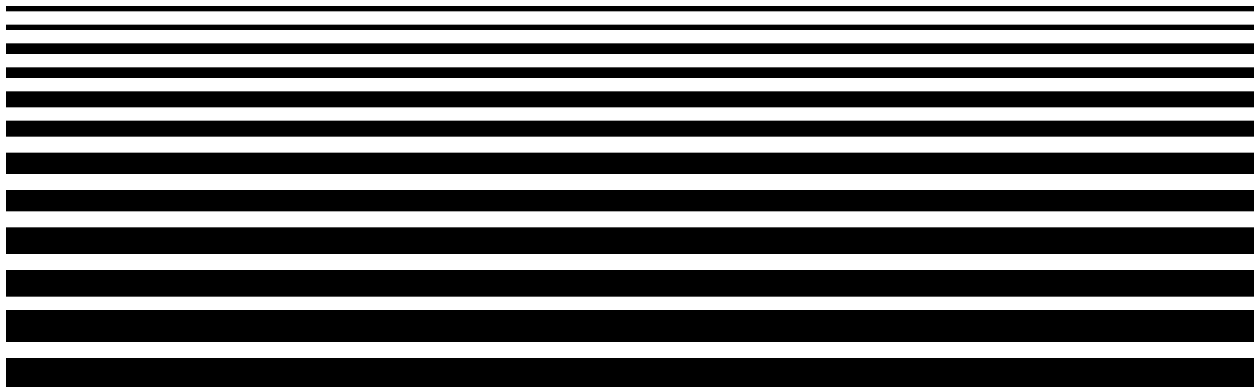




DECLARATION
OF
COVENANTS AND RESTRICTIONS
OF
CRYSTAL POINTE
PROPERTY OWNERSHIP



Crystal Pointe Covenants and Restrictions

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF CRYSTAL POINTE PROPERTY OWNERSHIP**

THIS DECLARATION made this 3rd day of *June* 1994, by CENTEX HOMES COMPANY, an Indiana general partnership ("Centex") and 86TH STREET DEVELOPMENT LIMITED PARTNERSHIP, an Indiana limited partnership ("86th Street") (Centex and 86th Street are hereinafter collectively referred to as "Declarant").

WITNESSETH:

WHEREAS the following facts are true:

A. Centex is the sole owner in fee simple title to certain real estate located in Marion County, Indiana, more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "86 Street Real Estate"). (The Centex Real Estate and the 86th Street Real Estate are collectively referred as the "Real Estate").

B. 86th Street is the sole owner in fee simple title to certain real estate located in Marion County, Indiana more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as the "86th Street Real Estate") .(The Centex Real Estate and the 86th Street Real Estate are collectively referred to as the "Real Estate").

C. Centex has the right to acquire a portion of the 86th Street Real Estate, the legal description of that portion being attached hereto and marked Exhibit C (hereinafter referred to as the "Centex Purchase Real Estate").

D. Centex and 86th Street desire to develop the Real Estate for a single family residential development in accordance with the provisions of this Declaration and the various plats to be filed with respect to the Real Estate.

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

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

1. Definitions.

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

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(a) "Applicable Date" means the date determined pursuant to Paragraph 10 of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members as provided in this Declaration and in accordance with the Bylaws of the Corporation.

(d) "Bylaws" shall mean the Bylaws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation.

(e) "Common Area" means the ground designated as such upon any Recorded Plat or any property conveyed to the Corporation for the use and benefit of its Members.

(f) "Common Expense" means expenses for administration of the Corporation, expenses for the upkeep, maintenance, repair and replacement of the Common Area and all sums lawfully assessed against the Members of the Corporation.

(g) "Corporation" means Crystal Pointe Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Lots, or appointees as provided in Paragraph 10 of this Declaration; such Corporation being more particularly described in Paragraph 10 of this Declaration.

(h) "Crystal Pointe" means the name by which the Real Estate, which is the subject of this Declaration, shall be known.

(i) "Declarant" shall mean and refer to Centex Homes Company, an Indiana general partnership, and 86th Street Development Limited Partnership, an Indiana limited partnership and any successors and assigns of either of them whom they designate in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant. Except as otherwise specifically provided in this Declaration, any action of the Declarant must be made jointly by Centex and 86th Street.

(j) "Dwelling Unit" means one of the living units located upon a Lot.

(k) "Lot" means any plot of ground designated as such upon Recorded Plat and upon which one (1) Dwelling Unit is constructed, may be constructed or exists thereon. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(l) "Member" means a member of the Corporation.

