

**DECLARATION OF COVENANTS,  
EASEMENTS AND RESTRICTIONS**

**FOR**

**CRYSTAL BAY II**

**R & P ENTERPRISES, INC.,  
d/b/a R. P. MILHOUSE,  
DECLARANT**

EXHIBIT A

DECLARATION OF COVENANTS,  
EASEMENTS AND RESTRICTIONS  
FOR CRYSTAL BAY II

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR CRYSTAL BAY II ("Declaration"), made this \_\_\_\_\_ day of January, 1987, by R & P Enterprises, Inc., d/b/a R. P. Milhouse, a California corporation authorized to do business in Indiana, (hereinafter called the "Developer" or "Declarant"),

WITNESSETH THAT:

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

WHEREAS, the Declarant is developing the Real Estate and certain surrounding lands within the tract described in the attached Exhibit B as a residential subdivision consisting of detached single-family dwellings and attached, two-family dwellings located on adjacent lots, to be known as "Crystal Bay II", which shall be platted by Declarant in sections from time to time; and,

WHEREAS, the Real Estate will be platted by Declarant as Crystal Bay II - Section One, in phases consisting of one (1) or more Lots from time to time to be recorded in the office of the Recorder of Hendricks County, Indiana; and,

WHEREAS, Declarant desires to subject the Real Estate to certain covenants in order to provide appropriate easements and restrictions with respect to the use and enjoyment of common structures as between attached dwellings and to ensure that the development and use of the various lots on the Real Estate are harmonious with and do not adversely affect the value of surrounding lots on the Real Estate or within Crystal Bay II; and

WHEREAS, the Declarant desires to provide for the maintenance and repair of the Common Property (as herein defined) located or to be located in Crystal Bay II, which is of common benefit to the Owners of the various lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Crystal Bay II;

NOW, THEREFORE, the Declarant imposes upon the Real Estate the following covenants, which shall run with the Real Estate and be binding upon Declarant and upon all successors to and assigns of all or any part of Declarant's interest in the Real Estate:

ARTICLE I

General Purpose Of This Declaration

The Real Estate is hereby subjected to the covenants herein declared to preserve the value of the Real Estate, to provide for appropriate reciprocal rights and obligations between Owners with respect to Common Structures (as herein defined) shared by them, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate or within Crystal Bay II, to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate, all for the purpose of preserving the values of all Lots within Crystal Bay II and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Crystal Bay II.

## ARTICLE II

### Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

**Section 1. Adjoining Lot.** "Adjoining Lot" means, in relation to any Lot, the adjacent Lot on which the other portion of a duplex building has been or is to be constructed.

**Section 2. Assessment.** "Assessment" means the share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of Article VI.

**Section 3. Association.** "Association" means Crystal Bay II Co-Owners Association, Inc., an Indiana not-for-profit corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

**Section 4. Building Committee.** "Building Committee" means the Declarant so long as any Lots remain unsold by Declarant and so long as Crystal Bay II is still subject to expansion, and thereafter shall mean the Board of Directors of the Association, or any group of not less than three (3) persons designated as the Building Committee by resolution of the Board of Directors, when and to the extent exercising any rights of consent pursuant to this Declaration.

**Section 5. Common Areas.** "Common Areas" means certain open spaces or recreational or community facilities which may be designated by Declarant as Common Area on the plat or plats of Crystal Bay II, as the same may be recorded from time to time, and which is intended for the common benefit of all Lots.

**Section 6. Common Driveways.** "Common Driveways" means those driveways, walkways, and similar areas, designated as such and with Easements across Lots therefor as shown on the plat or plats of Crystal Bay II, as the same may be recorded from time to time, which have been or hereafter are constructed for the purpose of providing common access for owners, occupants and their guests and invitees, to any or all Lots other than those that have been dedicated to the public and accepted for maintenance by the appropriate public agency.

**Section 7. Common Expense.** "Common Expense" means the actual and estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Property, real estate taxes or personal property taxes assessed against any Common Property, and any other cost or expense incurred by the Association for the benefit of the Common Property, and shall also include the costs of maintaining the exterior portions of improvements (including Driveways) and the landscaping upon the Lots and the costs of the master policy of casualty insurance, as required in Article V herein, and any other cost or expense incurred by the Association pursuant to this Declaration or in the course of performance of its duties under this Declaration. Common Expenses shall not include any costs or expenses incurred in connection with the initial installation or completion of the Driveways, utility lines and mains, street lights, or other improvements constructed by Declarant.

**Section 8. Common Structures.** "Common Structures" shall include all foundations, columns, beams, supports, Party Walls, and other structural elements located along or upon any common lot line between two or more Adjoining Lots, or necessary for the support, use, or enjoyment of attached dwelling units located on Adjoining Lots.

**Section 9. Common Property.** "Common Property" means all real and personal property which is in the nature of common or public improvements or areas, and which is located in, upon, or under the Common Areas, Easements, or Driveways within Crystal Bay II, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agencies. Without limiting the generality thereof, Common Property shall include, to the extent not publicly dedicated, all Driveways, curbs, water mains, fire hydrants, the Drainage System, the Sewage System, street lights and street signs, public sidewalks, lakes, retention ponds, parks, and open spaces.

