



*First American  
Title Insurance Company*

**INDIANA**

Not Just for One Transaction, But for Life

First American Title Insurance Company  
Indianapolis Downtown—Corporate  
251 E. Ohio Street, Suite 200  
Indianapolis, IN 46204  
Telephone (317) 684-7556

## Subdivision Covenants and Restrictions

The information is provided as a public service only. The information on this site is general in nature, unofficial and is not a valid reference for any legal purposes. The user agrees to hold harmless, protect, indemnify, and forever release First American Title Insurance Company and its officers, directors, agents, and employees, from and against any and all liabilities, losses, damage, expenses and charges, including but not limited to attorneys' fees and expenses of litigation, which may be sustained or incurred by the user under, or arising directly or indirectly out of the use of the information contained in this site.

200500036635  
Filed for Record in  
HENDRICKS COUNTY IN  
THERESA D LYNCH  
12-01-2005 At 09:44 am.  
COVENANTS 73.00

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
OAKS AT WINDRIDGE**

**THIS DECLARATION**, made as of this 30<sup>th</sup> day of November, 2005, by **OAKS AT WINDRIDGE, L.P.**, an Indiana limited partnership ("Declarant"),

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real estate, located in Hendricks County, Indiana, which is more particularly described in Exhibit A (hereafter "**Property**") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision; and

**WHEREAS**, Declarant desires to subdivide and develop the Property as hereinafter provided.

**NOW, THEREFORE**, the Declarant hereby declares that the Property (including, without limitation each Lot (as defined in **Article II**)) situated therein shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, subject to the following restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property, and which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. The restrictions shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof. The restrictions shall inure to the benefit of the Declarant and its respective successors in title to the Property or any part or parts thereof.

The Owner of any Lots by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained. By acceptance of such deed, execution of such contract, and/or actively occupying such Lot, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions and also for itself, its heirs, personal representatives, successors, and assigns covenants and agrees and consents to and with Declarant, the Association, and the Owners of each of the Lots hereby affected to keep, observe, and comply with the terms and conditions hereof.

Declarant shall have, and hereby reserves the right, at any time, and from time to time, at any time prior to the expiration of the Development Period (as hereinafter defined), to add to the Property and

32+2

2

subject to this Declaration any contiguous real estate owned by Declarant (the "Additional Property"). Any Additional Property added to the Property shall become a part of the Property and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Declarant places of record with the recorder of Hendricks County, Indiana, an instrument so declaring the same to be part of the Property, which supplementary declaration (hereafter "Supplementary Declaration") shall be by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments applicable to the Additional Property and/or the Dwelling Units constructed thereon as may be necessary to reflect the different character, if any, of the added Dwelling Units or Additional Property so long as the rights and obligations of the original Lot Owners are not materially altered.

Upon recording of any such instrument on or before the expiration of the Development Period, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add and expand the Property as to any part or parts of any Additional Property, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other Additional Property, and such right and option of expansion may be exercised by Declarant from time to time so long as such expansion is accomplished on or before the expiration of the Development Period. Such expansion of the Property is entirely at the discretion of the Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Property.

## ARTICLE I

### *Name*

The subdivision of the Property created by this Declaration shall be known and designated as Oaks at Windridge (hereafter "Subdivision").

## ARTICLE II

### *Definitions*

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Articles" means the Articles of Incorporation of the Association (as hereinafter defined) filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.2 "Association" means the **OAKS AT WINDRIDGE HOMEOWNERS ASSOCIATION, INC.**, an Indiana non-profit corporation, its successors and assigns.

Section 2.3 "Architectural Review Board" means that entity established pursuant to Section 6.2(a) of this Declaration for the purposes therein stated.

Section 2.4 "Board of Directors" means the Board of Directors of the Association.

Section 2.5 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

b

Section 2.6 "Common Area" means: (1) those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Association from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter defined), and (2) unless expressly stated to the contrary, all portions of the Property designated on the Plat (as hereinafter defined) as a "Block", "Common Area", "Lake", "Park" and such other areas within the Property that are not otherwise identified on the Plat (as hereinafter defined) as a lot or street. The Common Area shall be conveyed to the Association at the time of conveyance of the first Lot to an Owner.

Section 2.7 "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of all Common Area, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses.

Section 2.8 "Construction Plans" mean those plans prepared by Declarant and approved, as necessary, by appropriate public agencies, that outline the total scheme of development and general uses of the Property, as such may be amended from time to time.

Section 2.9 "Declarant" means *OAKS AT WINDRIDGE, L.P.*, an Indiana limited partnership and its successors and assigns.

Section 2.10 "Development Period" means the period of time commencing with Declarant's execution hereof and ending when Declarant no longer owns any Lot. The Development Period shall recommence if the Declarant subjects any Additional Property to this Declaration in accordance with the Declaration.

Section 2.11 "Dwelling Unit" means any single-family residence situated upon a Lot (as hereinafter defined).

Section 2.12 "Lake Area(s)" means any Common Area on which a lake now exists or is later constructed by Declarant as depicted on the Plat, and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 2.13 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land within the Property designated as such upon the Plat (as hereinafter defined) or, after construction, that parcel of land upon which there is constructed one (1) single detached Dwelling Unit. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit

Section 2.14 "Plot Plan" means (i) a site plan prepared by a licensed engineer, architect, or land surveyor, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including, but not limited to, the landscaping thereof) or the construction or alteration of a Dwelling Unit or other structure or improvement thereon.

Section 2.15 "Principal Builder" means any Builder owning or who has contracted to purchase more than 50% of the Lots in the Subdivision.

Section 2.16 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.17 "Plat" means the subdivision plat of the Property which was recorded with the Recorder of the Hendricks County, Indiana, on November 23, 2005, as Instrument No. 2005-00036124, as the same may be hereafter amended or supplemented.

### ARTICLE III

#### *Property Rights, Easements and Encroachments*

Section 3.1 Owners' Easements of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any Common Area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every Lot (in the form of a right to membership in the Association), subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area owned by the Association;

(b) The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to promulgate reasonable rules and regulations governing the use of the Common Area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the Lots and the Common Area owned by the Association;

(d) The rights of Declarant and Principal Builder as provided in this Declaration, as the same may be amended from time to time;

(e) The right of the Association to mortgage any or all of the Common Area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;

(f) The easements reserved elsewhere in this Declaration and the right of the Association to grant further reasonable utility easements across and through the Common Area owned by the Association for the benefit of its members;

(g) The right of the Association to dedicate or transfer all or any part of the Common Area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. Notwithstanding the foregoing, no such dedication or transfer, except as expressly permitted elsewhere in this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association;

(h) If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to such Lot Owner's easement for ingress and egress;

(i) The right of the Declarant and any Principal Builder to erect any signs (1) advertising the sale of the Property or any Lot and/or (2) identifying the Subdivision; and

(j) All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 3.2 Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Declaration, any owner may assign his or her right of enjoyment of the Common Area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the Lot.

