

8807892

STATEMENT OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, MADE ON THE DATE HEREINAFTER SET FORTH BY  
SHEAR & KERRIS DEVELOPMENT CORPORATION, hereinafter referred to  
as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in  
Hamilton County, State of Indiana, which is more particularly  
described on Exhibit A attached hereto and made a part hereof  
(hereinafter referred to as the "Properties").

NOW THEREFORE, Declarant hereby declares that all of the  
Properties described above shall be held, sold and conveyed  
subject to the following easements, restrictions, covenants, and  
conditions, which are for the purpose of protecting the value and  
desirability of, and which shall run with, the Properties and be  
binding on all parties having any right, title or interest in the  
described Properties or any part thereof, their heirs, successors  
and assigns, and shall inure to the benefit of each owner thereof.

This instrument Recorded 5-2 1988  
Shear K. Cherry, Recorder, Hamilton County, IN

RECEIVED FOR RECORD  
AT 9:10 O'CLOCK A.M.

ARTICLE 1

MAY 2 1988

MEMBERSHIP

BOOK PAGE  
Shear K. Cherry  
RECORDER HAMILTON COUNTY, INDIANA

Section 1.01. Definitions.

(a) "Association" shall mean and refer to Valleybrook  
Property Owners Association, Inc., an Indiana not-for-profit  
corporation, its successors and assigns.

(b) "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.

07892

"Valleybrook" shall mean and refer to that certain real property known as Valleybrook in Hamilton County, Indiana, as legally described in Schedule A attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

(e) "Declarant" shall mean and refer to Dugan & Morris Development Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

(f) "Plat" shall mean and refer to plat of the Valleybrook subdivision as recorded in Plat Book 15, page 63-76 in the office of the Recorder of Hamilton County, Indiana.

Section 1.02. Membership And Voting Rights.

(a) Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(b) The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

A. When the total votes outstanding in the Class A

membership equal seventy-five per cent (75%) of the total votes outstanding in the Class B membership, or

3. On January 1, 2002.

(c) Change of membership in the Association shall be established by recording in the public records of Hamilton County, Indiana, a deed or other instrument establishing a record title to a Lot in the Project and the delivery to the Association of a certified copy of such instrument. The owner designated by such instrument thus becomes a member of the Association and the membership of the prior owner is terminated.

(d) The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Lot.

(e) If a Lot is owned by more than one person, or is under lease, or is owned by a corporation, partnership, joint venture, or other entity, the designation of voting representative shall be made and such voting representative for purposes of this Article shall be considered to be the "member."

#### ARTICLE 2

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 2.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. 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.

Section 2.02. Purpose of Assessments. The assessments levied by the Association 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 any portion of the Properties for which responsibility is given the Association by this Declaration.

Section 2.03. Maintenance by the Association. The Association shall provide maintenance of the Retention Pond located on Lots 22, 23, 24, 25, 26, and 27 of the Properties, the bridge over the creek, the Project identification sign located at the entrance to the Project, dusk to dawn lights in front yards, and such other matters as the Association deems necessary by a vote of two-thirds (2/3) of all of its membership.

Section 2.04. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for Class A members shall be One Hundred Fifty Dollars (\$150.00) per year.

- A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of 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 at an amount not in excess of the maximum.

Section 2.05. Notice and Quorum for Any Action. Written notice of any meeting called for the purpose of taking any action shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of 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 2.06. Uniform Rate of Assessment. Annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 2.07. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the sale of each Lot by Declarant. 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 assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 2.08. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of three percent (3%) above the prime rate of interest being charged by Merchants National Bank & Trust Company of Indianapolis, Indiana. The Association may bring an action at law against the Owner personally obligated to pay the same, including an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 2.09. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein 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.

### ARTICLE III

#### GENERAL PROVISIONS

Section 3.01. No structure shall be erected, altered, placed or permitted to remain on the real estate described herein other than a one single family dwelling and private garage. No residence or dwelling shall be constructed on said real estate unless such residence, exclusive of open porches and attached garages, shall have a ground floor area of at least 2,800 square feet, if it is a one-story structure, or 1,600 square feet on the ground floor, if it is a higher structure, and in the case of a building higher than one story, there shall be at least a total of 3,000 square feet. All dwellings shall have as a minimum, a two (2) car garage.

