder of Marion County, Indiana; and

WHEREAS, it is the intent of Declarant that there shall be a maximum number of one hundred forty (140) Lots within the Properties described in Exhibit A subject to expansion provisions hereinafter defined. Further, an Association, Sandy Point, Inc., shall manage the Common Area, Limited Common Area and Recreational Common Area and Lake Recreational Common Area, and the Association shall establish the budgeting and assessment procedures for the use and maintenance thereof. In addition, the Association shall handle the billing and collection of assessments for maintenance and replacement of the Common Area,

Limited Common Area, Recreational Common Area and Lake Recreational Common Area; and

WHEREAS, prior to the conveyance of any Lot in the Properties to an Owner, Declarant intends to record a final plat and convey that part of the Section, exclusive of such Lot or Lots as hereinafter defined, for the common use and enjoyment of the Owners (subject to the terms of this Declaration), which portion of the Properties shall hereinafter be called "Common Area", "Limited Common Area", "Recreational Common Area" and "Lake Recreational Common Area"; and

WHEREAS, at the time of the conveyance of any Lot in a Section to an Owner, the Declarant intends to make available the common amenities of the Properties including the lake and any other amenities that are built in that Section, and at time of completed development, the entire Properties described in Exhibit "A", excluding the Lots shall be conveyed without cost or charge to the Association; and

WHEREAS, inasmuch as the Declarant, by this Declaration, is committing only Section One containing not more than eighteen (18) Lots on 3.84 acres in the plat of Sandy Point, Section One, the annexation of all or any part of the additional Sections contained in Exhibit "A" may be automatically included within this Declaration by a simple Supplemental Declaration as executed and recorded by Declarant, and such action shall require no approvals or other action by either the Owner or the Board of Directors or the members of the Association, as hereinafter more particularly defined. Provided, however, the total land area described in Exhibit "A" shall contain not more than a maximum of one hundred forty (140) Lots; and

WHEREAS, simultaneous with the conveyance of any Lot in any Section phase of development of the Properties to an Owner, the Declarant shall convey the Common Area, Limited Common Area, Recreational Common Area and Lake Recreational Common Area to the Association as designated within each final plat of the Section of the Properties for the use and enjoyment of the Owners (subject to the terms of this Declaration), which Common Area, Limited Common Area, Recreational Common Area and Lake Recreational Common Area will be more specifically identified and described in the final plats of each Section of Sandy Point; and

WHEREAS, as each Section is developed in Sandy Point containing Recreational Common Area, as hereinafter more particularly described, such Recreational Common Area shall be conveyed with the recreational improvements planned therein in accordance with the sales schedule hereinafter set forth for their mutual use and enjoyment.

NOW, THEREFORE, Declarant hereby declares that all of the

real estate described on Exhibit "A" (subject to certain easements servicing the Properties) shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are the for the purpose of protecting the value and desirability of, and which shall run with, the real estate and be binding on all parties having any right, title or interest in the described Properties and/or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

Section 1. "Declarant" shall mean and refer to BAY DEVELOPMENT CORP., its successors and assigns as a Declarant.

Section 2. "Association" shall mean and refer to Sandy Point, Inc., its successors and assigns.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to the certain real estate described on Exhibit "A" (subject to easements servicing the Properties), except streets, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Section" means that Declarant contemplates the subject Declaration to be the first Section of a total of eighteen (18) Lots. Declarant has caused, or will cause, to be platted no more than eighteen (18) Lots in numerical sequence commencing with Lot numbered 1 as more particularly set forth on the final plat in the first Section of development. All Sections of development shall be placed or record no later than June 1, 1990. All areas other than the Lot conveyed to the Owner within a Section is initial Section Common Area. Final Section Common Area is that land remaining within the Properties, if any, that will be conveyed to the Association following platting of the final Section.

Section 6. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area, Limited Common Area and Recreational Common Area and Lake Recreational Common Area. Declarant has planned a maximum of one hundred forty (140) attached and detached Dwellings on Lots within the Properties. Each Lot shall contain a single family residential dwelling.