(m) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(n) "Recorded Plat(s)" means any plat of a portion of the Real Estate depicting thereon Lots and Common Areas that have been (i) prepared and certified by a registered land surveyor in the State of Indiana; (ii) executed by the owner of the Real Estate that is the subject of the

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plat and (iii) recorded in the office of the Recorder of Marion County, Indiana.

2. Declaration.

Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Crystal Pointe.

Crystal Pointe shall be a single family residential development consisting of Lots and Common Areas as depicted on the Recorded Plats. The Common Area and the size of the Lots are as designated on the Recorded Plat.

4. Lot Boundaries.

The boundaries of each Lot in Crystal Pointe shall be as shown on the Recorded Plats.

5. Common Area.

Common Area includes all the area designated as such on the Recorded Plats, including, but not limited to, the lake, drainage areas, landscaped buffer along County Line Road, and entrance sign, but excluding all Lots.

6. Ownership of Common Area.

The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members, and by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 10.

(c) The Common Area in Crystal Pointe shall be conveyed to or owned by the Corporation on the Applicable Date or earlier; provided, however, that the conveyance of the Common Area to the Corporation shall not prevent Declarant from improving the Common Area as Declarant deems appropriate (including, but not limited to construction of lakes) at any time prior to the Applicable Date.

(d) The use of the lake is restricted to those Owners whose Lots border the lake and is further restricted as provided in Paragraph 21(i) and (j).

7. Delegation of Use of the Common Area.

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

8. Easements in Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in the Common Area. Such easement and right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

An easement is also granted to the corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area and Lots to perform its duties; provided, however, except in the case of an emergency, reasonable notice shall be given the Lot Owner.

9. Easements.

Centex and 86th Street shall have the right to the reasonable use of and agree to reasonably cooperate with one another in the granting of and in connection with the use of easements, utilities and similar facilities as set forth on the development plan for Crystal Pointe.

10. Corporation; Membership; Voting; Functions.

(a) Membership in Corporation.

Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases at which time his membership shall terminate and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights.

The Corporation shall have two (2) classes of membership with the following voting rights:

(i) Class A.

Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall

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more than one (I) vote be cast with respect to any such Lot.

(ii) Class B.

Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Centex and 86th Street as Class B Members, shall be entitled to three (3) votes for each Lot of which they are the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the resident agent of the corporation, (ii) the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or (iii) January 1, 2004.

(c) Functions.

The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

11. Board of Directors.

(a) Management.

The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or is a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 11.

(b) Initial Board of Directors.

The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Brett Wilson and Raymond H. Rohling and a third member to be appointed by Board Members Brett Wilson and Raymond H. Rohling (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in this Declaration, the Articles or the Bylaws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any method shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the Bylaws or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board,

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whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications.

Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy.

Subject to the provisions of subparagraph (b) of this Paragraph 10, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and reelected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date (which, if appropriate, may be a special meeting) one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. If such election is at a special meeting, the Directors elected shall serve for the applicable period plus the time' from the special meeting to the first annual meeting. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 10 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 11. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors.

A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors.

The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Corporation, the management, mainte-

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nance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners) and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) Landscaping, maintenance and upkeep of the Common Area;
- (ii) Assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (iii) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (iv) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (v) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and
- (vi) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area.

(g) Powers of the Board of Directors.

The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (i) To employ a Managing Agent to assist the Board in performing its duties;
- (ii) To purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (iii) To employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
- (iv) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

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(vi) To open and maintain a bank account or accounts in the name of the Corporation;

(vii) To promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners.

(h) Limitation on Board Action.

After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget; and

(iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation.

No director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. In the event compensation is approved, all Directors shall receive equal compensation. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, which shall be the cost of Common Expense.

(j) Non-Liability of Directors.

The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors.

The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the

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fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in actions, suits or proceedings where such Director is adjudged liable for bad faith, gross negligence or willful misconduct in the performance of his duties. The Corporation shall also reimburse any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(1) Bond.