**Section 10. Declarant.** "Declarant" means R & P Enterprises, Inc., a California corporation, d/b/a/ R. P. Milhouse, or any other person, firm, corporation or partnership which succeeds to the interests of R & P Enterprises, Inc. as developer of Crystal Bay II

as set forth in a recorded instrument expressly transferring the rights and obligations of Declarant.

Section 11. Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, swales, ditches, pipes, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Driveways and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across Crystal Bay II, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

Section 12. Driveways. "Driveways" means Limited Driveways and Common Driveways.

Section 13. Easements. "Easements" refer to those areas reserved as easements on the plat or plats of Crystal Bay II, as the same may be recorded from time to time and the easements described and contained herein.

Section 14. Crystal Bay II. The term "Crystal Bay II" means and includes all sections thereof as shall have been platted and recorded from time to time by Declarant in accordance with the provisions of this Declaration.

Section 15. Limited Driveways. "Limited Driveways" means those driveways, walkways, and similar areas which are not dedicated to the public and which are only required to provide access to particular individual Lots or structures located thereon.

Section 16. Lot. "Lot" means any of the separate parcels identified on the final plat or plats of Crystal Bay II, as the same may be recorded from time to time. Lots shall be numbered in pairs, with each pair consisting of Adjoining Lots designated by the common lot number and the letter "A" or "B" following such number.

Section 17. Owner. "Owner" means any person or persons who hold or acquire on or after the date of this Declaration legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any Mortgagee so long as such Mortgagee does not have possession of the Lot or hold both legal and equitable title thereto.

Section 18. Mortgagee. The term "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 19. Party Walls. "Party Walls" means the common walls constructed on or near to the common lot lines between any two Adjoining Lots, which divide the dwelling units constructed on any two Adjoining Lots.

Section 20. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Driveways and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor, except such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

### ARTICLE III

#### Use and Bulk Restrictions

Section 1. Permitted Uses. The Real Estate and all improvements on any portion thereof shall be used or occupied for residential purposes, with no more than one family per Lot. No business buildings shall be erected thereon and no commercial enterprise may be conducted on any part thereof. No lease on any Lot or portion thereof shall have a term of less than six (6) months.

Section 2. Types of Structures. No structure shall be erected, altered, placed, or permitted to remain on any Lot, other than one detached, single-family dwelling or one attached single family dwelling constituting a part of a duplex building on two Adjoining Lots, and permanently attached accessory buildings. No such structures shall exceed one story in height without the approval of the Building Committee. Any attached garage, attached tool shed, attached storage building, or any other attached accessory building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of said

residence. No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot, except such as may be used by the builder during the construction of a residential building thereon, and except such storage sheds or tool sheds as may be approved by the Building Committee. Except as provided in the preceding sentence, no structure of a temporary or readily moveable character may be placed upon any Lot or used as a residence.

**Section 3. Setbacks.** No building or other structure shall be placed closer than 15 feet from any right-of-way line or Easement for Common Driveways, without the approval of the Building Committee and, if necessary under applicable zoning regulations or requirements, the approval of any zoning authority having jurisdiction thereof; provided, that Building Committee approval shall not be required for construction by Declarant. No building or other structure shall be placed closer than permitted by applicable zoning laws and variances from the back of the curb or back of the sidewalk, as applicable for Common Driveways or the Street, as shown on the plat or plats of Crystal Bay II. No portion of any structure shall be placed closer than 10 feet to any portion of any building already existing or under construction on any adjacent Lot at the time construction on any Lot commences, except that this requirement shall not apply as between the buildings attached to one another on Adjoining Lots.

**Section 4. Manner of Use.** Each Owner shall use and occupy his respective Lot and all easements and rights-of-way appertaining thereto, in a careful, safe, and proper manner and keep his Lot in a clean and safe condition in accordance with this Declaration, applicable zoning ordinances; all health, fire, and police requirements and regulations, state statutes, local ordinances, and the lawful directions of proper public officials. No Owner shall conduct, or permit any person to conduct, any nuisance or any unlawful activity on the Real Estate.

**Section 5. Floor Area.** The finished and liveable floor area of the main structure on any Lot, exclusive of one story open porches and garages and other attached residential accessory buildings, shall not be less than 1,200 square feet without the approval of the Building committee and, if necessary under applicable zoning regulations or requirements, the approval of any zoning authority having jurisdiction thereof; provided, that Building Committee approval shall not be required for construction by Declarant.

#### ARTICLE IV

##### General Rights and Restrictions

**Section 1. Nuisances.** No farm animals, fowl, or domestic animals for commercial purposes shall be kept or permitted on any Lot. Pets shall be permitted outdoors only under leash and accompanied by an Owner or other person, and each Owner shall be fully liable for any injury or damage to any person or to the Common Property caused by his or her pet, and shall be responsible for removing from such areas his or her pet's waste materials. The Board of Directors may adopt such other rules and regulations regarding pets as it may deem appropriate, and in the event that in the judgment of the Board of Directors, any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall be permanently removed from the Real Estate upon written notice of such determination by the Board of Directors. No Lot or structure or improvement thereon shall be used in any manner which causes or might reasonably be expected to cause any disturbance to the normal use and enjoyment of surrounding Lots, nor in any manner which causes injury to the reputation of Crystal Bay II, including, without limitation, the burning of any refuse or excessive noise by the use of any musical instruments, loud speakers, electrical equipment, amplifiers or other equipment or machines. No Owner shall install or maintain any interior or exterior window decor visible from outside the buildings on any Lot, other than interior window coverings having a white or light-colored backing or lining.