Section 3.3 Certain Obligations and Access Rights to the Common Area.

(a) Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of the Common Area owned by the Association and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

(b) The Association shall have and is hereby granted a general right of access and easement to all of the Common Area owned by the Association and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration.

Section 3.4 General Drainage, Utility, Sewer and Other Development Easement. The following rights and easements reserved in this Section 3.4 shall not be exercised with respect to a Lot, after the conveyance of such Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. It is further agreed that with respect to any Lots owned by, or for which Principal Builder has contracted to purchase, such rights shall not be exercised by Declarant without Principal Builder's advance written consent. The following rights and easements reserved by Declarant in this Section 3.4 shall run with the Property, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association upon the expiration of the Development Period.

(a) Until the last Dwelling Unit is constructed on the last undeveloped Lot, Declarant hereby reserves unto itself and any Principal Builder, and unto any public or private utility, a general easement ("General Drainage, Utility, and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be installed and maintained all electrical, telephone, water, gas, and sanitary and storm sewer, to serve any Dwelling Unit constructed on the Property. This General Drainage, Utility, and Sewer Easement shall not include any area of the Property on which any Dwelling Unit is constructed, with the exception of any areas covered by patios or decks. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or

reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(b) Until the last Dwelling Unit is constructed on the last undeveloped Lot, Declarant reserves unto itself and to any Principal Builder, and thereafter unto the Association, an easement ("**Lake Easement**") and right-of-way in and to any Lake Area (s) or areas now or hereafter shown on the Plat as a "Block", "Common Area", or "Lake" or any other Common Area within the Property used as a water retention or detention area, or on which a Lake now exists or is later constructed, for the purpose of fulfilling any maintenance obligations set forth in this Declaration and/or establishing and maintaining proper surface water drainage throughout the Property, and an easement of ingress and egress through so much of the remainder of the Property as is reasonably necessary or appropriate, to perform such actions as Declarant or the Association deem necessary or appropriate, for the purpose of establishing and maintaining proper surface water drainage throughout the Property, which such actions shall include the construction, repair and maintenance of retention and detention ponds or lakes in accordance with the requirements of applicable law and of all governmental agencies having jurisdiction (without undertaking any obligation or duty to exceed such requirements).

(c) Until the last Dwelling Unit is constructed on the last undeveloped Lot, Declarant reserves unto itself and to any Principal Builder, and thereafter unto the Association, the right and an undefined sign and facilities easement ("**Sign and Facilities Easement**") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(d) Until the last Dwelling Unit is constructed on the last undeveloped Lot, Declarant reserves unto itself, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any General Drainage, Utility, and Sewer Easement, Lake Easement, and any Sign and Facilities Easement located on the Property (except as to any Lot which has theretofore been conveyed by Declarant), or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof (except as to any Lot which has theretofore been conveyed by Declarant); and,

(iii) Describe more specifically or to change the description of any General Drainage, Utility, and Sewer Easement, Lake Easement, and any Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the

11

Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder the County in which the Property is located.

(e) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.5 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private, over and upon the Common Area.

Section 3.6 Fee Title to Lot. The fee title to any Lot described as bounded by any street, lane, walkway, park, pond, lake, or any other common property which has not been dedicated or accepted by the public and the fee title to any Lot shown on any Plat as abutting upon any such common property shall not extend upon such common property and the fee title to such common property is reserved to the grantor to be conveyed to the Association for the common enjoyment of all residents of the Subdivision.

Section 3.7 Designated Drainage, Utilities, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof (hereafter collectively "DU&E Easements"), which are hereby reserved to the appropriate governmental entities, public utilities and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, and detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 6.2 below, shall be built, erected or maintained on said drainage easements except by Declarant and its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within drainage easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to comply shall operate as a waiver and release of Declarant and their engineers and agents from all liability as to property damage resulting therefrom caused by storm water or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.



Declarant reserves unto itself during the Development Period, and thereafter to the Association, a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary. The Association shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of the Association an emergency exists which precludes such notice.

Section 3.8 Designated Easements for Landscaping, Mounding, Screening and Signage. Landscape Easements designated on the Plat are created for the use by Declarant, the Architectural Review Board and the Association at their election, for the construction, planting and maintenance of trees, shrubs, plantings, sign structures and walk, and other decorative structures. The landscaping and other structures located within the easement may be maintained by the Association, and the Association shall have an easement of ingress and egress on and over such area for the purpose of maintenance. The landscaping and other improvements planted or installed by the Declarant and/or the Association in this area may not be removed by an Owner, and no fence shall be placed in such area by an Owner, except as approved by the Association. Within any strips of ground shown or designated on a Plat as a landscape easement, landscape maintenance easement, landscape maintenance access easement, or by any similar language indicating a landscaping purpose, Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to (i) erect signs which advertise the Property or availability of Lots, and/or identify the Subdivision and (ii) install landscaping, mounding, walls, and screening. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, signs, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, signs, or other improvements shall be erected within the area of any such easements located adjacent to any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

Section 3.9 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

Section 3.10 Easement Work. Notwithstanding any architectural approval under Section 6.2 below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove any fence not in compliance with Section 3.7 and any other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.7 and Section 3.8 above.

Section 3.11 No Access. There may be strips of ground designated on the Plat as "no access strips", "no access", "no access easement", "no access esmt", or by other similar language. Vehicular ingress, egress, and traveling and/or the construction of improvements for such ingress, egress and/or traveling, is prohibited on, over, or across any such strips or areas.

Section 3.12 Reservation of Right to Grant Easement. Prior to the expiration of the Development Period, the Declarant hereby reserves the right to (i) grant easements upon, under, over and across the Property for the benefit of land which is adjacent to the Property and/or (ii) to obtain, for the benefit of the Property, easements upon, under, over and across the real estate which is adjacent to the Property.

9

Section 3.13 Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways and walkways provided prior arrangements are made with the utility company or public agency furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios or other pavings, other than crossings, driveways and walkways, and neither Declarant nor any utility company or public agency using the easements shall be liable for any damage done by either of them or their assigns, agents, employees or servants to shrubbery, trees, flowers, driveways, or other improvements of the Owner located on the land covered by said easements.

#### ARTICLE IV

##### *Association Membership, Voting Rights,*

##### *Board of Directors and Professional Management*

Section 4.1 Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and Principal Builder. Class A members 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 the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and Principal Builder. The Declarant and Principal Builder 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:

- (i) December 31, 2012; or
- (ii) When the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or
- (iii) The date on which the Class B Members agree in writing to the cessation and conversion of the Class B membership.