Each Lot shall contain an area which exceeds the exterior face of the foundation wall dimensions of the structure by one (1) inch; and shall include the Lot's side in the instance of an attached dwelling of one-half (1/2) of any party wall dividing a dwelling structure on a Lot from any other dwelling structure or Lot. Additionally, each Lot may include a "patio" area and/or balcony or porch on the Properties contiguous and appurtenant to the aforementioned Lot. Further, the Final Plat of each Section may include for each platted Lot in each Section, areas specifically reserved for landscape gardening, storage and such other uses specifically authorized by the Association.

Section 7. "Dwelling" shall mean and refer to a single family residence erected on a Lot within the Project Real Estate.

Section 8. "Common Area" shall mean all the real estate (including improvements thereto) owned by the Association for the common use and enjoyment of the Owners. Common Area shall include the "Initial Common Area" and the "Final Common Area" as hereinafter defined in Sections 10 and 11, respectively.

Section 9. "Limited Common Area" shall mean all the real estate (including improvements thereto) owned by the Association but restricted in use to the Lot appurtenant thereto such as patios, driveways, parking areas and storage areas and other similar uses, and more particularly identified by designation on the Final Plat of each Section.

Section 10. "Initial Common Area" shall include all the real estate (including improvements thereto) contained within a Section excepting the Lots therein and shall be owned by the Association at the time of the conveyance of the first Lot to an Owner. Such Initial Common Area, located within each Section, is illustrated on the Final Plat of each Section as approved by the Plats Committee of the Metropolitan Development Commission of Marion County, Indiana.

Section 11. "Final Common Area", if any, shall include all the real estate (including improvements thereto described in Exhibit "A", including lake and all other amenities other than Initial Common Area, located within each Section, as described on the recorded Final Plat documents for each Section. The Final Common Area shall be available to each Lot Owner as he purchases a Lot.

Section 12. "Recreational Common Area" means the amenities built and maintained for the mutual use and enjoyment of the Owners in Sandy Point, which shall be owned and maintained by Sandy Point, as hereinafter defined. Subject to the annexation of additional territory, as described in the Declaration of Covenants, Conditions and Restrictions of Sandy Point, and the

development of Dwellings therein, the following amenities will be provided in accordance with the combined sales of Dwellings within Sandy Point as follows:

(a) Pool and Shower Facility upon sale of one hundred (100) Dwellings.

(b) Two Tennis Courts upon the sale of one hundred (100) Dwellings.

(c) Boat Ramp and Storage upon the sale of one hundred (100) Dwellings.

(e) Provided, however, if, by a majority vote of the then Owners of Dwellings and Declarant, at a regular or special meeting of members of the Association, the foregoing amenities are determined to be undesirable or the cost of maintenance exceeds the benefits or alternative amenities are more desirable, then the foregoing schedule of recreational improvements may be changed or eliminated.

Section 13. Lake Recreational Common Area means that body of water covering the land description in Exhibit A that extends from the land boundaries of each Section to the westerly demarkation line of White River. This body of water has been declared public water under regulatory authority of the State of Indiana and the United States Corps of Engineers by action of the Indiana Department of Natural Resources.

Section 14. Boat Docking Facilities, Maintenance and Storage Areas shall be owned and maintained by the Association for rental exclusively to Owners in Sandy Point at a reasonable rate of charge; providing no general or special assessments shall be made upon any Owner for installation and maintenance thereof. Provided, further, all rents received shall be applied to the costs of such amenities and their maintenance and any surplus of funds collected shall inure to the benefit of the Declarant or members of the Association, but shall be used in defraying assessments for maintenance of Common Area, Limited Common Area, and Recreational Common Area to the end that such rents shall not, under the the provisions of the Internal Revenue Code or Indiana Adjusted Gross Income Tax law, jeopardize the status of Sandy Point, Inc. as a not-for-profit corporation.

ARTICLE II Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area 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 the use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Association's 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 signed by two-thirds (2/3) of each Class Member agreeing to such dedication or transfer has been recorded and Mortgagees' rights are complied with as set forth in Article VIII, below.

c) The right of individual Owners to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his tenants, guests or contract purchasers who reside on a Lot.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of one or more parking spaces, in the area of the common drive immediately outside the Lot's garage facility, together with the right of ingress and egress in and upon said parking space. The parking space shall be in addition to the garage space and shall be permanently designated by the Association for the exclusive use of the Owner of the Lot or his guest or invitee as Limited Common Area. Additional parking spaces may be provided as part of the Common Area for the use of the guests or invitees of the Owners. The Association may restrict the Owners' rights to use any additional parking spaces not specifically designated for the Owners' use. A separate boat, dock, trailer and recreational vehicle storage area may be developed by Declarant or the Association, which shall become a part of the Common Area and may be subject to the payment of rent, assessed and collected in the same manner and subject to the same terms by the Association as other assessments hereinafter set forth in Article IV hereof.