**Section 2. Fences; Sight Obstructions.** No fence shall be erected on or along any Lot line, nor on any Lot, the purpose or result of which will be to obstruct reasonable vision, light or air to adjacent Lots. All fences shall be kept in good repair and erected so as to enclose the property and decorate the same without hindrance, encroachment, or obstruction to any Easement the right-of-way line for Common Driveways, or adjacent Lot. No fence shall be erected between the front Lot lines and the building setback line other than a fence of a decorative nature not exceeding three feet six inches in height, without the approval of the Building Committee. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the adjoining

Common Driveway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Lot lines and a line connecting points twenty-five (25) feet from the intersection of said street Lot Lines (or in the case of a rounded property corner, from the intersection of the street Lot lines extended to form a corner). The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street Lot line with the edge of a Driveway pavement or alley line. As to any trees located within said sight line areas, the Owner thereof shall maintain the foliage line of such trees at a sufficient height to prevent obstruction of such sight lines.

**Section 3. Driveways.** All Driveways shall be paved prior to or as soon as practicable after the completion of the construction of the dwellings in accordance with plans and specifications meeting the approval of the Building Committee. Each Owner shall permit Driveways located on his Lot to be maintained by the Association so as to prevent or repair unsightly cracking or crumbling, and shall keep his Limited Driveway clean and free of debris.

**Section 4. Vehicle Parking.** No camper, motor home, truck, trailer, boat, or recreational vehicle of any kind may be stored on any Lot, except in an attached garage or other attached accessory building. No vehicle shall be parked on a regular, recurrent, or permanent basis on any Common Driveway. This Section 4 shall not apply to any construction vehicles, trailers, or equipment of Declarant or any other builder in Crystal Bay II during the development thereof.

**Section 5. Signs and Antennae.** No sign of any kind or any antennae shall be displayed to the public view on any Lot (whether indoors or outdoors), except that one sign of not more than six square feet may be displayed on Sundays for the purpose of advertising an open house with respect to such Lot and except for such signs as may be erected by the builders (including Declarant) to advertise the property during construction and sale, and except such other signs as may be approved by the Building Committee and, if necessary under applicable zoning regulations or requirements, by any zoning authority having jurisdiction thereof.

**Section 6. Landscaping and Vegetation.** Each Owner shall cause or permit all portions of his Lot upon which no other improvements are constructed to be covered with grass, trees, or shrubs, and shall cause or permit such landscaping to be maintained properly, except prior to the construction of any improvements thereon or during the period when the dwelling or other improvements on the Lot are actually under construction. No Owner shall permit the growth of weeds on his Lot, and each Owner shall cause or permit the same to be kept reasonably clear from unsightly growth at all times.

**Section 7. Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage, or other waste shall not be kept on any Lot except in sanitary, windproof containers, and such containers shall be kept clean, shall be stored in the garage of each respective unit except for trash pick-up days and shall not otherwise be stored on any Lot in open public view.

**Section 8. Storage Tanks.** Any gas or oil storage tanks used in connection with a Lot shall be either buried or located in a garage or house such that they are completely concealed from public view.

**Section 9. Tree Preservation.** No trees may be removed from any Lot without the approval of the Building Committee, and applications for such approval shall be made to the Building Committee in writing, except that such approval shall not be required for Declarant.

**Section 10. Placement of Utility Lines.** All electrical service lines, gas service lines, television lines, telephone lines, and all other lines or mains which may be used for the transmission of any form of matter or energy, which may be located on the Real Estate and which are not within buildings or structures or attached to the walls thereof, shall be placed underground. All lines which serve any one Lot shall be so located as to be accessible for maintenance and repair without disturbance to structures and other permanent improvements on any other Lot.

**Section 11. Obstruction of Common Property.** No Owner shall unreasonably interfere with, damage, or obstruct the use or maintenance of any Common Property, Common Structures or Common Driveways.

**Section 12. Outdoor Lighting.** All outdoor lighting on any Lot shall be subject to the approval of the Building Committee, and all applications for such approval shall be in writing, except that such approval shall not be required for Declarant.

**Section 13. Rights to Common Property.** Title to all Common Property shall be held in the Association, except for Driveways. Each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his Lot, a right of access to his Lot over all Common Driveways, the right to the use of all Common Areas for their intended purposes and the right of access thereto over the Common Driveways, and the right of access to and use of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Lot; provided, however, that no Owner's use of any Common Property shall materially interfere with any other Owner's use thereof.