Section 4.3 Board of Directors. The Board of Directors of the Association shall be appointed and/or elected as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 4.4 Professional Management. The Association may, in its sole and subjective discretion, engage or employ a professional manager or management company, possessing experience in the management of homeowners associations, to assist the Board of Directors in the management and administration of the Association. No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess

of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 4.5 Fulfillment of Commitments. Notwithstanding the cessation of the Class B membership and the turnover of the Association, and notwithstanding the conveyance of any Common Area by the Declarant to the Association, the Declarant reserves unto itself and to Principal builder the right to enter upon any Lots and/or Common Areas for the purpose of complying with the Zoning Commitments (as hereafter defined) and any other commitments extended to any municipality or zoning jurisdiction in connection with any zoning approvals, plat approvals, variance approvals, special use or exception approvals, and/or any other approvals granted by such municipality or zoning jurisdiction.

ARTICLE V

*Covenant for Maintenance Assessments*

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot now or hereafter owned by it within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Regular Yearly Assessments (for maintenance, repairs and ordinary operating expenses, including Common Expenses);
- (b) Special Assessments for capital improvements and operating deficits and for special maintenance or repairs as provided in this Declaration; and
- (c) One Time Assessment for purposes specified below.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with prejudgment interest at eight percent (8%) per annum, costs and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the Lots against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. Declarant shall be responsible for all or any portion of the Common Expenses to the extent of any deficiency in Regular Yearly Assessments collected from Owners prior to the expiration of the Development Period.

Section 5.2 Purpose of Regular Yearly Assessments. The Regular Yearly Assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, maintenance and repair of the Common Area, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. As and if necessary, a portion of the Regular Yearly Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area, and other capital improvements which the Association is required to maintain.

11

Section 5.3 Maximum Regular Yearly Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Yearly Assessment on any Lot shall be Four Hundred and 00/100 Dollars (\$400.00) per Lot per year.

(b) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year not more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, without a vote of the membership. In addition, upon the employment and engagement by the Association of a professional manager or management company to assist the Board of Directors in the management and administration of the Association, there shall immediately and automatically, without notice or vote of membership, be added to the regular annual assessment the cost of such professional management.

(c) From and after January 1 of such year, the maximum Regular Yearly Assessment may be increased each calendar year by more than twenty-five percent (25%) above the maximum Regular Yearly Assessment for the previous year, by a vote of two-thirds (2/3) of the votes entitled to be cast by members who cast votes in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors from time to time may fix the Regular Yearly Assessment, without any vote of the membership, at any amount not in excess of the maximum.

Section 5.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the Regular Yearly Assessments authorized above, the Association may levy a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes entitled to be cast by those members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 5.5 One-time Assessment. Upon the closing of the initial conveyance of each Lot by (i) Declarant as to any Lot (other than Lots sold to Principal Builder); and (ii) Principal Builder (as to any other Lots); the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Two Hundred and 00/100 Dollars (\$200.00) which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of expenses of the Association for its early period of operation of the Association and the Property, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board of Directors.

Section 5.6 Quorum. Written notice of any meeting called for the purpose of taking any action authorized under this Article 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 the total number of votes entitled to be cast (Class A and Class B votes combined) 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

12

meeting shall be one-half (½) 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 5.7 Uniform Rate of Assessment. Regular Yearly Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots; provided, however, that the foregoing notwithstanding, with respect to any Lots held by any licensed builder purchasing a Lot or Lots solely for the purpose of construction of a for-sale Dwelling Unit thereon (a "Builder"), or by the Declarant or Principal Builder, no Regular Yearly Assessments and Special Assessments shall be due or accrue until such time as a Dwelling Unit is fully constructed upon such Lot and sold by Declarant, Principal Builder, or Builder to a third party purchaser.

Section 5.8 Date of Commencement of Yearly Assessments; Due Dates. Subject to the limitations contained in Section 5.7, The Regular Yearly Assessment provided for herein shall commence as to each Lot upon the initial transfer of such Lot by Declarant to an Owner. The Board of Directors shall fix any increase in the amount of the yearly assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Yearly Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period (i.e., annual, monthly, lump-sum or otherwise) for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an Officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 5.9 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established therefor pursuant to this Declaration, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as provided in this Declaration) shall become delinquent and shall constitute a continuing lien on the Lot to which such assessment relates, binding upon the then Owner, his heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs and attorney's fees of preparing and filing the complaint in such action; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area owned by the Association or abandonment of his Lot.

Section 5.10 Subordination of the Lien to Mortgages; Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for

13  
prior assessments by a binding certificate from the Association, issued pursuant to this Declaration, as to whether or not such assessments have been paid.

## ARTICLE VI

### *Use, Restrictions, and Architectural Control*

Section 6.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners and other members of the Association. Any Lot or portion thereof so designated for common use shall become part of the Common Area owned by the Association, and reasonable rules and regulations shall be promulgated and enforced with respect thereto so that the use and enjoyment of adjacent Lots by the Owners thereof shall not be unreasonably disturbed. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

### Section 6.2 Architectural Control.

(a) The Architectural Review Board. An Architectural Review Board consisting of two (2) or more persons shall be appointed by the Declarant and Principal Builder. Following the termination of the Class B memberships, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Plot Plan therefor. Prior to the commencement by any Owner (other than Declarant or Principal Builder) of (i) construction, erection or alteration of any Dwelling Unit, building, fence, wall, swimming pool, tennis court, patio or other structure on a Lot; or (ii) any plantings on a Lot, a Plot Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Dwelling Unit, swimming pool, tennis court, patio or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any person other than Declarant without the prior written approval of the Architectural Review Board of a Plot Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over the Subdivision, and no Owner shall undertake any construction activity within the Subdivision unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Plot Plan approved by the Architectural Review Board. As used in this Section 6.2, "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

(c)

14

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Plot Plan within fifteen (15) days after notice of such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant and Principal Builder, or, if the Class B membership interests have terminated, the Board of Directors, the approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of the Architectural Review Board to act on the plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approval of a Plot Plan deemed denied by the failure of the Architectural Review Board to act on such plan within the specified period) by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth herein to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

(f) Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In disapproving any Plot Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Board if resubmitted.

(g) Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of Article 6, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceedings challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Review Board, could only conclude that such determination constituted an abuse of discretion.

(h) Design Consultants. The Architectural Review Board may utilize the services of architectural, engineering and other persons possessing design expertise and experience in evaluating Plot Plans. No presumption of any conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent persons filing Plot Plans with the Architectural Review Board.

(i) Existing Violations of Declaration. The Architectural Review Board shall not be required to consider any Plot Plan submitted by an Owner who is, at the time of submission of such Plot Plan, in violation of the requirements of this Article 6, unless such Owner submits to the Architectural Review Board with such Plot Plan an irrevocable agreement and undertaking (with such surety as the Board may reasonably require) to remove from the Owner's Lot any improvements or landscaping constructed and/or installed prior to the submission or approval of a Plot Plan (or constructed and/or installed in violation of a previously approved Plot Plan) to the extent any such previously constructed and/or installed improvement or landscaping is not subsequently approved by the Architectural Review Board.