Section 3.02. No building structure shall be erected in this subdivision between the building lines and the property line of the streets as shown on the Plat nor shall there be erected any structure closer to the side of a Lot than 10 feet. Where buildings are erected on more than a single Lot this restriction shall apply to the side lines of the extreme boundaries of the multiple lots.

Section 3.03. No trailer, tent, shack, basement, garage, barn, above ground storage tank, or other outbuilding or temporary structure shall be used for temporary residential purposes on the property, and no boat, trailer, recreational vehicle, truck larger than 3/4 ton pick-up, or camper of any kind (including, but not in limitation thereof, house trailers, camping trailers and boat trailers) shall be kept or parked upon said lot except within a garage.

Section 3.04. No structure of any kind on said real estate shall be used for the purpose of carrying on a business, trade, or profession, nor shall anything be done thereon which shall be or become a nuisance to the neighborhood.

Section 3.05. No poultry or farm animals shall be raised or maintained on the property. This restriction shall not prohibit a resident from keeping a household pet or bird. All dogs shall be kept on a leash and under the control of its owner, or in a fenced area which utilizes chain link fencing and top and bottom railings. This fenced area must also comply with the requirements set forth in other paragraphs herein.

Section 3.06. It is the intent of the Declarant that all natural vegetation be maintained in the same manner and condition as before any construction. Therefore, there shall be no removal of trees which have a diameter of more than six (6") inches

unless approved by the building committee. Further, there shall be no earth removal or changing of the terrain without approval of said committee.

Section 3.07. There shall be no continuous or permanent on-street parking within the project.

Section 3.08. The duty and right to review, inspect, approve or reject any and all plans and specifications for construction of any type of house or building, proposed for construction by any property owner prior to commencing any construction shall rest with a building committee which shall initially consist of one (1) member, who shall be James Dugan. The building committee may, by a majority vote of its members, add additional members to the committee. No residence, garage, servants quarters, driveway, fences, swimming pools, mail box, or other structure of any kind shall be constructed on said site without the prior written approval of the building committee. Elevation plans, plans for landscaping, and any other data or information that may be requested, shall be submitted to the building committee for its approval. All modifications and additions of all types to any structure or improvement, whether such modification or addition is to occur before or after initial approval of the residence, must be submitted to and approved by the building committee. The majority of said members shall constitute a quorum for approval or disapproval of any plans submitted, and the decision of the majority shall be final. Construction shall be completed within ten (10) months of commencement, but not later than eighteen (18) months after approval. No charges shall be made to any lot owner of any real estate in the area for examination of and action upon the plans. In the event of the death, disability or resignation of any of said members, the remaining members shall select the successor or successors to fill the vacancy or vacancies.

Section 3.9. No parcel of land shall be re-divided into a smaller parcel or parcels.

Section 3.10. All owners of lots shall belong to the Valleybrook Property Owners Association and shall be governed by the By-Laws of such Association.

Section 3.11. Any structure that is externally damaged by fire, tornado, or other disaster shall be repaired or removed within six (6) months of such occurrence.

Section 3.12. There shall be no storage buildings, barns, or other outbuildings on any lot within the subdivision.

Section 3.13. The right to enforce the provisions, restrictions, and covenants set forth within, by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is hereby dedicated and reserved to the owners of the several lots, their heirs or assigns who shall be entitled to such relief without being required to show any damage of any kind to any such owner or owners by or through any such violation or attempted violation.

Section 3.14. Each lot shall henceforth be encumbered by a blanket temporary easement for the purpose of installation, maintenance, and upkeep of the drainageways and sub-surface drains, with this blanket temporary easement being supplementary to the easements depicted on the Plat of Valleybrook.

Section 3.15. All residence shall be required to install and maintain a hard surface driveway or driveways which shall be composed of either concrete, asphalt, or like material.

Section 3.16. No trash shall be put out for pick-up by a disposal service except on the day it is to be picked up by such service.

Section 3.17. - All fences shall comply with all regulations of the City of Carmel.

Section 3.18. There are strips of ground as shown on the Plat and marked Drainage and Utility Easement, reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of Lots in this subdivision shall take their titles subject to the rights of public utilities.

Section 3.19. All Lots in this subdivision are reserved for residential use, and no building other than a one-family residence or structure or facility accessory in use thereto shall be erected thereon.

Section 3.20. No fence shall be erected in this subdivision between the building lines and the property line of the streets as shown on the Plat, except with the approval of the Declarant, which fences shall not exceed 42 inches in height and shall be of a decorative nature. No fence shall be installed in any storm water, retention, or detention areas.