Section 4. Title to Initial Common Area. The Declarant shall convey the Initial Common Area in a Section in fee simple absolute to the Association at the time of the first conveyance of a Lot in the Section, such conveyance to be subject to taxes for the year of conveyance, to restrictions, conditions, limitations and easements of record and public utilities.

Section 5. Title to Final Common Area. The Declarant shall

convey the Final Common Area, if any, (other than Common Area previously conveyed) to the Association, in fee simple absolute at the time of the final platting of all Lots on the Properties; such conveyance to be subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

ARTICLE III
Membership and Voting Rights

Section 1. Every Owner of a Lot which is subject to assessment, and defined in Article IV, Section 1, shall be a member of the Association. For purposes of determining classes of membership, a Class A Member shall be the Owner of any conveyed Lot containing a Dwelling, and a Class B Member shall be the Owner of any unconveyed, platted or unplatted, Lot, and each reference to a Lot in Section 2(a), 2(b) or 2(c) of this Article shall be deemed to be a conveyed Lot containing a Dwelling or an unconveyed, platted or unplatted, Lot, respectively.

Section 2. The Association shall have two (2) classes of Membership:

(a) Class A. Every person, group of persons or entity, other than the Declarant, who is a record Owner of a fee interest in any Lot which is or becomes subject, by covenants of record, to assessment by the Association, shall automatically be a Class A Member; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

(b) Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each platted and unplatted Lot owned. For purposes of determining voting rights and duties, it shall be assumed there is a total of one hundred forty (140) platted and unplatted Lots within the Properties and Declarant shall have the automatic right to plat and record Sections, not to contain in excess of one hundred forty Dwellings without the consent or approval of the Association or any other person, firm or corporation. The Class B Membership shall cease

and be converted to a Class A Membership on the happening of either of the following events, which ever occurs earlier:

i) Whenever the total votes outstanding of Class A Membership equal the total votes outstanding in Class B Membership, or

ii) On June 1, 1990, in the event all the Lots have not been conveyed to the Owners or the Class B Memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association. In this latter event, Class B Memberships shall automatically terminate and become Class A Memberships, excepting there shall be no assessments on undeveloped Lots but Declarant shall bear the burden of maintenance, property taxes and liability insurance thereon.

ARTICLE IV
Covenant For Maintenance Assessments
Class A & Class B Members

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinbefore provided.

All sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis and shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas and facilities, which funds shall be used for those purposes and not for usual and ordinary expenses of the Common Areas and facilities. This fund for capital expenditures shall be maintained in a separate interest bearing account with a bank or savings and loan association authorized to conduct business in the county in which the Association is established. The accountant selected to initially set up the books of account shall determine the appropriate allocation of assessments between usual and ordinary expense and the replacement reserve fund.

Inasmuch as the annual budget for usual and ordinary expenses of the Association may have a deficit until all Lots are platted, assessments during the build-out period shall be paid to Declarant and Declarant shall be financially responsible to pay all deficits in Association operating expenses until Class B Memberships become Class A Memberships as above defined.

In addition, as each assessment is paid to Declarant, that

portion of the assessment allocable to the replacement reserve fund shall be deposited and maintained in a separate interest bearing account as defined above.

Further, at the time Class B Memberships in the Association expire, Declarant shall deliver over to the officer designated by the Association, the accumulated replacement reserve fund and shall further fund the Association with a sum equal to twenty-five per cent (25%) of the budgeted ensuing twelve (12) months' assessments less funds budgeted for capital reserve purposes to create a fund sufficient for the Association to meet its current obligations as they accrue until its current collection of assessments is sufficient to meet its current expense. Any monies collected as assessments for usual and ordinary expense, but not yet expended by Declarant on behalf of the Association shall be considered part of the Declarant's twenty-five per cent (25%) funding to the Association. Declarant, however, shall not be required to pay assessments on unplatted Lots until such time as these Lots are platted and dwellings erected thereon and the Common Areas within such plats are conveyed to the Association and the Association assumes the obligation of taxes, insurance and maintenance.