**Section 14. Additional Restrictions on Use.** The following restrictions on the use and enjoyment of the Lots and Common Property shall be applicable to Crystal Bay II, and in addition to those set forth above in this Declaration, all for the benefit of Co-owners in the Crystal Bay Horizontal Property Regime. These are as follows:

- (a) All Lots shall be used exclusively for residential purposes and occupancy for a single-family. Nothing herein contained shall restrict the use of premises during construction and sale period as "Models", office, construction trailer and equipment, and for storage of equipment, materials and supplies.
- (b) No additional buildings shall be erected other than the Buildings constructed, or to be constructed, by Declarant except with the prior written consent of the Board.
- (c) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of a building on any Lot, or on or upon any balcony or patio, and no sign, awning, canopy, shutter, or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other part of a building without the prior written consent of the Board of Managers of Crystal Bay (the "Board").
- (d) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot or on the Common Property, except that small pet dogs, cats, or customary household pets may be kept in a building on a Lot, provided that such pet is not kept, bred, or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash and an Owner shall be fully liable for any damage to the Common Property of Crystal Bay caused by his pet. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from Crystal Bay II upon two (2) written notices from the Board to the respective Owner.
- (e) No clothes, sheets, blankets, rugs, laundry, or other things shall be hung out or exposed on any part of any Lot or Common Property. The Lots and Common Property shall be kept free and clear of rubbish, debris, and other unsightly material by the Owners.
- (f) 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 Lots or Common Property.
- (g) No "For Sale", "For Rent", or "For Lease" signs or other window advertising display shall be maintained or permitted on any part of any Lot or the Common Property or any Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "For Sale" or "For Lease" signs on any unsold or unoccupied Units.
- (h) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini-bikes, or any other unconventional vehicles of any description, shall be permitted, parked, or stored anywhere within the Property, provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage. The parking of any type or kind of vehicle shall not be permissible upon the streets.

- (i) No Owner of any Lot adjacent to any part of Crystal Bay shall be allowed to plant trees, landscape, or do any gardening on any of such Lot, except with the express permission from the Board.

Section 15. Remedies for Failure to Comply. In the event that any Owner fails to fully observe and perform the obligations set forth in Article III or this Article IV, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by the Association, the Association and any Owner shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person, the Association shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of the Association. All costs incurred by the Association in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure shall be payable by the defaulting Owner upon demand by the Association, and shall immediately become a lien against his Lot, subject to payment and collection in the manner provided in Article V for collection of Assessments. The rights in the Owners and the Association under this Section shall be in addition to all other enforcement rights hereunder or at law or in equity.

Section 16. Lot Access. All Lots shall be accessed from the Driveways. Additionally, the Co-owners and Board of Crystal Bay shall be entitled to enforce the provisions of this Article IV to the same extent and with the same rights as the Owners and the Association.

## ARTICLE V

### Rights and Obligations for Common Structures

Section 1. Easement for Common Structures. Each Owner shall have the exclusive right (subject to the provisions of this Declaration) to use, occupy, and enjoy his Lot and the improvements constructed thereon; provided, however, that a reciprocal, non-exclusive easement is hereby declared in favor of the Owners of Adjoining Lots for the mutual support, service and benefit of all Common Structures and in favor of all Owners and the Co-owners in Crystal Bay for the use of Common Driveways.

Section 2. Maintenance and Repair of Common Structures. Each Owner shall be responsible for the maintenance, repair, and reconstruction of his Lot and all improvements located thereon, and shall keep the same in good condition and repair, except that as to Party Walls, the expenses of maintenance, repair and reconstruction thereof shall be borne equally by the Owners of Adjoining Lots, and except that the exterior portions of all structures (including paint, brick, siding, roofing, downspouts, gutters, shutters, porches, and canopies), Driveways and all landscaping on the Lots shall be maintained by the Association, and such maintenance shall be paid for as a Common Expense. The Association shall have the right to enter upon each Lot for the performance of its maintenance and repair duties hereunder. Notwithstanding the foregoing, should any Common Structure be damaged or destroyed by the default, negligence or other act or omission of any Owner, such Owner shall repair or reconstruct the same at his sole cost and expense and shall compensate the Owner of the Adjoining Lot for any damages incurred by such other Owner as a result of such damage or destruction of the Common Structure, except insofar as such damages are adequately compensated by any master casualty insurance policy maintained by the Association.

Section 3. Insurance, Casualty. The Association shall maintain a master policy of insurance against fire and other casualty, with standard extended coverage endorsements, on all improvements on all Lots, in an amount equal to the full insurable value of such improvements. Such insurance shall include a replacement cost endorsement and inflation guard endorsement (if obtainable) and shall name as insureds all Owners and Mortgagees from time to time of all Lots. In the event that the improvements on any Lot(s) are damaged or destroyed by any casualty, the Owner(s) thereof shall promptly repair or reconstruct the same substantially to their condition immediately prior to such damage or destruction out of available insurance proceeds; provided, that with the written approval of the Owners of the Adjoining Lots and the Mortgagees of both Adjoining Lots, and subject to the other provisions of this Declaration, such Owners may elect to remove the remainder of the improvements and construct new improvements thereon not necessarily the same as the ones previously

constructed. Such insurance proceeds shall be held and disbursed by the Mortgagee(s) of the Lots affected by such casualty, as their respective interests shall appear and if such Mortgagee(s) so elect, or by the Association as trustee for the Owners and Mortgagees of the Lots so affected.