The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Corporation, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

12. Initial Management.

The Initial Board of Directors has entered or will hereafter enter into a management agreement with Centex (or a corporation or other entity affiliated with Centex or if Centex or an affiliate of Centex is unwilling to perform such services, then by a company selected by Declarant) for a term not to exceed three (3) years with either Declarant or the applicable manager having the right to terminate such management agreement upon ninety (90) days' notice to the other party. Under such management agreement, the applicable manager will provide supervision, management and maintenance of the Common Area: and in general, perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years. In the event manager terminates such management agreement as provided in this Paragraph 12 the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations of the manager or employ a new management company. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the corporation and Centex (or its affiliate as appropriate) is in effect, Centex (or its affiliate as appropriate) shall have and Centex hereby reserves to itself (or to its affiliate as appropriate), the exclusive right to manage all the Real Estate that has been subjected to a Recorded Plat and perform all the duties of the Managing Agent as set forth in Paragraph 11(f). For such services Centex (or its affiliate as appropriate) shall receive a fee in an amount agreed upon by the Board of Directors.

13. Real Estate Taxes.

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Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Real Estate or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate or part thereof assessed as a whole. Real estate taxes assessed on the improvements on the Real Estate shall be paid by the Owner of such improvements. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

14. Utilities.

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

15. Maintenance.

Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Each Owner shall be responsible for maintaining and keeping his Lot, Dwelling unit and all other structural improvements located on his Lot in a good, clean, neat, sanitary and well maintained condition and shall do such work thereon as is required to cause such Lot and structural improvements to be so maintained. The obligation to maintain a Lot shall exist, whether or not a Dwelling Unit exists on such Lot, and the Owner of such Lot shall keep such Lot maintained in the same manner as such Lot would be maintained if a Dwelling Unit existed thereon.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby, which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

If any Owner shall fail to maintain and keep his Lot, Dwelling unit and other structural improvements located on his Lot in a good, clean and sanitary condition as determined by the Board of Directors, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's Lot.

So long as the Real Estate is subject to this Declaration, each Owner, by his acceptance of a

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

16. Architectural Control

(a) The Architectural Review Board.

As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons. Until the Applicable Date, the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors and may be different than or the same as the Board of Directors.

(b) Purposes.

The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate (Common Area and Lots) and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures and improvements.

(c) Conditions.

The Architectural Review Board shall approve the plans for any fence, wall or other structure, and no improvements, alterations, excavation or changes in grade or other work which in any way alters any Lot or the exterior of any Dwelling Unit or other improvement thereon shall be commenced, made or done without the prior written approval of the Architectural Review Board; provided, however that Centex shall have the exclusive right to approve or disapprove the plans for the initial construction of a Dwelling Unit on a Lot located on the Centex Real Estate and the Centex Purchase Real Estate and 86th Street shall have the exclusive right to approve or disapprove the plans for the initial construction of a Dwelling Unit on a Lot located on the 86th Street Real Estate. All Dwelling Units must comply with the following minimum standards and requirements:

i. All Dwelling Units shall have a minimum of 1600 square feet of finished living area (exclusive of garages, carports, basements and porches)

ii. All Dwelling Units shall have a sodded front lawn;

iii. All Dwelling units shall have a concrete driveway;

iv. All Dwelling units shall have the responsibility for the construction of the sidewalk in front of the Lot in accordance with plans provided by the Architectural Review Board;

v. All Dwelling Units shall have dusk to dawn lights with photocells installed and maintained in the front yard of each Lot in accordance with plans provided by the Architectural Review Board;

vi. All Dwelling Units shall have the same type, style and size of mailbox and mailbox post, all in accordance with plans provided by the Architectural Review Board.

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vii. Any Lot which borders on the lake may have only a wrought iron or similar material fence. Regardless of this provision, the Architectural Review Board must approve any and all fences on any Lot.

(d) Procedures.

In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a majority vote.

17. Assessments

(a) Annual Accounting.

Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accounting group approved by the Board, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget.

Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, notwithstanding any other provision in this Declaration, the Articles or the Bylaws, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of those Owners present either in person or by proxy; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area that must be repaired and replaced on a periodic basis, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

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

(c) Regular Assessments.

The annual budget, as adopted by the Owners, shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment, against each Lot equal to the Common Expenses multiplied by a percentage equal to one divided by the total number of Lots in the Real Estate. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as herein above provided. The Regular Assessment against each Lot shall be paid in advance in two equal semiannual installments with the first payment due on the first day of the first month of each fiscal year. Payment of the semiannual installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, the Owners may elect to pay assessments annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget:

(i) If the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) If the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that

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date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells; conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 18 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semiannual installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments.

From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date.

During the period that Declarant is selling Lots and Dwelling Units are being constructed within the Real Estate, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the Bylaws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 17.