The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made subordinated only to the lien of a first mortgage, real property taxes and assessments for municipal improvements. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but such delinquent accounts shall remain a lien upon the Lot subject to foreclosure.

Section 2. Purpose of Assessments. The assessments levied by the Association on a Lot shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the Dwellings situated upon the Properties.

Section 3. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein, shall commence as to all Lots as of date of transfer of title. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established

by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association on the date of its issuance.

Section 4. Uniform Rates of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots. Annual assessments may be paid on a monthly, quarterly, semi-annual or annual basis, but, if paid on other than an annual basis, default in the payment of any one installment, shall cause the entire unpaid assessment for the year in which the delinquency occurs to become immediately due and payable

Section 5. Maximum Annual Assessment. Until January 1, 1985, the maximum annual assessment shall be Ninety-Five Dollars (\$95.00). For the ensuing three calendar years, because of uncertainties in usual and ordinary Common Area expenses due to Indiana real property assessments, rising cost of energy and other unforeseeable operating expenses, the Board of Directors of the Association may increase the assessment by a sum not to exceed ten per cent (10%) per annum without vote of the Membership. However, any such increases shall be documented by normal accounting procedures and distributed to the Membership to demonstrate that such increases are attributable to increases in operating expenses and no portion of such increases shall inure to the benefit of the Declarant and the monies received shall be entirely expended on Association expense.

(a) From and after January 1, 1988, the maximum annual assessments per Lot may be increased each year without a vote of the Membership, as provided below on the basis of "The Revised Consumer Price Index - Cities (1957-1959=100)" (hereinafter called "CPI"), published by the Bureau of Labor Statistics of the United States Department of Labor. The CPI Number indicated in the column for the City of Indianapolis, entitled "All Items", for the month of November of the year preceding the year in which the conveyance of the first Lot to an Owner occurs, shall be the "Base CPI Number"; and the corresponding CPI Number for the month of November of the year in which the conveyance of the first Lot to an Owner shall be "Current CPI Number". The Current CPI Number shall be divided by the Base CPI Number. From the quotient thereof, there shall be subtracted an Integer of One (1); and the resulting positive number shall be deemed to be the maximum percentage that the annual assessment per Lot may be increased above the maximum assessment for the previous year without a vote of the Membership. Each succeeding year thereafter, the maximum percentage increase of assessment over the previous year without a vote of the Membership shall be determined in a like manner; provided, however, the Current CPI Number for each previous year shall be deemed the Base CPI Number

for each succeeding year in the computation of the maximum percentage increase. In the event the actual percentage increase of assessment in any year by the Association is less than the maximum allowed without a vote of the Membership, the difference, between the actual percentage increase and the maximum percentage increase, may be added to the percentage increase for the following year in determining the maximum percentage increase of assessment allowed without a vote of the Membership for such year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment per Lot may be increased above the maximum percentage determined in Paragraph a) of this Section by a vote of two-thirds (2/3) of the Class A Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment per Lot at an amount not in excess of the maximum.

Section 6. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A Members.

Section 7. Notice and Quorum for any Action Authorized Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 or 6 shall be sent to all Class A and Class B Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Class A and Class B Members or of proxies entitled to cast sixty per cent (60%) of all the votes of the Class A and Class B Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment for a Class A or Class B Membership not paid within thirty (30) days after the due date shall become delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear a late charge of one and one-half per cent (1-1/2%) per month. The Association may bring an action at law against the Owner per-

sonally obligated to pay the same and foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, Limited Common Area, Recreational Common Area, Lake Recreational Common Area or abandonment of his Lot. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Ownership. Ownership in the Common Area, Limited Common Area and Recreational Common Area shall vest in the Association as each Section therein is platted in the following manner:

(a) Each Owner shall have an undivided interest in the Common Area and Limited Common Area with all other Owners equal to his Lot's Percentage Interest. Title to the Common Area, Limited Common Area and Recreational Common Area shall be conveyed to the Association for the uses and purposes set forth in this Declaration. Each Lot's Percentage Interest in the Common Area, Limited Common Area and Recreational Common Area shall be determined in accordance with the following formula.