5

(j) Liability of Board. Neither the Architectural Review Board, nor any member thereof, nor any agent thereof, nor the Declarant, shall be responsible or liable in any way for any fees, damages, delays, charges, defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved or the materials to be used.

(k) Inspection. Members of the Architectural Review Board may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

(l) Plot Plans. Prior to commencement of any construction on a Lot, a Plot Plan shall be submitted to the Architectural Review Board in accordance with the requirements of this Section 6.2. Each Owner shall comply with the terms and provisions of Article Six and the requirements of the Architectural Review Board established pursuant to the authority granted by this Declaration.

(m) Construction and Landscaping. All construction upon, landscaping of and other improvement to a Lot shall be completed strictly in accordance with the Plot Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within sixty (60) days following substantial completion of the Dwelling Unit unless the Board agrees to a later landscaping completion date. Construction of said Dwelling Unit shall be completed within one (1) year after the date of the issuance of a building and improvement location permit by the Town of Brownsburg, Indiana. If the Owner fails to commence or complete construction of a Dwelling Unit within the time periods specified herein, or if the Owner should, without Declarant's written approval, sell, convey or otherwise dispose of the Lot before completion of construction of a Dwelling Unit on the Lot, then, in any of such events, Declarant or the Association may:

(i) Obtain injunctive relief to force the Owner to proceed with construction of any Dwelling Unit, a Plot Plan for which has been approved by the Architectural Review Board upon application by such Owner; or

(ii) Pursue other remedies at law or in equity as may be available to Declarant.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Plot Plan shall not relieve such Owner from his obligation to commence and complete construction of a Dwelling Unit upon the lot within the time periods specified herein. For the purposes of this subparagraph (i), construction of a Dwelling Unit will be deemed "commenced" when grading of the building site begins and shall be deemed "completed" when the exterior of the Dwelling Unit (including, but not limited to, the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Plot Plan.

(n) Building and Improvement Location Permit. In addition to the approval required in Section 6.2(c) above, the Town of Brownsburg, Indiana must issue a building and improvement location permit before any structure, improvement or land use may be altered, changed, placed, erected or located in this subdivision. The Town of Brownsburg, Indiana has approved a soil and water conservation plan (erosion control plan) and the Construction Plans



showing building pad areas, pad elevations, and grading plan with slopes for positive surface drainage therefrom. Prior to the closing of the sale of a Lot from the Declarant to an Owner, that Owner shall inspect his Lot to insure that the Declarant's drainage facilities will remove all free standing water from the surface of the Lot. The Owner shall report at once to the Declarant any deficiencies found. The Owner shall develop his Lot in a way that assures that finished slopes, grades and erosion control measures comply with said Construction Plans after completion of all improvements and landscaping. Said Construction Plans may be inspected in the office of said Town of Brownsburg, Indiana during regular office hours. Deviations from the Construction Plans require prior Board approval and may necessitate a site reevaluation and redesign by a registered professional engineer or registered land surveyor at the time of improvement location permit and certificate of occupancy application, which engineer or surveyor shall certify positive surface drainage and that wastewater will gravity flow from the first floor of the Dwelling Unit to a sanitary sewer. In the improvement of any Lot, the Owner thereof will be accountable to the Declarant and the Town of Brownsburg, Indiana, for damages caused by him or his contractors to drainage facilities built by the Declarant. In the event of such damages, the Owner will be given notice by certified or registered mail to repair said damages, after which time, if no action is taken by the Owner, the Board may cause such repairs to be made at the cost of the Owner which sums shall bear interest and be a lien on the Lot and enforced in the manner provided herein for the collection of delinquent assessments.

(o) Principal Builder Exemption. Notwithstanding anything in the contrary contained in the foregoing, it is expressly agreed that Principal Builder shall not be subject to the foregoing requirements in subsections (a) - (m), including, without limitation, any approvals from Declarant, the Association or the Architectural Review Board as to its initial construction of Dwelling Units on Lots.

Section 6.3 Dwelling Unit and Lot Restrictions. Lot use will conform with the regulations of the Town of Brownsburg, Indiana unless these covenants are more restrictive, in which case these covenants will control. All Lots are restricted to residential use except as allowed in Section 6.26 below. The subdivision of a Lot is prohibited unless said division creates two (2) building sites on three (3) contiguous Lots, which building sites comply with the Town of Brownsburg zoning and subdivision regulations and with these covenants. Where a Lot is subdivided, or where an Owner acquires adjoining Lots for the purpose of building one (1) Dwelling Unit across the common lot line, the side lot line setback restrictions specified in Section 6.9 below shall not apply to said common lot line. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Dwelling Units in the Subdivision than the number of original Lots depicted on the Final Plat. Construction of buildings across drainage easements and utility easements that coincide with lot lines is prohibited.

Section 6.4 Dwelling Unit Size. No Dwelling Unit shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family Dwelling Unit three (3) stories or less in height. Except as otherwise provided herein, no Dwelling Unit may be constructed on any Lot unless such Dwelling Unit, exclusive of open porches, attached garages and basements, shall have a ground floor area of one thousand eight hundred (1,800) square feet if a one (1) story structure or one thousand six hundred (1,600) square feet if a higher structure, but in the case of a building higher than one (1) story, there must also be at least four hundred (400) square feet in addition to the ground floor area and the total floor area shall not be less than two thousand (2,000) square feet.

Section 6.5 Leasing. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Dwelling Unit or

17  
Lot may be leased for a period of less than ninety (90) days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease a Dwelling Unit.

Section 6.6 Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot. No more than four (4) household pets, such as cats and dogs, are allowed to be kept or maintained on any Lot, but in no event shall there be more than two (2) of any one (1) type of household pet per Lot. No animal shall be kept, bred or maintained for commercial purposes. Household pets shall be kept quiet so as not to disturb the peace and tranquility of the neighborhood. No such animal shall be allowed to run at large. Should an animal be walked by leash, any debris or animal waste resulting therefrom shall be cleaned up, removed and disposed of immediately by the owner of said animal. Any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' written notice from the Board of Directors, and provided further, that upon written request of twenty-five percent (25%) of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

Section 6.7 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 6.8 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Board of Directors and/or Architectural Review Board; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 6.9 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 6.10 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 6.11 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 6.12 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 6.13 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 6.14 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

18

Section 6.15 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling and a private garage. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed three (3) stories or thirty-five (35) feet in height.

Section 6.16 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant or the Association to cut weeds or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Association or the Declarant may file suit and recover such amount together with reasonable attorneys' fees and costs of collection.

Section 6.17 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sightline limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 6.18 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's, Principal Builder's, Builder's or Association's business on the Property.