Prior to the Applicable Date the Regular Assessment shall be determined as provided in this Paragraph 17(e). Until December 31, 1995 (or the Applicable Date if it occurs prior to December 31, 1995), the yearly Regular Assessment shall not exceed \$180.00 (the "Guaranteed Charge"). After December 31, 1995 and prior to the Applicable Date (assuming the Applicable Date is after December 31, 1995) the yearly Regular Assessment shall not exceed the amount of the Guaranteed Charge (\$180.00), plus (1) the greater of an amount representing an increase thereof to reflect any increase in the Consumer Price Index (all items, all cities) published by the United States government over such index as existed in the month of December, 1995 or (2) ten percent (10%). The amount to be added to the Guaranteed Charge shall be in an amount equal to the same percent-

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age of the Guaranteed Charge as the percentage increase in said Consumer Price Index or ten percent (10%), whichever is greater, or if Declarant so determines a lesser amount. Such adjustments to the Guaranteed Charge shall be made annually on the first day of each fiscal year. Such yearly charge shall, prior to the Applicable Date, entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Centex and 86th Street shall be responsible for any deficit prior to the Applicable Date (the "Deficit") in the following formula: Centex's share is 64.28% of the Deficit and 86th Street's share of the Deficit is 35.72%; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund.

Twenty-five percent (25%) of the Regular Assessment prior to the Applicable Date shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and if required, applied to the replacement of Common Areas. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Lot shall commence on the date that such Lot is embodied in a Recorded Plat (Commencement Date). The first payment shall be payable on the Commencement Date prorated to the first day of the month when the next semiannual payment is due. Thereafter, payment of the Regular Assessment shall be paid semiannually beginning with the first day of the fiscal year or the first day of the seventh calendar month of the fiscal year, as applicable.

(f) Failure of Owner to Pay Assessment.

No Owner (including Centex and 86th Street) may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may, in its discretion, accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the prime interest rate as announced

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by Bank One, Indianapolis, NA, from time to time by (or if said bank is no longer in existence then such rate charged by a national bank in Marion County, Indiana, selected by the Board of Directors) during the unpaid period plus three percent (3%). In the event either Centex or 86th Street fails to pay the Regular Assessment when due then the non-defaulting party shall have the right and is hereby authorized by the Board to act as agent for the Board to collect such Regular Assessment from the defaulting party in any manner provided in this paragraph 17(f).

(g) Subordination of Assessment Lien to Mortgage.

Notwithstanding anything contained in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot that has a Dwelling Unit constructed on it to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefore and further provided that the transfer of a Lot without a Dwelling Unit on it shall not result in the extinguishment of such lien. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefore. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

18. Mortgages and Unpaid Assessments.

(a) Notice to Corporation.

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

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

(b) Notice of Unpaid Assessments.

The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or

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purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 17 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums.

Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

19. Insurance.

(a) Casualty Insurance.

The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area in an amount equal to the full replacement value of the improvements which in whole or in part, comprise the Common Area, unless the Board determines that a lesser amount of insurance is appropriate. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as herein above set forth shall be paid to it or to the Board of Directors. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least thirty (30) days prior written notice to Mortgagees who have provided the Corporation with notice of such Mortgagee's desire to receive notice of the potential termination.

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

(b) Public Liability Insurance.

The Corporation shall also purchase a master comprehensive public liability insur-

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ance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

(c) Other Insurance.

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

(d) General Provisions.

The premiums for all insurance herein above described shall be paid by the Corporation as part of the Common Expenses.

20. Casualty and Restoration of Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

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

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction.

21. Covenants and Restrictions.

The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area shall be in addition to any other covenants or restrictions contained herein

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and in the Recorded Plats, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family. No Lot shall be subdivided to form lots of less area.

(b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance or other unlawful activity shall be permitted on any Lot.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any building, and no sign, awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Dwelling Unit without the prior consent of the Architectural Review Board.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance.

(f) All rubbish, trash or garbage shall be stored in closed sanitary containers, shall be regularly removed from the premises, and shall not be allowed to accumulate.

(g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Real Estate.

(h) No structure of a temporary character, trailer, boat, camper, bus or tent shall be maintained on any Lot, nor shall any garage or other building, except a permanent residence, be used on any Lot at any time as a residence or sleeping quarters either temporarily or permanently.

(i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the Common Area or any part thereof (except the lake as provided herein), shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area. Only those Owners whose Lots border the lake are allowed to use and enjoy the lake subject to such rules and regulations as may be from time to time promulgated and issued by the Board governing the operation, use and enjoyment

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of the lake provided further that no Owner, members of their families, guests or invitees or occupants of any Dwelling Unit or other persons entitled to use the same may swim, boat, ice skate or engage in similar activities on the lake.