(b) If the Property consists only of Section One, each Lot's Percentage Interest shall be that as each Lot bears to all Lots in the Section. If any additional Sections are annexed, as permitted and contemplated by this Declaration, upon execution of the applicable Supplemental Declaration, the Percentage Interest of each Lot in the Section or Sections which are a part of the Properties prior to such annexation will automatically reduce in accordance with the formula. The Owners of Lots in the Section or Sections which are a part of the Properties prior to such annexation shall automatically receive a Percentage Interest in the Common Area, Limited Common Area and Recreational Common Area of such Section of the additional Section being annexed, the precise Percentage Interest to be determined and designated in the Supplemental Declaration of annexation.

(c) The Percentage Interest appurtenant to each Lot shall be the Percentage Interest in the Properties allocable to the Owner thereof in all matters with respect to the Properties. Each Owner of a Lot shall be a member of the Association and

shall be entitled to one vote per Lot.

As each Section is developed, Declarant shall record a Supplemental Declaration as hereinbefore described annexing and adding such Section to this Declaration making it a part of the Sandy Point development. Each Owner, by acceptance of a deed to a home, acknowledges, consents and agrees as to each Supplemental Declaration that is recorded as follows:

(a) The Section described in each Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(b) Common Area, Limited Common Area and Recreational Common Area shall automatically be conveyed to the Association.

(c) The recording of a Supplemental Declaration shall not alter the amount of the lien for Common Expenses assessed to a Lot prior to such recording.

(d) Each Owner, by acceptance of the deed conveying his Lot, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Supplemental Declaration is and shall be deemed to be in accordance with the law and, for the purposes of this Declaration, any changes in the conveyance of additional Common Area, Limited Common Area and Recreational Common Area to the Association resulting from Supplemental Declarations and additional platting shall be deemed to be made by agreement of all Owners.

(e) Each Owner agrees to execute and deliver any documents as are necessary or desirable to cause the provisions of this paragraph to comply with the law as it may be amended from time to time.

Section 11. Real Estate Taxes. Real estate taxes are to be separately taxed to each Lot. Real estate taxes upon Common Area, Limited Common Area, Recreational Common Area and Lake Recreational Common Area shall be paid by Declarant until such time as they are transferred in title to the Association who thereafter shall pay such taxes.

Section 12. Utilities. Each Owner shall pay his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the common expenses in each Section unless otherwise agreed by a majority of the Owners of each Section.

ARTICLE V
Exterior Maintenance, Insurance and Taxes

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, including private streets and signs, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces, doors and windows. In the event the need for maintenance or repair of a Lot or the improvement thereon is caused through the willful or negligent act of its Owner, or through the willful or negligent act of the family, guests or invitees of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject. Any additions, improvements, structures, fencing or landscaping authorized by the Declaration, Bylaws and Rules and Regulations of the Association shall be separately maintained by that Lot Owner and not by the Association unless otherwise agreed to by the Association.

Section 2. Insurance. The Association shall purchase a master casualty policy on all dwellings affording fire and extended coverage in an amount equal to the full replacement value of the improvements that in whole or in part comprise the Common Area facilities and attached Dwellings, paid as a part of the common expenses.

The Board of Directors, in behalf of the Owners through the Association of Owners, shall also purchase a master liability policy in an amount required by the Bylaws or revised from time to time by a decision of the Board of Directors, which policy shall cover the Association of Owners, the executive organ, if any, the managing agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Properties, all Owners and all other persons entitled to occupy any attached or detached Dwelling or other portions of the Properties. Such other policies as may be required in the interest of the Owners and the Association may be obtained by the Board of Directors for the Association, including, without limitation, workmen's compensation insurance, liability insurance on motor vehicles owned by the Association, and specialized policies covering lands or improvements on which the Association has or shares ownership or other rights and officers' and directors' liability policies.

When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment 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 by the officer required to send notices of meetings of the Association.

In case of fire or any other casualty or disaster, other than complete destruction of all buildings containing the Dwellings, the improvements shall be reconstructed and the insurance proceeds applied to reconstruct the improvements.