Section 6.19 Sign Limitations. No sign of any kind, other than those installed by Declarant, Principal Builder, or the Association may be displayed to public view on any Lot, except that one sign with an area of not more than six (6) square feet may be displayed with the purpose of advertising the Lot for sale.

Section 6.20 Lakes, Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights reserved unto the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 6.21 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the use of Lots and the Common Area owned by the

17

Association. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Property as well as its own books, records and financial statements available for inspection by Dwelling Unit Owners or by holders, insurers and guarantors of first mortgages, that are secured by Dwelling Units in the Property. These documents shall be available during normal business hours or under other reasonable circumstances.

Section 6.22 Development and Sale Period. Nothing contained in this Article 6 shall be construed or interpreted to restrict the activities of Declarant or Principal Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or Principal Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or Principal Builder, as in the sole opinion of Declarant or Principal Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 6.23 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board.

Section 6.24 Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Declarant during the Development Period and, thereafter, by the Board of Directors and/or the Architectural Review Board.

Section 6.25 Notice of Zoning Commitments. Notice is hereby given that certain written commitments were made in connection with the zoning of all or part of the Property which were recorded as Instrument Nos. 2004-00005210 and 2004-00005211 in the Office of the Recorder of Hendricks County, Indiana, copies of which are attached hereto as Exhibit B (the "Zoning Commitments"). To the extent of any inconsistency between the terms of this Declaration and the Zoning Commitments, the Zoning Commitments shall control.

Section 6.26 Home Occupations. No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- (a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said Dwelling Unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the Dwelling Unit for residential purposes;
- (c) There can be no sign or display that will indicate from the exterior of the Dwelling Unit that the Dwelling Unit is being used, in whole or in part, for any purpose other than that of a residential dwelling;
- (d) No commodity can be sold from the Lot or Dwelling Unit located thereon.

20

(e) No person can be employed other than a member of the immediate family residing in the Dwelling Unit;

(f) No manufacturer or assembly operations can be conducted; and

(g) Customers cannot enter upon the Lot or Dwelling Unit for the purpose of conducting business.

In no event shall the following activities be conducted: child care, barber shop, styling salon, animal hospital, kennel, any form of animal care or treatment such as dog trimming, or any similar activities.

Section 6.27 Fences, Yard Ornaments, Prohibition of Street Right of Way Improvements. In no event may any fence be erected or maintained on any Lot without the prior approval of the Architectural Review Board, which may establish design standards for fences and further restrictions with respect to fencing, including limitations on, or prohibition of, the installation of fences in the rear yard of a Lot and along the bank of any Lake. No fence shall be erected or maintained on or within any landscape easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fencing, landscape screening, or walls may be constructed or installed until after architectural approval is obtained from the Declarant, during the Development Period, and thereafter the Board of Directors and/or the Architectural Review Board. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Principal Builder (but only during such period). If approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board. Non-professionally installed fences may be inspected by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. In general, fences shall be located on the property line, one foot within the property line, or three feet within the property line; provided, however, that no fence shall be located any closer to the front of a residence than six feet behind the line of the face of the residence nearest the front line, not counting patios, terraces, entryways, or steps. Swimming pools shall be properly fenced to protect the safety of others as required by Section 6.34 below. Such fences shall not be required if a properly installed automated pool cover is maintained in place that will withstand and support a weight of four hundred (400) pounds or more and satisfies the requirements of all governmental authorities and is kept closed at all times when the pool is not in use or otherwise attended. Fences in easements are prohibited except as permitted in Section 3.7. No fence shall be placed on any Lot or boundary thereof that will obstruct reasonable light, air or view, or will otherwise hinder or damage the aesthetics of the subdivision. No yard ornament shall be allowed on any Lot, including, but not limited to metallic balls, concrete statues, etc., without the approval of the Architectural Review Board. No improvements of any kind shall be permitted in a dedicated street right of way, excepting erosion control, driveway entrances, sidewalks, landscaping and mailboxes.

Fences are to be wrought iron, cedar, or treated pine. Further, all wooden fences are to be dog-eared, flattop shadow box style with 1" x 6" vertical boards, and are to remain unpainted. No fence shall

21

be constructed until its materials, design, and location are first approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board. Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing. All approvals of landscape screening materials, design, and location shall be on an individual basis.

The exact location, material, color and height of the fence and rendering or photograph thereof shall be submitted to the Declarant, during the Development Period, and thereafter to the Board of Directors and/or the Architectural Review Board for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been received by applicant in writing within thirty (30) days after submitted, then said request shall be considered DENIED.

Section 6.28 Animal Kennels. Animal kennels or quarters which are not connected to a Dwelling Unit are prohibited. Animal quarters or kennels which are to be connected to the Dwelling Unit cannot be constructed until after they are approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board.

Section 6.29 Mini Barns and Outbuildings. No mini barn, outbuilding, or other structure which is detached from a Dwelling Unit shall be constructed.

Section 6.30 Playground/Recreational Equipment. No playground or recreational equipment shall be placed or constructed upon a Lot until after it is approved by the Declarant, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Review Board. All such playground or recreational equipment shall be constructed of wood and not metal.

Section 6.31 Exterior Building Finish. Vinyl siding shall not be permitted on any Dwelling Unit or Lot. Each Owner shall conform to the minimum brick requirements set forth in the Zoning Commitments, and in addition the first floor of any Dwelling Unit shall be fully-wrapped with brick, stone or stucco.

Section 6.32 Garages. No garage shall be erected on any Lot which is not permanently attached to the Dwelling Unit, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any Lot which is not permanently attached to the Dwelling Unit. Every Dwelling Unit shall have an attached garage that is at least large enough to shelter the equivalent of two and one-half (2½) automotive vehicles.

Section 6.33 Driveways. Residential driveways shall be constructed of Portland cement concrete, or other hard-surface materials, such as paving stones, but not including asphalt; however, driveways between the backs of curbs and street right of way boundaries, as well as sidewalks, shall be constructed only of Portland cement concrete. All driveways shall be maintained dust-free. If a driveway is approved and constructed upon any easement, the Lot Owner shall be responsible for the repair and maintenance of that driveway.

Section 6.34 Swimming Pools. No swimming pools, where the water level is either partially or completely above natural ground level, shall be permitted. Any in-ground swimming pool shall be properly fenced or covered to protect the safety of others as required by Section 6.27 above. Before installation, such pool, fence or cover shall receive Architectural Review Board approval as required by Section 6.2.

Section 6.35 Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Dwelling Unit or on or in any Common Areas or any part thereof which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity,

would pay, without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in any Dwelling Unit or on or in any Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof or of the exterior of the Property and buildings thereon shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed in any Dwelling Units, on any Lots or in the Common Areas or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property. Barking dogs shall constitute a nuisance. No temporary basketball goals of any description shall be permitted on any lot, in Common Areas or in public rights of way.