Section 4. Failure to Repair, Maintain or Reconstruct; Remedies. In the event that any Owner shall fail or refuse to maintain, repair, or reconstruct any Common Structures for which he is responsible under this Article V and shall persist in such failure or refusal after thirty (30) days prior written notice thereof, then in addition to all other rights and remedies as may be available at law or in equity, the Owner of the Adjoining Lot and the Association each shall have the right, upon a preliminary finding of reasonable cause by any court having jurisdiction of the parties or the property, to enter upon such defaulting Owner's Lot and perform all necessary work thereon to return the Common Structures to good condition and repair or to build such structures or improvements as are necessary to restore the improvements on the Adjoining Lot to a complete and usable architectural unit. In the event that such failure or refusal shall result in any condition which is causing or is likely to cause immediate and substantial harm to persons or property outside of such defaulting Owner's Lot, such right of entry shall be immediate. All costs incurred is a result of such entry and the work performed on such defaulting Owner's behalf (including attorneys' fees) shall be payable on demand by the party incurring such costs, and shall constitute a lien on such defaulting Owner's Lot from the date(s) incurred in favor of the party incurring such costs. Such lien shall be subordinate to the lien of any Mortgagee and the lien for Assessments hereinafter provided.

Section 5. Easements for Encroachments. In the event that, by reason of the design, inexactness of construction, shifting or settling of the dwelling units on Adjoining Lots, any spaces, structures, utility lines, ventilation ducts, appliances, or other portions or components intended to serve the dwelling unit on one Lot encroach upon the Adjoining Lot, an exclusive easement shall be deemed to exist in favor of said Lot for the maintenance, use and enjoyment of such portions or components as encroach on the Adjoining Lot, for so long as such portions or components exist. Additionally, in the event any Common Driveway encroaches upon any Lot other than as depicted graphically on the final plat of such Lot, a mutual non-exclusive easement in favor of all other lots shall be deemed to exist for the maintenance, use and enjoyment of such Common Driveway as actually in existence and all replacements and renewals thereof.

## ARTICLE VI

### Construction Approvals.

Section 1. Plans, Specifications and Locations of Improvements. No building, structure, driveway, fence, wall, patio, swimming pool, landscaping, antenna, or other form of improvement shall be erected, placed, or altered on any Lot until the building plans, specifications, and plot plan showing the design, dimensions, color, materials, and location thereof have been approved by the Building Committee as to their conformity and harmony of external design with the existing buildings, structures, and other improvements in Crystal Bay II, and as to compliance with applicable law and the covenants herein contained; provided, however, that no such approval shall be required for any improvements constructed by Declarant. If the Building Committee fails to act upon any plans submitted to it for approval within a period of thirty (30) days from the submission date of such plans, such failure shall be deemed approval and the Owner may then proceed with the construction according to the plans submitted. The Building Committee shall not be entitled to any compensation for services performed pursuant to this Article VI.

Section 2. Exercises of Discretion by Building Committee. Whenever any approval or exercise of discretion by the Building Committee is called for by this Declaration, the Building Committee shall exercise its discretion reasonably in view of the general purposes of this Declaration, as set forth in Article I, and in view of any specific purposes or standards which govern the specific approval or exercise of discretion in question, as may be specified in the section or sections of this Declaration relating thereto. The Building Committee shall have no power to approve any plans that do not comply with the use and bulk restrictions set forth in Article III of this Declaration, nor shall it have any power to vary or alter any other term, condition, covenant, or restriction in this Declaration unless express authority therefor is granted by this Declaration.

**Section 3. Completion of Work.** Upon receipt of all approvals required pursuant to this Article, each Owner shall, as soon as practical, satisfy or cause to be satisfied all conditions thereof and diligently proceed with the commencement and completion of all approved construction. If work is not substantially completed within one year of the date of such approval, or such longer period as the Building Committee may approve prior to the expiration of such one year, then the approval of the plans for such work shall terminate automatically without any further act by any person, and such Owner shall not commence or continue such construction without further approval of the Building Committee obtained in the manner of the initial approval as hereinabove provided. Failure to comply with the limitations set forth in this section shall constitute a breach of this Declaration and subject the defaulting party to all enforcement procedures set forth herein and any other remedies provided by law or equity. Furthermore, the Building Committee, at its discretion, may declare such uncompleted improvement to be a nuisance and shall have all remedies provided by law or in equity to abate such nuisance.

## ARTICLE VII

### Covenants For Maintenance Assessments

**Section 1. Purpose of the Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within Crystal Bay II, as the same may be platted from time to time, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, fencing, repairing, operating, and maintenance of the Common Property, including, but not limited to, the payment of taxes and insurance thereon, for the cost of labor, equipment, material, and management furnished with respect to the Common Property, and any and all other Common Expenses. Each Owner hereby covenants and agrees to pay to the Association:

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

**Section 2. Pro-rata Share.** The Pro-rata Share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the plat or plats of Crystal Bay II, as the same may be recorded from time to time.

**Section 3. Liability for Assessments.** Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. 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 become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any Mortgagee whose mortgage was recorded prior to the date such Assessment first became due and payable. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

**Section 4. Basis of Annual Assessments.** The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves for periodic repair and replacement of the Common Property. A copy of this budget shall be delivered to each Owner within thirty (30) days prior to the beginning of each fiscal year of the Association. Such budget, when approved, shall constitute the basis on which the "Annual Assessments" are determined for purposes of this Declaration.