Section 3.21. In the event storm water drainage from any Lot flows across another Lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on said Plat.

Section 3.22. Outlets for sump pump water will be provided for each Lot in this subdivision by the Declarant or home builder at the time of Lot development. If during excavation of the foundation for crawl space or basement, ground water is encountered, or if the house location is in an area of high water table (as per Hamilton County Surveyor or City of Carmel), an outlet will be provided directly to a storm sewer or approved open ditch with plastic pipe. The route of outlet will be via platted easements and approved by proper agencies. Where a storm sewer exists on or directly adjacent to a subject Lot, all sump pumps shall tie directly to storm sewer via underground pipe. Lots not located in an area of high water table may outlet sump pump water in the rear yard, no closer than 25 feet from established Lot lines or platted easements.

Section 3.23. Construction of any sump pump outlet will commence only when appropriate construction plans have been submitted and approved by the proper agencies and applicable permits issued from the local building authority. Where construction will be in established drainage and/or utility easements, approval must be obtained from City of Carmel or Hamilton County Surveyor. The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the individual homeowner and/or the Association.

Section 3.24. Geo-thermal heat pumps shall be of the closed loop type only.

Section 3.25. No noxious, unlawful, or other offensive activity shall be carried out on any Lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3.26. All Lot owners will be required to have installed at least one gas or electric "dusk to dawn" yard light in the front yard. Such lights are to be installed by the developer or builder prior to final inspection by the Carmel Department of Community Development. All garages opening to the street shall have automatic door controls.

Section 3.27. No Lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and such matter shall be kept in sanitary containers. Trash shall not be burned.

Section 3.28. Lot owners, upon taking title, agree to waive their rights to oppose future zoning changes and special permits necessary to complete the Master Plans of VALLEYBROOK SUBDIVISION.

Section 3.29. It shall be the duty of the owner of each Lot in the subdivision to keep the grass on the Lot properly cut and to keep the Lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so then the Declarant may take such action as it deems appropriate in order to make the Lot neat and attractive and the owner shall upon demand reimburse Declarant for the expense incurred in so doing.

Section 3.30. All garbage and trash cans and receptacles and woodpiles shall be screened.

Section 3.31. There shall be no outside TV dishes larger than 3 feet in diameter. There shall be no outside TV antennas.

Section 3.32. There shall be no gravel yards.

Section 3.33. No lot which does not have a completed residence constructed thereon may be resold without the approval of the Declarant.

Section 3.34. All streets shown on the Plat are hereby dedicated to the public.

Section 3.35. No tennis court shall be constructed on any lot. No basketball court shall be constructed which shall have the basketball goal closer to the street than the front door of the house. No above-ground pools shall be constructed. No permanent outdoor clothes line shall be constructed.

The foregoing Restrictions shall run with the land until January 1, 2011, and for additional ten (10) year periods thereafter. However, a release executed by at least seventy-five percent (75%) of the owners of lots in the subdivision, submitted in writing within thirty (30) days prior to the end of any extension, will release the restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 26 day of APRIL, 1988.

DUGAN & MORRIS DEVELOPMENT CORPORATION

By: James Dugan  
James Dugan, President

By: James Morris  
James Morris, Secretary

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF HAMILTON )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared James Dugan and James Morris, of DUGAN & MORRIS DEVELOPMENT CORPORATION, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions to be their voluntary act and deed.

Witness my hand and notarial seal this 26 day of APRIL, 1988.



My Commission Expires:

7-31-91

John F. Peary  
Notary Public  
John F. Peary  
Printed  
Residing in HAMILTON County,  
Indiana

This instrument was prepared by Stephen A. Harlow, Attorney at Law, HARLOW & WRIGHT, P.C., 9000 Keystone Crossing, Suite 730, Indianapolis, IN 46240.

EXHIBIT A

... through ... Valleybrook Section 1, as recorded in ...  
... in the Office of the Recorder of ...  
... Hamilton County, Indiana

This Instrument Recorded 5-2 1988  
Sharon K. Cherry, Recorder, Hamilton County, IN

8407870

8911832

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by DUGAN & MORRIS DEVELOPMENT CORPORATION, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Hamilton County, State of Indiana, which is more particularly described on Exhibit A attached hereto and made a part hereof.