Section 6.36 Storage. Outside storage of any items, including, but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless screened from view by enclosures so as to be effectively screened from view outside the Lot upon which the same are located. The design of such screened enclosure must be approved by the Architectural Review Board in accordance with the architectural control provisions hereof. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may be kept outside only if in sanitary containers which are so screened. Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed, inoperable or damaged vehicles or any other vehicles of any description other than normal passenger automobiles (including station wagons and small trucks such as pickups and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Areas, either permanently or temporarily.

Section 6.37 Rules and Regulations. The Board may adopt and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including Common Areas, as the Board, in its sole discretion, deems appropriate or necessary.

Section 6.38 Sidewalks. Each initial Owner taking title from the Declarant, by acceptance of a deed for his Lot, even if not expressed in said deed, is deemed to covenant and agree to build (at the time of construction of the Dwelling Unit) and maintain in good condition a concrete sidewalk at the sides of all streets upon which said Lot abuts. Sidewalks shall be constructed within two (2) years of the date of said deed if no Dwelling Unit is erected on the Lot, or prior to the conveyance of title to another party, whichever first occurs. Said walks shall conform with the lines and grades established by the Board. Each said Owner shall be responsible for grading and finishing yard slopes, erosion control and decorative landscaping as required by the Board for sidewalk construction. Said walks shall conform with the Construction Plans for the subdivision on file in the office of the Town of Brownsburg, Indiana and shall be placed per the Town of Brownsburg, Indiana specifications.

Section 6.39 Outside Burning. No trash, leaves or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and then, only in acceptable incinerators and in compliance with all applicable legal requirements.

Section 6.40 Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

13

Section 6.41 Electric Bug Killers. Electric bug killers, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

Section 6.42 Air Conditioners. No air condition unit shall be installed so as to protrude from any structure located on a Lot (including, but not limited to, the window of any Dwelling Unit or garage) if the same would be visible from a public way or any other Lot.

Section 6.43 Street Numbers. Street numbers shall be uniformly displayed on all Dwelling Units and shall be of such type, size, color and material as are prescribed by the Architectural Review Board.

Section 6.44 Mud Control. Should mud or other debris be distributed on any public street or other area of the Subdivision, as a result of any activity on any Lot, the Owner of that Lot shall be responsible for the removal of that mud or other material on the date of its placement. In the event of such damages, the Owner will be given notice by certified or registered mail to repair said damages, after which time, if no action is taken by the Owner, the Board may cause such repairs to be made at the cost of the Owner which sums shall bear interest and be a lien on the Lot and enforced in the manner provided herein for the collection of delinquent assessments. The Owner further holds Declarant, its partners, agents, engineers, contractors and the Town of Brownsburg, Indiana, harmless from any liability that might result from violation of or failure to conform to this Section 6.44.

## ARTICLE VII

### *Maintenance, Repairs and Replacements*

Section 7.1 By Owners. Except as specifically provided in this Declaration or in any Supplementary Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. Except as may be specified in any Supplementary Declaration, all fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Area owned by the Association. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

Section 7.2 Common Properties and Lawns by the Association.

(a) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:

(i) Maintenance of the Common Area. Maintenance of the Common Area shall include, but shall not be limited to, fertilizing, treating any Lakes, mowing and replanting when necessary of the grass and trees and maintenance of any other improvement within the Common Area;

(ii) Maintenance of any entry signs, permanent subdivision identification sign, landscaping, mounding, fences, trails, pedestrian paths, multi-purpose fields,



24

swimming pools, wading pools, bath houses, playground equipment, and/or any other improvements installed by the Declarant in any Common Area, or any Landscape Easement, Landscape Maintenance Easement, Landscape Maintenance Access Easement or similar easement;

(iii) The maintenance of any street lights which are installed by Declarant; and,

(iv) The maintenance of any brick surface installed by Declarant on any internal street or entryway.

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area owned by the Association (or any items deemed Common Area for purposes of maintenance only) as it deems necessary.

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

(c) The authorized representatives of the Association, the Board of Directors and the Managing Agent for the Association (if any) are hereby granted an easement for access upon and to any Lot as may be required in connection with maintenance repairs or replacements of or to the Common Area owned by the Association, including, but not limited to, access to any easements reserved by any Plat of any portion of the Property for such purposes.

ARTICLE VIII

Insurance

Section 8.1 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee of the Association or Board of Directors, and all persons acting or who may come to act as agents, or employees of any of the foregoing with respect to the Association. It shall also cover all Common Area owned by the Association, public ways and any other areas under the Association's control or supervision. The premiums for all such liability policies shall be a Common Expense.

Section 8.2 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a Common Expense by the Association. Any management



agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force. In addition, the fidelity bond coverage must at least equal one (1) years' assessments on all Dwelling Units in the Property, plus the Association's reserve funds. If available, the fidelity bonds must include a provision that calls for ten (10) days' written notice to the Association or insurance trustee before the bond can be canceled or substantially modified for any reason.

Section 8.3 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The premiums for all such insurance coverage shall be a Common Expense.

Section 8.4 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. Except as provided in any Supplementary Declaration, the same obligation shall apply to an Owner, and not the Association, for damage or destruction to the Owner's Dwelling Unit. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.5 Insufficiency of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a Special Assessment against all Lots for such deficiency.

Section 8.6 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Property. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

ARTICLE IX

*Mortgages*

Section 9.1 Mortgagee Rights. In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any Lot or Lots, jointly or singly, may pay any real estate taxes or other taxes or charges which are in default and which may or have become a charge or lien against any Common Area owned by the Association or any other property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an

obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this Section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys' fees.

Section 9.2 Notice to Mortgagees. The Association, upon request, shall provide to any lender holding a first mortgage upon any Lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such Lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in this Declaration.

Section 9.3 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the first mortgagee of a Lot pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

Section 9.4 Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any Dwelling Unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Properties must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association Articles, Association By-Laws or any other document governing the development and administration of the Property must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 9.5 Unpaid Dues or Charges. Any first mortgagee who obtains title to a Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Dwelling Unit's unpaid dues or charges accrued before the acquisition of the title to the Dwelling Unit by the mortgagee.

## ARTICLE X

### *General Provisions*

Section 10.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants,

27

conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 10.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.3 Assignment. Declarant may at any time assign some or all of its rights and obligations under this Declaration. Such assignment shall be effective after it is executed and recorded by Declarant with the Recorder of Hendricks County, Indiana. After such assignment is recorded with the Recorder of Hendricks County, Indiana, Declarant shall have no further obligations or liabilities under the Declaration with respect to the rights or obligations assigned.