In the event of complete destruction of all of the buildings containing Dwellings, the buildings shall not be reconstructed, except as otherwise provided, and the insurance proceeds, if any, shall be divided among the Owners in the percentage by which each owns an undivided interest in the Common Areas and facilities or proportionately according to the fair market value of all the Dwellings immediately before the casualty as compared with all other Dwellings, as specified in the Bylaws, excepting the proceeds from insurance paid for by Owner of detached Dwellings shall be distributed to these Owners and/or their mortgagees, and they shall share in only those insurance proceeds unrelated to Dwellings improvements paid for by the Association, and the property shall be considered as to be removed from this Declaration unless by a vote of two-thirds (2/3) of all of the Owners a decision is made to rebuild the buildings, in which case the insurance proceeds shall be applied and any excess of construction costs over insurance proceeds shall be contributed as provided herein in the event of less than total destruction of the buildings.

A determination of total destruction of the buildings containing Dwellings shall be determined by a vote of two-thirds (2/3) of all Owners at a special meeting of the Association called for that purpose.

Where the improvements are not insured or where the insurance proceeds are not sufficient to cover the cost of repair or reconstruction and the Property is not to be removed from this Declaration, the Owners shall contribute the balance of any such costs in the percentage by which an Owner owns an undivided interest in the Common Area and facilities as expressed in the Declaration plus an equitable allocation of the sales price of each Dwelling destroyed as compared to the total cost of replacement of all destroyed buildings. Such amount shall be assessed as part of the common expense and shall constitute a lien from the time of assessment.

If it is determined by the Owners not to rebuild after a casualty or disaster has occurred, then in that event:

(a) The property shall be deemed to be owned in common by all Owners;

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

(c) Any liens affecting any of the Dwellings shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the property as provided herein; and

(d) The Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of the sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Properties, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

ARTICLE VI Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, to the extent not inconsistent with the provisions of this Article, the general rules of law of the State of Indiana regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability or negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribute Runs with Land. This right of any Owner to a contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII General Provisions

Section 1. Enforcement. These covenants, conditions and restrictions may be enforced by the Association or any Owner. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in that event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty-five (25) years from the date of recordation of this Declaration, after which the said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a two-thirds (2/3) vote of all Class A Members of the Association such covenants and conditions are amended, altered or revoked.

Section 4. Amendment. This Declaration may be amended

during the first twenty-five (25) year period by an instrument signed by not less than seventy-five per cent (75%) of the Owners and First Mortgagees, and thereafter by an instrument signed by not less than two-thirds (2/3) of the Owners and First Mortgagees. Any amendment must be recorded in the Office of the Recorder of Marion County, Indiana. No such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed agreement is sent to every Owner at least thirty (30) days in advance of any action taken and no such agreement shall be effective with respect to any permanent easements or other permanent rights or interest relating to the Common Area herein created.

Section 5. Common Area. Declarant reserves the following rights in the Common Area until January 1, 1989:

(a) An easement over and upon the Common Area and upon lands appurtenant to the Lots for the purpose of completing improvements for which provision is made in this Declaration where access thereto is otherwise not reasonable available;

(b) An easement over and upon the Common Area for the purposes of making repairs required pursuant to this Declaration or contracts of sale with Lot purchasers;

(c) The right to maintain in the Common Area sales and management offices, model units and advertising signs.

(d) The right to erect a permanent sign or signs at the entry (or entries) to the Properties as well as private street signs and directional signs. Such signs shall remain in place and become a part of the Common Area to be owned and maintained by the Association. Such signs shall remain in place for a period of thirty (30) years from date of recording of this Declaration, and thereafter shall continue to remain in place of successive periods of ten (10) years each unless by a two-thirds (2/3) vote of the Class A Members of the Association it is determined to remove or replace them.

ARTICLE VIII Mortgagee's Rights

Section 1. Notice of Rights of Mortgagee of a Lot. Upon written request by a mortgagee to the Association, Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot of any obligation of the Owner under the Declaration, the Bylaws of the Association or the Articles of Incorporation of the Association. The request for notification can be made by any mortgagee of a Lot, its successor or assign. The notification shall be sent not later than the 65th days after

the occurrence of an uncured default.