(j) No boat docks, decks, rafts or similar structures or improvements shall be permitted on or near the lake.

(k) No boats, campers, trailers of any kind, busses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, mini bikes or mopeds shall be permitted, parked or stored anywhere within the Real Estate, unless stored completely enclosed within a garage. No repair work shall be done on the Real Estate on any vehicles, including passenger automobiles unless completely enclosed within a garage.

(l) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with express permission from the Board.

(m) The Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(n) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

(o) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(p) There are designated on the Recorded Plats building lines. Except as required for utilities to serve the Real Estate or a Lot, no building or structure will be permitted within this no-build area.

(q) Each Owner by acceptance of a deed to a Lot shall be deemed to have waived such Owner's right to remonstrate against annexation of all or any portion of the Real Estate.

(r) No detached structure shall be maintained on any Lot, except with the express permission from the Architectural Review Board.

(s) Each Owner shall maintain the Lot and any landscaping thereon in an attractive manner.

(t) Any fences to be constructed on a Lot must be constructed in accordance with the provisions of Paragraph 16(c) hereof and must be approved by the Architectural Review Board in accordance with Paragraph 6.

(u) No antenna, satellite dishes or other device for the transmission or reception of radio, television or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground whether attached to a Dwelling Unit or otherwise on any lot without the written approval of the Architectural Review Board, which approval shall not be unreasonably withheld. Provided, however, that any such device may be installed and maintained on

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any Lot without the necessity of such written approval if (a) is not visible from neighboring Lots, streets or Common Area; (b) the Owner prior to installation has receiving the written consent of the Owners of all Lots who would have views of the device from their Lots or (c) the device is virtually indistinguishable from structures, devices or improvements such as heat pumps, air conditioning units, barbecue grills, patio furniture and garden equipment which are allowed in Crystal Pointe and/or by this Declaration or (d) it is a satellite dish two (2) feet or less in diameter.

Notwithstanding anything to the contrary contained herein or in the Articles or By-laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Centex and 86th Street shall have the right to use and maintain any Lots and Dwelling Units owned by Centex or 86th Street (as applicable) and other portions of the Real Estate owned by Centex or 86th Street (as applicable) all of such number and size and at such locations as Centex or 86th Street in its sole discretion may determine, as Centex or 86th Street may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Centex or 86th Street shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Centex or 86th Street be or become part of the common Area, unless so designated by Centex or 86th Street (as applicable) and Centex or 86th Street (as applicable) shall have the right to remove the same from the Real Estate at any time.

22. Plats.

Both Centex and 86th Street shall have the right at any time to record plats for additional portions of the Real Estate and upon such recording such plats shall be Recorded Plats. Neither Centex nor 86th Street has the obligation to record any additional plat. In addition, upon the consent of both Centex and 86th Street, any portion of the Real Estate not part of a Recorded Plat may be withdrawn from the terms and provisions of this Declaration by a document executed by both Centex and 86th Street reflecting such withdrawal and recorded in the office of the Recorder of Marion County.

23. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

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

(iv.) Adoption. Any proposed amendment to this Declaration must be ap-

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proved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 15 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Lot, or (6) the provisions of paragraph 21 of this Declaration with respect to amendments solely by Declarant without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the corporation and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

(vii) Approval by Declarant. Notwithstanding anything to the contrary in this Declaration, during anytime which Centex or 86th Street still owns a Lot, Declarant must approve in writing any amendment to this Declaration by the Owners under this Paragraph 23 and no amendment shall be effective or exist absent such written approval by Declarant.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, either Centex or 86th Street shall have the right and power without the consent of the other and the Declarant, and without the consent or approval of the Owners, the corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Association, the Veteran's 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, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical, typographical or other errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Centex or 86th Street to vote in favor of, make, or consent to any amendments described in this Paragraph 23 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to Centex or 86th Street to vote in favor of, make, execute and record any such amendments. The right of Centex or 86th Street to act pursuant to rights reserved or granted under this Paragraph 23

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shall terminate at such time as Centex or 86th Street (as applicable) no longer holds or controls title to any part or portion of the Real Estate.

24. Acceptance and Ratification.

All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles, and the Bylaws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Real Estate 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 Lot or Lots or any part of the Real Estate in any manner shall be subject to the Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

25. Negligence.

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation.

26. Costs and Attorney Fees.

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

27. Waiver.

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

28. Severability Clause.

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

29. Pronouns.

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Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

30. Interpretation.

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