Section 10.4 Amendment. This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Hendricks County, Indiana, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant or Principal Builder reserved or set out hereunder may be amended or changed without Declarant's and Principal Builder's (as applicable) prior written approval. Except as prohibited in the paragraph immediately below, the Declarant reserves the right and power with the written consent of the Principal Builder to amend this Declaration without the approval of the Owners: (i) to correct or clarify the legal description of the Property or to add Additional Property; (ii) to correct clerical or typographical errors; (iii) to make nominal changes in the Declaration; (iv) to the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including the U.S. Department of Housing and Urban Development, the U.S. Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency); or (v) to the extent necessary to enable the Declarant to meet any other reasonable need or requirement, including those associated with the completion of the development of the Property and to facilitate the making or marketing of first mortgages upon any lots. Notwithstanding anything herein to the contrary, the Declarant may unilaterally record any Supplementary Declaration. Any amendment must be recorded.

Neither the Association, the Owners nor Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners of the Dwelling Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;

(b) Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

28

(c) Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement, or reconstruction of the Common Area owned by the Association.

Section 10.5 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the bandling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area owned by the Association, or from the termination of the development. Each Dwelling Unit Owner, by his acceptance of a deed, appoints the Association as his attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Dwelling Unit Owners and their mortgage holders. Any distribution of funds in connection with the termination of this development shall be made on a reasonable and an equitable basis.

Section 10.6 Term. All easements described in this Declaration are permanent easements unless otherwise stated and are appurtenant to, and run with, the Property. They shall at all times inure to the benefit of and be binding on the Owner and the mortgagee from time to time of any Lots and the Owner and any mortgagee, if any, from time to time of the Common Areas, and their respective heirs, successors, personal representatives and/or assigns. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to the Declaration, their respective personal representatives, heirs, successors and/or assigns, for an initial term commencing on the date this Declaration is recorded and ending December 31, 2045, after which time the Covenants and Restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

**IN WITNESS WHEREOF, OAKS AT WINDRIDGE, L.P.**, an Indiana limited partnership, has caused this Declaration to be executed as of the date first written above.

OAKS AT WINDRIDGE, L.P., an Indiana limited partnership

By:

Russell M. Webb, Jr.

By:

Russell M. Webb, Jr.

(Signature)

Russell M. Webb, Jr., President

(Printed Name)

Its:

President

(Title)

29

STATE OF INDIANA )  
HENDRICKS ) SS:  
COUNTY OF ~~MADISON~~ )

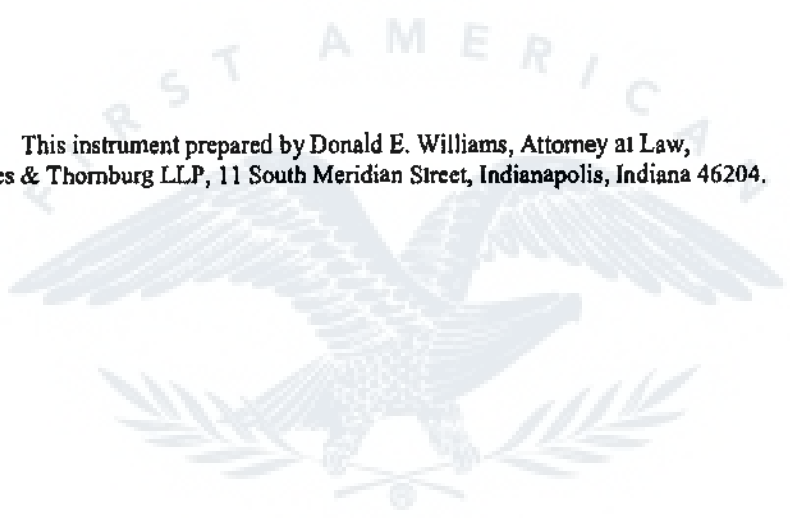
Before me the undersigned, a Notary Public in and for said County and State, personally appeared Russell M. Webb, Jr., the President of Development Managers Corporation, the General Partner of Oaks at Windridge, L.P., an Indiana limited partnership, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Oaks at Windridge.

Witness my hand and Notarial Seal this 00th day of November, 2005.

My Commission Expires:  
09-02-09

Pamela D. Hughes  
Notary Public Residing in Hendricks County, Indiana  
Pamela D. Hughes  
(Printed Signature)

This instrument prepared by Donald E. Williams, Attorney at Law,  
Barnes & Thornburg LLP, 11 South Meridian Street, Indianapolis, Indiana 46204.



30

EXHIBIT A

LEGAL DESCRIPTION

A part of the East Half of the Southeast Quarter of Section 33, Township 17 North, Range 1 East in the Town of Brownsburg, Lincoln Township, Hendricks County, Indiana, being more particularly described as follows:

Commencing at an aluminum disk found representing the Southeast corner of said Half-Quarter Section; thence North 00 degrees 01 minute 40 seconds West on and along the East line of said Half-Quarter Section 1348.70 feet to the POINT OF BEGINNING of this description; thence South 89 degrees 30 minutes 05 seconds West parallel with the South line of said Half-Quarter Section a distance of 1523.28 feet to a point on the West line of said Half-Quarter Section; thence North 00 degrees 09 minutes 05 seconds East on and along said West line a distance of 1025.14 feet; thence South 89 degrees 59 minutes 55 seconds East 140.00 feet; thence North 00 degrees 00 minutes 05 seconds East parallel with the West line of said Half-Quarter Section a distance of 28.48 feet; thence South 89 degrees 58 minutes 55 seconds East 730.00 feet; thence South 00 degrees 00 minutes 05 seconds West parallel with the West line of said Half-Quarter Section 33.77 feet; thence South 89 degrees 59 minutes 55 seconds East 140.00 feet; thence North 22 degrees 25 minutes 17 seconds East 72.70 feet; thence North 89 degrees 58 minutes 20 seconds East 85.71 feet; thence North 80 degrees 02 minutes 03 seconds East 122.84 feet; thence North 89 degrees 58 minutes 20 seconds East 112.88 feet to a point on the East line of said Half-Quarter Section; thence South 00 degrees 01 minute 40 seconds East on and along said East line a distance of 1135.89 feet to the POINT OF BEGINNING and containing 32.05 acres, more or less. Subject to all restrictions, rights-of-way and easements of record.

This record plat consists of 53 Lots numbered 1 through 53, all inclusive, with streets and easements as shown hereon. The size of lots, widths of streets and easements are shown on this plat by figures denoting feet and decimal parts thereof.

The within described real estate represents a part of the real estate as determined by a Land Title Survey prepared by Benchmark Surveying, Inc. and certified by Brian G. Riemiller on January 13, 2004 and is recorded as Instrument Number 00000000000 in Book 000, Pages 0000-0000 in the Office of the Recorder of Hendricks County, Indiana.