Section 2. Rights of First Refusal. No first mortgagee, its successor or assign, of a Lot who comes into possession of that Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, a deed or assignment taken in lieu of foreclosure shall be subject to any rights of first refusal which the Owner may have given to the Association or other Owners of the Lots.

Any right of first refusal now or hereafter contained in this Declaration or the Bylaws shall not impair the rights of any first mortgagee to:

(a) Foreclose or take title to a Lot pursuant to the remedies provided in the mortgage or

(b) Accept a deed or assignment in lieu of foreclosure in the event of default by the Owner, or

(c) Sell or lease a Lot acquired by such mortgagee.

Section 3. Rights of Mortgagee. Unless at least seventy-five per cent (75%) of the first mortgagees (based upon one vote for each first mortgage owned), and the Class A Members other than the Declarant or any other sponsor, developer or builder, of the Lots have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Properties of Common Area or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties by the Association shall not be deemed a transfer within the meaning of this clause.

(b) Change the method of determining the obligations, assessments, dues or other changes which may be levied against a Lot or Owner.

(c) By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Dwellings on Lots, the exterior maintenance of the Dwellings on Lots, the maintenance of party walls or common fences, driveways or the upkeep of lawns and plantings in the Properties.

(d) Fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred per cent (100%)

of the insurable value (based on current replacement cost).

(e) Use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such improvements.

Section 4. Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

Section 5. Taxes and Insurance. First mortgagees of Dwellings may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Limited Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common and Limited Common Area and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor all first mortgagees duly executed by the Association, and an original or certified copy of such agreement shall be possessed by the Seller.

Section 6. Insurance Proceeds and Condemnation Awards. No provision of the constituent documents shall give a Lot or Dwelling owner or any other property, priority over any rights of first mortgagees of Dwellings within the Properties pursuant to their mortgages in the case of a distribution to Lot or Dwelling Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or Limited Common Area.

ARTICLE IX Harmony And Environmental Controls

Section 1. Architectural Control Committee. Except for original construction or as otherwise in these covenants provided, no building, fence, sidewalk, drive, walk, or other structure shall be erected, placed, altered or maintained upon the Properties nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any architectural control committee composed of not less than three (3) members appointed by said Board of Directors. Refusal of approval of plans, location or specification by said Board of Directors or architectural control committee may be based upon any ground, including,

without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the sole and uncontrolled discretion of said Board of Directors or architectural control committee shall seem sufficient. No alterations may be made in such plans after approval by the Board of Directors or architectural control committee is given except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished the Board of Directors or architectural control committee for its records. In the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this article will be deemed to have been fully complied with. Notice of disapproval shall be by certified mail, return receipt requested and if service is refused, then notice shall be given personally or by First Class U.S. Mail.

Section 2. Fences. Except for original construction, no fence, hedges or wall shall be constructed upon the Properties without the prior written approval of the Architectural Control Committee.

Section 3. Prohibited Uses and Nuisances. Except for the activities of the Declarant during original construction:

(a) No noxious or offensive trade or activity shall be carried on upon any Lot within any Dwelling situated upon a Lot, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or the other Owners of the Lots.

(b) The maintenance, keeping, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Dwelling situated upon the Properties, except that this shall not prohibit the keeping of dogs, cats and/or caged birds or other unobjectionable domestic pets provided they are not kept, bred or maintained for commercial purposes.

(c) No burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind shall be permitted on any Lot.

(d) Except as herein elsewhere provided, no junk vehicles, motorcycles, commercial vehicles, trailer trucks, campers, camp trucks, house trailers, boats or the like, shall be kept upon the Properties (except in enclosed garages) nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of its Board of

Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection.

(f) In order to facilitate the free movement of passing vehicles, no automobiles belonging to Owners shall be parked on the paved portion of any joint driveway or streets, public or private, except during bona fide emergencies.

(g) No sound hardwood trees measuring in excess of three (3) inches in diameter two (2) feet above the ground shall be removed from any portion of the Properties without written approval of the Association acting through its Board of Directors or duly appointed committee.

(h) Except as may be approved in writing by the Board of Directors or their designated committee, no structure of a temporary character, trailer, tent, shack, barn or other out-building shall be used on any portion of the Property at any time.