Section 5. Basis of Special Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. A special Assessment shall be imposed only with the approval of two-thirds (2/3) of the Owners, and shall be due and payable on the date(s) determined by such Owners, or if not so determined, then as may be determined by the Board of Directors.

Section 6. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The Annual Assessments on each Lot in each section of Crystal Bay II shall commence on the first day of the first month following the month in which Declarant first conveys ownership of any Lot in such section to an Owner and shall be due and payable in monthly installments on the first day of each and every month thereafter, except as may otherwise be established by the Board of Directors by notice to the Owners; provided, that if any Lot is first occupied for residential purposes prior to being conveyed by Declarant, full Assessments shall be payable with respect to such Lot commencing on the first day of the first month following the date of such occupancy. The Declarant shall be liable for and shall make up any deficit in the budget for the Common Expenses for any year in which Declarant controls the Association, and notwithstanding the preceding sentence, the Declarant shall pay an assessment on each Lot owned by it equal to twenty-five percent (25%) of the full annual Assessment against any Lot, until such time as full Assessments become applicable to the Lot under the terms of the preceding sentence. The first Annual Assessment within each section shall be made for the balance of the fiscal year of the Association in which such Assessment is made, and the Board of Directors may from time to time by resolution authorize the payment of such Assessments in quarterly, semi-annual or annual installments on such date or dates as it deems appropriate.

Section 7. Duties of the Association.

- (a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Association shall cause audited financial statements to be prepared at least annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives. Notices of the amounts of the Annual Assessments and the amounts of the installments thereof shall be sent annually within thirty (30) days following the determination thereof. In the absence of any notice regarding the amount of the Annual Assessment, each Owner shall continue to pay the monthly amount for Annual Assessments previously paid by such Owner. Notices of the amounts of Special Assessments shall be sent as promptly as practicable and in any event not less than ten (10) days prior to the due date of such Assessment or any installment thereof. In the event notice of any Special Assessment is mailed less than ten (10) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within ten (10) days after the date of actual mailing of such notice.
- (b) The Association shall promptly furnish upon request to any Owner, prospective purchaser, title insurance company, or Mortgagee a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- (c) The Association shall notify any Mortgagee from which it has received a request for notice: (a) of any default in the performance of any obligation under this Declaration by any Owner which is not cured within sixty (60) days;

(b) of any condemnation or casualty loss that affects either a material portion of Crystal Bay II or the Lot securing its mortgage; (c) of any lapse, cancellation, or material modification of any insurance policy or fidelity bond required to be maintained by the Association; and (d) any proposed action which requires the consent of the Mortgagees or a specified percentage thereof, as set forth in this Declaration.

Section 8. Non-payment of Assessments; Remedies of Association.

- (a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.
- (b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

Section 9. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year, except that so long as the Declarant controls the Association, Declarant shall be responsible for such deficit. Thereafter, such deficit may be recouped either by inclusion in the budget for Annual Assessments or by the making of one or more Special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-rata share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s), in such amounts as the Board of Directors shall deem appropriate.

Section 10. Initial Assessments. During the first year following the date of recordation of the Declaration for Section One of Crystal Bay II, the total Assessments per Lot per month shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). In each year thereafter, the total Assessments per Lot per month shall not be increased by more than the twelve percent (12%) over the prior year, until such time as the Declarant relinquishes control of the Association. In no event shall the annual Assessments exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) per month per Lot without the approval of a majority of the Owners; provided, however, that said maximum amount may be increased by no more than five percent (5%) per year by the Board of Directors without such consent.

ARTICLE VIII

Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with the Articles of Incorporation and By-Laws thereof. The membership of the Association shall consist of one class of voting members, with each member having equal voting rights. The members of the Association shall consist of the Owners of Lots in Crystal Bay II, as the same may be platted from time to time. In the event that any one Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, they shall be treated collectively as one member for voting purposes, so that as to any matter being considered by the Association, only one vote appertains to each Lot.

Section 2. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Property, the maintenance of the exterior portions of all improvements, Driveways and of all landscaping on any Lot, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

Section 3. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least seventy-five percent (75%) of the Lots and ninety percent (90%) of the Mortgagees; provided, however, that any such amendment of this Declaration shall require prior written approval of the Declarant so long as Declarant own any Lots within Crystal Bay II. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when their approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the office of the Recorder of Hendricks County.

Section 4. Insurance. A. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all Common Property, in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence for personal injury and One Million Dollars (\$1,000,000.00) per occurrence for property damage.

B. The Association shall also maintain in force the master casualty policy referred to in Article V hereinabove, and shall maintain adequate fire and extended coverage insurance for all Common Property for the benefit of all Owners and Mortgagees in Crystal Bay II, insuring against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full insurable value of such Common Property, and shall contain the following endorsements, if and to the extent obtainable at a reasonable cost in the State of Indiana: (i) replacement cost; (ii) inflation guard; (iii) demolition cost, contingent liability, and increased construction cost in connection with Building code requirements; and (iv) steam boiler coverage (if applicable). In the event that all or any part of the Common Property is determined to be in a flood hazard area, the Association shall also obtain a master policy of flood insurance on all structures and improvements on any Lot and all Common Property within such flood hazard zone, in an amount at least equal to the lesser of 100% of the current replacement cost of all insurable property within the flood hazard area, or the maximum coverage available for such property under the National Flood Insurance Program. The amounts of coverages under the foregoing master policies shall be increased from time to time to cover all additions to Crystal Bay II.