NOW THEREFORE, Declarant hereby declares that such property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the property and be binding on all parties having any right, title, or interest in any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
MEMBERSHIP

Section 1.01. Definitions.

(a) "Association" shall mean and refer to Valleybrook Property Owners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

(b) "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.

(c) "Project" shall mean and refer to that certain real property commonly known as Valleybrook in Hamilton County, Indiana, as legally described in Schedule A attached, and such additions thereto as may hereinafter be brought within the jurisdiction of the Association.

This Instrument Recorded 6-9-99  
Sharon K. Cherry, Recorder, Hamilton County, IN

RECEIVED  
MAY 9 10 57 AM '99  
HAMILTON COUNTY, INDIANA

INDEX # 89 11832

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

(e) "Declarant" shall mean and refer to Dugan & Morris Development Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

(f) "Plat" shall mean and refer to plat of the Valleybrook subdivision as recorded in Plat Book \_\_\_\_, page \_\_\_\_, in the Office of the Recorder of Hamilton County, Indiana.

(g) "Properties" shall mean Lots 1 through 68 in Valleybrook, Sections 1 and 2, as recorded in Plat Book \_\_\_\_, page \_\_\_\_, in the Office of the Recorder of Hamilton County, Indiana.

Section 1.02. Membership And Voting Rights.

(a) Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(b) The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

A. When the total votes outstanding in the Class A

8911832

membership equal seventy-five per cent (75%) of the total votes outstanding in the Class B membership,

or

B. On January 1, 2002.

(c) Change of membership in the Association shall be established by recording in the public records of Hamilton County, Indiana, a deed or other instrument establishing a record title to a Lot in the Project and the delivery to the Association of a certified copy of such instrument. The owner designated by such instrument thus becomes a member of the Association and the membership of the prior owner is terminated.

(d) The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Lot.

(e) If a Lot is owned by more than one person, or is under lease, or is owned by a corporation, partnership, joint venture, or other entity, the designation of voting representative shall be made and such voting representative for purposes of this Article shall be considered to be the "member."

#### ARTICLE 2

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 2.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. 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.

**Section 2.02. Purpose of Assessments.** The assessments levied by the Association 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 any portion of the Properties for which responsibility is given the Association by this Declaration.

**Section 2.03. Maintenance by the Association.** The Association shall provide maintenance of the Retention Pond located on Lots 22, 23, 24, 25, 26, and 27 of the Properties, the bridge over the creek, the Project identification sign located at the entrance to the Project, dusk to dawn lights in front yards, and such other matters as the Association deems necessary by a vote of two-thirds (2/3) of all of its membership.

**Section 2.04. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for Class A members shall be One Hundred Fifty Dollars (\$150.00) per year.

- A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of 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 at an amount not in excess of the maximum.

**Section 2.05. Notice and Quorum for Any Action.** Written notice of any meeting called for the purpose of taking any action shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of 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 2.06. Uniform Rate of Assessment.** Annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 2.07. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the sale of each Lot by Declarant. 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 assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 2.08. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of three percent (3%) above the prime rate of interest being charged by Merchants National Bank & Trust Company of Indianapolis, Indiana. The Association may bring an action at law against the Owner personally obligated to pay the same, including an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 2.09. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein 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.

ARTICLE III  
GENERAL PROVISIONS

Section 3.01. No structure shall be erected, altered, placed or permitted to remain on the real estate described herein other than a one single family dwelling and private garage. No residence or dwelling shall be constructed on said real estate unless such residence, exclusive of open porches and attached garages, shall have a ground floor area of at least 2,800 square feet, if it is a one-story structure, or 1,600 square feet on the ground floor, if it is a higher structure, and in the case of a building higher than one story, there shall be at least a total of 3,000 square feet. All dwellings shall have as a minimum, a two (2) car garage.

8911832

Section 3.02. No building structure shall be erected in this subdivision between the building lines and the property line of the streets as shown on the Plat nor shall there be erected any structure closer to the side of a Lot than 10 feet. Where buildings are erected on more than a single lot this restriction shall apply to the side lines of the extreme boundaries of the multiple lots.

Section 3.03. No trailer, tent, shack, basement, garage, barn, above ground storage tank, or other outbuilding or temporary structure shall be used for temporary residential purposes on the property, and no boat, trailer, recreational vehicle, truck larger than 3/4 ton pick-up, or camper of any kind (including, but not in limitation thereof, house trailers, camping trailers and boat trailers) shall be kept or parked upon said lot except within a garage.