(i) Except for entrance signs, directional signs, community "theme and structures" and the like, no signs of any character shall be erected, posted or displayed upon, in or about any Lot situated upon the Properties, provided, however, if specifically permitted by a written resolution adopted by the Board of Directors.

(j) No structure, planting or other material other than driveways or sidewalks shall be placed or permitted to remain upon any portion of the Properties which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels.

(k) Garage doors and the doors of any other storage room or the like shall be maintained in a closed position when not being used for immediate ingress and egress.

(l) No outside television or radio aerial or antenna, or other aerial or antenna, for reception or transmission shall be maintained upon any Lot without the prior written consent of the Board of Directors unless such structure is a part of the basic design of a Dwelling or group of Dwellings.

(m) There shall be no violation of any rules for the Common Area, Limited Common Area and Recreational Common Area, which may from time to time be adopted by the Board of Directors or promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws,

authorized to adopt such rules. These rules shall include a provision that no passes, permits or other authority shall be given by any Owner to any person or persons to utilize the lake, beach or other amenities when not in the company of such Owner without the express written consent of the Board of Directors.

(n) In addition to the foregoing restrictions, all restrictions of the Plat as to the use of the Properties are incorporated by reference herein as restrictions of this Declaration.

(o) The Property shall be developed and used only for single family attached or detached residential uses and for the use and maintenance of non-commercial recreational facilities constructed as an amenity to and owned in common by the owners of single family residences thereon. Private dock facilities may be installed and owned by the Owners of Lots of a design and at a location approved by the Board of Directors or committee designated by such Board. Such approval shall be in writing before installation is commenced.

(p) No more than one hundred forty (140) single family attached or detached dwelling units shall be constructed upon the Properties; however, it is permitted that amenities may be constructed so long as such facilities are not made available for public use.

(q) Each dwelling unit shall be separately platted in such a manner as will permit it to be individually sold as a part of a permanent home community.

Section 4. Right of Association to Remove or Correct Violations of this Article. The Association may, in the interest of the general welfare of all the Owners of the Lots and after reasonable notice to the Owner, enter upon any Lot or the exterior of any Dwelling at reasonable hours on any day for the purpose of removing or correcting any violations or breach or any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided, however, that no such action shall be taken without a resolution of the Board of Directors of the Association or by an architectural control committee composed of three (3) or more members appointed by the Board.

Section 5. Perpetual Easement for Encroachments. If any portion of the common area shall encroach upon any Lot, or if any Lot or any improvement, building, overhang, fixture or other structure or improvements of whatever type shall for any reason encroach upon any other Lot or upon any portion of the Common Area as a result of the construction of the building or improvements, a valid, perpetual easements for the encroachment and for

its maintenance is retained by the Declarant for its benefit and for the benefit of the Association and any Owner of a Lot whose Lot is affected thereby and shall exist perpetually. In the event the building or the improvement shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, any resulting encroachment shall be permitted, and a valid easement for such encroachments is hereby reserved by the Declarant for its benefit and for the benefit of the Association and any Owner of a Lot whose Lot is affected thereby and shall exist perpetually. An easement is further granted to all emergency vehicles and personnel including police, fire protection, ambulances and utilities to enter upon the streets and Common Area in the performance of their duties.

Section 6. Mutual Emergency Easement. There shall be created along the easterly property line of the Properties a mutual emergency access easement with a crash gate on the property line providing a mutual emergency ingress and egress easement to the planned development to the east. The cost of maintenance of such easement and crash gate shall be equally shared by the Association and the planned development to the east. The crash gate shall normally be maintained in place and used only in cases when emergency requires the breaking of the gate.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 21st day of March, 1984.

BAY DEVELOPMENT CORP.

By: Allen I. Sklare
Allen I. Sklare, President

Attest: Miriam R. Sklare
Miriam R. Sklare, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared Bay Development Corp., by Allen I. Sklare and Miriam R. Sklare, its President and Secretary, respectively, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Sandy

point, and who, having been duly sworn, stated that the representations contained therein are true.

WITNESS my hand and Notarial Seal this 21st day of March, 1984.

William F. LeMond
WILLIAM F. LEMOND, Notary Public
Residing in Madison County, IN.

My commission expires:

4-1-81

Prepared by William F. LeMond, Attorney at Law, 600 Union Federal Building, Indianapolis, IN. 46204

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