C. The Association also shall obtain comprehensive public liability insurance together with Workmen's Compensation Insurance, employers liability insurance, and such other liability insurance, with such coverages and limits, as the Board of Directors deems appropriate.

All policies of insurance of the character described above shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, the Board of Directors, the Declarant, any Managing Agent, their respective employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defenses based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies shall name the Association, for the use and benefit of the Owners, as the insured; shall provide that the coverage thereunder is primary even if an Owner has other insurance covering the same

loss; shall show the Association or insurance trustee, in trust for each Owner and Mortgagee, as the party to which proceeds shall be payable; shall contain a standard mortgage clause and name FNMA and all Mortgagees as mortgagee; and shall prohibit any cancellation or substantial modification to coverage without at least ten (10) day's prior written notice to the Association and to the Mortgagees. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors, and any managing agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.

D. The Association shall obtain a fidelity bond indemnifying the Association, the Board of Directors, and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee or officer of the Association or of any other person handling the funds of the Association or the Owners, which bond shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses for Crystal Bay II.

E. All policies of insurance maintained by the Association pursuant to this Section shall provide such coverages and be in such amounts as may be required from time to time by FNMA, FHLMC, FHA or VA. All policies shall contain a clause whereby the insurer agrees to provide written notice to the Association, to FNMA, and to any other lending institution or agency requesting or requiring the same, prior to any cancellation or material modification thereof. The Association shall notify all Mortgagees of which it has notice of any lapse, cancellation, or material modification of any insurance policy.

F. Each Owner shall have the right to purchase any additional insurance as he may deem necessary, and each Owner shall be solely responsible for loss of or damage to his personal property located on his Lot, however caused, including all floor and wall coverings, appliances, furniture and betterments installed by the Owner. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

Section 5. Condemnation, Destruction. In the event that any of the Common Property shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Property condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Property or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Property; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owners' behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Property.

Section 6. Control of Association. During the development of Crystal Bay II, the Association shall be operated and controlled by Declarant. The Board of Directors shall consist of persons appointed by Declarant, and each Owner shall give and shall be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owners are entitled to vote under this Declaration or under the Articles of Incorporation or the By-Laws of the Association. The control of the Association shall be transferred to the Owners no later than the earlier of the following dates:

- (a) one hundred twenty (120) days after the date on which a total of seventy five percent (75%) of the Lots have been conveyed to Owners;
- (b) five (5) years after the date on which the first Lot is conveyed to an Owner.

The irrevocable proxy in Declarant shall terminate as of the date of such transfer.

Section 7. Mortgagees' Rights. The Mortgagees, individually and collectively, have the right, but not the obligation, to pay any taxes or other charges or assessments which are or may become a lien against the Common Property, in the event the same are not paid by the Association when due. The Mortgagees also have the right, but not the

obligation, to pay any overdue premiums on hazard insurance policies required to be maintained by the Association, or to secure new hazard insurance coverage in the event of a lapse of any such policies. Any Mortgagee or Mortgagees making any payment pursuant to this Section 7 shall be entitled to reimbursement from the Association promptly upon written demand therefor to the Association.

Section 8. Dealing with Common Property. The Association shall not convey, dedicate, lease, mortgage, pledge, or otherwise transfer or encumber all or any part of the Common Property, without the approval of the Owners of at least two-thirds (2/3) of the Lots. In dealing with the Common Property, the Association shall be deemed to hold the same in trust for the use and benefit of the Owners.

Section 9. Professional Management. The Association may delegate its duties to a professional management agent, but any contract for such purposes shall be terminable upon not more than 90 days' notice, and no such delegation shall relieve the Association of its responsibilities under this Declaration.

## ARTICLE IX

### Expansion of Subdivision

Section 1. Method and Scope of Expansion. Declarant, at its option and from time to time, may expand Crystal Bay II to include all or any parts of the tract described in the attached Exhibit B, by the addition of further sections consisting of one or more Lots and any Common Property which is necessary or which in the discretion of Declarant is appropriate for addition with such section. Such further sections, if added, shall be added by the recordation of a plat of such sections, consistent in detail and layout with plats of sections previously recorded, and by the recordation of a declaration imposing upon such section covenants substantially similar in form and substance to this Declaration. Declarant hereby covenants that the total number of Lots in Crystal Bay II shall not exceed One Hundred Ten (110), and that no real estate shall be added thereto which is not within that described in Exhibit B, without the consent of the Owners of at least two-thirds of the Lots.

Section 2. Time for Expansion. No additional sections shall be added after the date which is seven (7) years after the date on which the plat for Crystal Bay II - Section One was recorded.

Section 3. Future Improvements. The Common Driveways, Sewage System, Drainage System, and utility lines and mains within each section shall be substantially constructed or installed prior to recordation of the plat and declaration for such section. All buildings, Common Driveways, and other improvements in all additional sections shall be consistent in quality of construction with the section(s) already in Crystal Bay II as of the date of this Declaration.