Section 3.04. No structure of any kind on said real estate shall be used for the purpose of carrying on a business, trade, or profession, nor shall anything be done thereon which shall be or become a nuisance to the neighborhood.

Section 3.05. No poultry or farm animals shall be raised or maintained on the property. This restriction shall not prohibit a resident from keeping a household pet or bird. All dogs shall be kept on a leash and under the control of its owner, or in a fenced area which utilizes chain link fencing and top and bottom railings. This fenced area must also comply with the requirements set forth in other paragraphs herein.

Section 3.06. It is the intent of the Declarant that all natural vegetation be maintained in the same manner and condition as before any construction. Therefore, there shall be no removal of trees which have a diameter of more than six (6") inches

8911832

unless approved by the building committee. Further, there shall be no earth removal or changing of the terrain without approval of said committee.

Section 3.07. There shall be no continuous or permanent on-street parking within the project.

Section 3.08. The duty and right to review, inspect, approve or reject any and all plans and specifications for construction of any type of house or building, proposed for construction by any property owner prior to commencing any construction shall rest with a building committee which shall initially consist of one (1) member, who shall be James Dugan. The building committee may, by a majority vote of its members, add additional members to the committee. No residence, garage, servants quarters, driveway, fences, swimming pools, mail box, or other structure of any kind shall be constructed on said site without the prior written approval of the building committee. Elevation plans, plans for landscaping, and any other data or information that may be requested, shall be submitted to the building committee for its approval. All modifications and additions of all types to any structure or improvement, whether such modification or addition is to occur before or after initial approval of the residence, must be submitted to and approved by the building committee. The majority of said members shall constitute a quorum for approval or disapproval of any plans submitted, and the decision of the majority shall be final. Construction shall be completed within ten (10) months of commencement, but not later than eighteen (18) months after approval. No charges shall be made to any lot owner of any real estate in the area for examination of and action upon the plans. In the event of the death, disability or resignation of any of said members, the remaining members shall select the successor or successors to fill the vacancy or vacancies.

Section 3.09. No parcel of land shall be re-divided into a smaller parcel or parcels.

Section 3.10. All owners of lots shall belong to the Valleybrook property Owners Association and shall be governed by the By-Laws of such Association.

Section 3.11. Any structure that is externally damaged by fire, tornado, or other disaster shall be repaired or removed within six (6) months of such occurrence.

Section 3.12. There shall be no storage buildings, barns, or other outbuildings on any lot within the subdivision without the prior written approval of the building committee.

Section 3.13. The right to enforce the provisions, restrictions, and covenants set forth within, by injunction, together with the right to cause the removal by due process of law of structures erected or maintained in violation thereof, is hereby dedicated and reserved to the owners of the several lots, their heirs or assigns who shall be entitled to such relief without being required to show any damage of any kind to any such owner or owners by or through any such violation or attempted violation.

Section 3.14. Each lot shall henceforth be encumbered by a blanket temporary easement for the purpose of installation, maintenance, and upkeep of the drainageways and sub-surface drains, with this blanket temporary easement being supplementary to the easements depicted on the Plat of Valleybrook.

9 8911832

Section 3.15. All residence shall be required to install and maintain a hard surface driveway or driveways which shall be composed of either concrete, asphalt, or like material.

Section 3.16. No trash shall be put out for pick-up by a disposal service except on the day it is to be picked up by such service.

Section 3.17. - All fences shall comply with all regulations of the City of Carmel.

Section 3.18. There are strips of ground as shown on the Plat and marked Drainage and Utility Easement, reserved for the use of public utilities for the installation of water and sewer mains, poles, ducts, lines and wires, subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of Lots in this subdivision shall take their titles subject to the rights of public utilities.

Section 3.19. All Lots in this subdivision are reserved for residential use, and no building other than a one-family residence or structure or facility accessory in use thereto shall be erected thereon.

Section 3.20. No fence shall be erected in this subdivision between the building lines and the property line of the streets as shown on the Plat, except with the approval of the Declarant, which fences shall not exceed 42 inches in height and shall be of a decorative nature. No fence shall be installed in any storm water, retention, or detention areas.

Section 3.21. In the event storm water drainage from any Lot flows across another Lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on said Plat.