## ARTICLE X

### Reserved Easements - Dedication of Public Streets

All public and quasi-public vehicles, including but not limited to police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, and privately owned delivery vehicles shall have the right to enter upon the Real Estate and any Lot therein in performance of their duties. Declarant hereby reserves and may grant to the Association or to the appropriate public agencies or utility companies perpetual easements over, upon, and under the Common Areas, Easements and Common Driveways for the installation, servicing, maintenance, repair, or replacement of any Common Property and any public utilities, including but not limited to water, sewers, gas, telephone, electricity, and cable television, as the same are now or hereafter may be located. Declarant further reserves easements over the Common Driveways and Drainage System for access to and drainage from those portions of the real estate described in Exhibit B which have not been added to Crystal Bay II as of any time. In the event that any Common Driveway is hereafter dedicated to the public and accepted for maintenance by the appropriate public agency, the easements reserved herein shall not be effected in any way by such dedication. In the event that Declarant, its successors or assigns, shall exercise any rights under the easements hereby reserved, and in the event that such exercise shall cause any damage to any Lot, the party exercising such easement rights shall restore such Lot substantially to its condition

immediately prior to such exercise. Declarant further reserves an easement in favor the Co-owners in Crystal Bay over all Common Property included in Crystal Bay II, for the same use and enjoyment thereof on the same conditions applicable to all owners in Crystal Bay II. In addition, the easements hereby reserved are limited in scope in that Declarant, its successors and assigns, shall not have the right to use such easements for the benefit of any property not within Crystal Bay or Crystal Bay II.

#### ARTICLE XI

##### Term

This Declaration shall be effective for an initial term of twenty (20) years and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless as of the end of any term both the Owners of ninety percent (90%) of the Lots and the Mortgagees of at least ninety percent (90%) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.

#### ARTICLE XII

##### Private Amenities and Services

The Drainage System, the Sewage System, and other Common Property shall be owned and maintained by the Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or any dissolution of the Association, the Association shall convey the Common Property to a successor organization having similar purposes and powers as the Association, or it shall use its best efforts to dedicate the Common Property to the appropriate public agencies or utilities which normally hold and/or administer such property. If such dedication or conveyance are not possible, such property shall be disposed of as determined by the Circuit Court of Hendricks County, Indiana, consistent with the purposes set forth in this Declaration.

#### ARTICLE XIII

##### General Provisions

Section 1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy, or possession of any portion of the Real Estate.

Section 2. Scope of Covenants. The Declarant and each Owner of any Lot in Crystal Bay II, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to have agreed to each and every one of the various terms, covenants, conditions, and restrictions contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, covenants, conditions, and restrictions contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys fees' of such successful party, in such amount as may be fixed by the Court in such proceedings.

**Section 4. Failure to Enforce Not a Waiver of Rights.** The failure of the Declarant, the Association, or any Owner to enforce any term, covenant, condition, or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, covenant, condition, or restriction.

**Section 5. Rights of Mortgagees.** Except to the extent otherwise provided in Article VII, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. Notwithstanding any other provision of this Declaration, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

**Section 6. Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court or by operation of law, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

**Section 7. Section Headings.** Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

**Section 8. Notices.** All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses maintained by the Association; or (b) seventy-two (72) hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

**Section 9. Deed Clause to Implement Declaration.** Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants of Crystal Bay II pertaining to the real estate hereby granted, which is recorded as Instrument No. \_\_\_\_\_, in the Office of the Recorder of Hendricks County, Indiana",

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

**Section 10. Provision Against Merger.** The Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the covenants contained herein shall not be merged into the title of the Declarant, regardless of whether the Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

**Section 11. Reservations of Declarant.** Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, in order to bring the Declaration or Crystal Bay II into compliance with the requirement of any public agency having jurisdiction thereof or of any agency guarantying, insuring, or approving mortgages, so long as Declarant owns any Lots within Crystal Bay II; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

**Section 12. Availability of Documents.** The Association shall keep and make available for inspection during normal business hours copies of this Declaration, the Articles of Incorporation and By-Laws of the Association, and current financial

statements of the Association, for the benefit of all persons who may have an interest therein.

Section 13. Government Enforcement. The Hendricks County Plan Commission, its successors and assigns, shall have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Hendricks County Plan Commission; provided further, that nothing herein shall be construed to prevent the Hendricks County Plan Commission from enforcing any provisions of Title and of the Hendricks County subdivision control ordinance, as amended, or any conditions attached to approval of the plat of Section 1 of Crystal Bay II by the Plan Commission.

Section 14. Severability. Every one of the covenants and restrictions herein contained is hereby declared to be independent of, and severable from, the rest of the covenants and restrictions, each and every one thereof and from every combination thereof. Therefore, if any of the covenants and restrictions herein contained shall be held to be invalid or to be unenforceable, or shall lack the quality of running with the land, that holding shall be without effect upon the validity and enforceability or "running" quality of any other of the covenants and restrictions herein contained.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants, Easements and Restrictions for Crystal Bay II this \_\_\_\_\_ day of January, 1987.

R & P ENTERPRISES, INC.  
d/b/a R. P. MILHOUSE

By: \_\_\_\_\_  
Talbot W. Denny,  
President

ATTEST:

\_\_\_\_\_  
Kathy Henderson, Secretary