Section 3.22. Outlets for sump pump water will be provided for each Lot in this subdivision by the Declarant or home builder at the time of Lot development. If during excavation of the foundation for crawl space or basement, ground water is encountered, or if the house location is in an area of high water table (as per Hamilton County Surveyor or City of Carmel), an outlet will be provided directly to a storm sewer or approved open ditch with plastic pipe. The route of outlet will be via platted easements and approved by proper agencies. Where a storm sewer exists on or directly adjacent to a subject Lot, all sump pumps shall tie directly to storm sewer via underground pipe. Lots not located in an area of high water table may outlet sump pump water in the rear yard, no closer than 25 feet from established Lot lines or platted easements.

Section 3.23. Construction of any sump pump outlet will commence only when appropriate construction plans have been submitted and approved by the proper agencies and applicable permits issued from the local building authority. Where construction will be in established drainage and/or utility easements, approval must be obtained from City of Carmel or Hamilton County Surveyor. The maintenance of drainage pipes and facilities for discharging sump pumps shall be the responsibility of the individual homeowner and/or the Association.

Section 3.24. Geo-thermal heat pumps shall be of the closed loop type only.

Section 3.25. No noxious, unlawful, or other offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3.26. All Lot owners will be required to have installed at least one gas or electric "dusk to dawn" yard light in the front yard. Such lights are to be installed by the developer or builder prior to final inspection by the Carmel Department of Community Development. All garages opening to the street shall have automatic door controls.

Section 3.27. No Lot in this subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and such matter shall be kept in sanitary containers. Trash shall not be burned.

Section 3.28. Lot owners, upon taking title, agree to waive all rights to oppose future zoning changes and special permits necessary to complete the Master Plans of VALLEYBROOK SUBDIVISION.

Section 3.29. It shall be the duty of the owner of each Lot in the subdivision to keep the grass on the Lot properly cut and to keep the Lot free from weeds and trash and otherwise neat and attractive in appearance. Should any owner fail to do so then the Declarant may take such action as it deems appropriate in order to make the Lot neat and attractive and the owner shall upon demand reimburse Declarant for the expense incurred in so doing.

3911832

Section 3.30. All garbage and trash cans and receptacles and woodpiles shall be screened.

Section 3.31. There shall be no outside TV dishes larger than 3 feet in diameter. There shall be no outside TV antennas.

Section 3.32. There shall be no gravel yards.

Section 3.33. No Lot which does not have a completed residence constructed thereon may be resold without the approval of the Declarant.

Section 3.34. All streets shown on the Plat are hereby dedicated to the public.

Section 3.35. No tennis court shall be constructed on any Lot without the prior written consent of the building committee as that committee is described in Section 3.08. No basketball court shall be constructed which shall have the basketball goal closer to the street than the front door of the house. No above-ground pools shall be constructed. No permanent outdoor clothes line shall be constructed.

Section 3.36. The Association shall be responsible for the maintenance of the entrance sign to Valleybrook and the grass and landscaped areas in Block "A".

8911832

The foregoing Restrictions shall run with the land until January 1, 2011, and for additional ten (10) year periods thereafter. However, a release executed by at least seventy-five percent (75%) of the owners of lots in the subdivision, submitted in writing within thirty (30) days prior to the end of any extension, will release the restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5<sup>th</sup> day of June, 1989.

DUGAN & MORRIS DEVELOPMENT CORPORATION

By: James Dugan  
James Dugan, President

By: James A. Morris  
James Morris, Secretary

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared James Dugan and James Morris, of DUGAN & MORRIS DEVELOPMENT CORPORATION, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions to be their voluntary act and deed.

Witness my hand and notarial seal this 5<sup>th</sup> day of June, 1989.



My Commission expires:

June 2, 1990

Marie A. Montgomery  
Notary Public  
MARIE A. MONTGOMERY  
Printed  
Residing in MARION County,  
Indiana

This instrument was prepared by Stephen A. Harlow, Attorney at Law, HARLOW, WRIGHT & CRAIG, P.C., 9000 Keystone Crossing, Suite 730, Indianapolis, Indiana 46240.

EXHIBIT A

Lots 31 through 68 in Valleybrook Section 2, as recorded  
in <sup>PC</sup> Plat Book 1, <sup>Slide No</sup> Page 30, in the Office of the Recorder  
of Hamilton County, Indiana

This Instrument Recorded 6-9 1999  
Sharon K. Cherry, Recorder, Hamilton County, IN

8911832