Donn M. Scotten  
Registered Land Surveyor  
Indiana No. S-0510



CERTIFICATE OF PLAN COMMISSION



EXHIBIT B

EXHIBIT "C"

STATEMENT OF PURPOSE AND COMMITMENTS

To the Town of Brownsburg regarding the use and/or development of real estate consisting of approximately 40.45 acres, located adjacently West of County Road 650 East, approximately one-quarter mile North of the intersection with County Road 700 North. All Development Standards shall be pursuant to the Town of Brownsburg "R-2" Zoning Standards, unless superceded by the following self-imposed commitments:

"PARCEL D" (Weddle and Ayres):

I. Development Commitments to be established and referenced with the property upon successful annexation into the corporate limits of the Town of Brownsburg:

- \* Maximum Density shall not exceed 2.0 units per acre.
- \* Minimum Lot Width at the building setback line shall be 100 feet.
- \* Minimum Lot Area shall be 13,500 square feet.
- \* Minimum Building usable floor area square footage:
  - a. Single Story Homes 1,800 square feet
  - b. Multi Story Homes 1,600 square feet first floor  
2,000 square feet total
- \* Developer shall establish an aesthetic landscaping buffer along the West frontage of County Road 650 East, excluding the Common Areas. Said Buffer shall consist of the following per 100 foot of frontage:
  - a. Three (3) evergreen trees averaging 8 to 10 feet in height.
  - b. One (1) ornamental tree with a minimum 2" caliper.
  - c. One (1) deciduous shade tree with a minimum 2" caliper.
  - d. One (1) shrub or equivalent with a minimum height of 48 inches.
- \* Decorative Street Lighting shall be provided along the interior streets.

II. Architectural commitments to be established and referenced with the property upon successful annexation into the corporate limits of the Town of Brownsburg:

- \* All homes will have a minimum two and one half-car garage and a concrete or asphalt driveway.
- \* All homes will feature a minimum 6/12 roof pitch.
- \* All roof overhangs must extend 12" beyond wall structure on all building elevations.
- \* Chimney chases above gutter line shall be enclosed.
- \* No vinyl exteriors shall be permitted.



EXHIBIT B

7 32

- \* All homes shall be constructed with a minimum of 50% brick, masonry and/or stucco on the front elevation. Net square footage shall be calculated as the total square footage of the front elevation less the square footage of all openings including but not limited to: Doors, Windows, Cantilevered Bay Windows and Garage Doors.
- \* A Homeowners Association shall be established and provide for the enforcement of "Covenants and Restrictions" and the maintenance of "Commons Areas".





\* 2 0 1 1 1 7 9 6 0 8 \*

201117960

PAUL T HARDIN  
HENDRICKS COUNTY RECORDER  
08/19/2011 12:25:49PM

**Cross Reference:** "Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge" on November 30, 2005 and recorded it on December 1, 2005 as Instrument No. 200500036635 in the Office of the Recorder of Hendricks County, Indiana.

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS OF OAKS AT WINDRIDGE**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF OAKS AT WINDRIDGE (this "Amendment"), dated July 18, 2011, is made by OAKS AT WINDRIDGE, L.P., an Indiana limited partnership ("Declarant") and the individuals listed on the attached Exhibit A (the "Individuals").

**Recitals:**

A. Declarant executed that certain "Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge" on November 30, 2005 and recorded it on December 1, 2005 as Instrument No. 200500036635 in the Office of the Recorder of Hendricks County, Indiana (the "Declaration"). All capitalized terms that are not otherwise defined in this Amendment shall have the same meanings set forth in the Declaration.

B. Declarant is the Owner of the thirty-six (36) Lots more particularly described on the attached Exhibit B and the Individuals are the Owners of the four (4) Lots more particularly described on the attached Exhibit A. As of the date of this Amendment, there are fifty-three (53) Lots, and Declarant and the Individuals constitute 75.47% of the current Owners.

C. RH of Indiana, L.P, an Indiana limited partnership ("RH"), has contracted to purchase all thirty-six (36) Lots described on the attached Exhibit B-1 from Declarant. RH is unwilling to close on the purchase of such Lots without the Declaration first having been amended as provided herein. Declarant and the Individuals all desire that RH complete the

U

11

8x3

purchase of such Lots.

**Amendment:**

NOW THEREFORE, in furtherance of the recitals set forth above, and in accordance with Section 10.4 of the Declaration. Declarant and the Individuals hereby adopt and approve the following amendments to the Declaration:

A. Section 2.10 of the Declaration is hereby deleted and replaced with the following:

“Development Period” means the period of time commencing November 30, 2005 and ending when both Declarant and any Principal Builder no longer own any Lot.

B. Section 2.15 of the Declaration is hereby deleted and replaced with the following:

“Principal Builder” means any Builder that either owns, has owned, or who has contracted to purchase at least thirty (30) Lots in the Subdivision in the aggregate, which amount shall be calculated cumulatively and include Lots purchased or to be purchased under one or more contracts.

C. Section 6.42 of the Declaration is hereby deleted and replaced with the following:

No window air condition unit shall be installed so as to protrude from any structure or window of any Dwelling Unit or garage if the same would be visible from a public way or any other Lot.

D. Notwithstanding anything in the Declaration to the contrary, from and after the date of this Amendment and for so long as RH owns any Lot, no amendment to Sections 2.10 and 2.15 of the Declaration as amended herein or Sections 5.5, 5.7 and 6.3 through 6.44 of the Declaration made by the Declarant, the Association, or the Owners pursuant to Section 10.4 shall be valid unless and until it has been approved by RH in writing and such consent has been executed by RH in recordable form.

IN WITNESS WHEREOF, the Declarant and the Individuals have caused this Amendment to be executed as of the date written above.

*Declarant:*

OAKS AT WINDRIDGE, L.P.

By: Development Managers Corporation,  
its general partner

*Russell M. Wead, Jr.*  
By: \_\_\_\_\_  
Name: RUSSELL M. WEAD, JR.  
Title: PRESIDENT

*The Individuals:*

*Mark Zickrose*  
Signature: \_\_\_\_\_  
Printed: Mark Zickrose

*Michael A. Haas*  
Signature: \_\_\_\_\_  
Printed: Michael A. Haas

*Thomas R. Butters*  
Signature: \_\_\_\_\_  
Printed: Thomas R. Butters

*Alyssa Neal*  
Signature: \_\_\_\_\_  
Printed: Alyssa Neal

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Russell M. Webb Jr., the President of Development Managers Corporation, an Indiana corporation, the general partner of Oaks at Windridge, L.P., an Indiana limited partnership, who, having been duly sworn, acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge for and on behalf of said corporation and limited partnership.

Witness my hand and Notarial Seal this 18<sup>th</sup> day of July, 2011.



Wanda Woodbridge  
(Wanda Woodbridge) Notary Public

My Commission Expires: 9-10-14 My County of Residence: Hamilton

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Marcus Zickfosse, who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge.

Witness my hand and Notarial Seal this 15 day of July



Wanda Woodbridge  
(Wanda Woodbridge) Notary Public

My Commission Expires: 9-10-14 My County of Residence: Hamilton

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Michael Haas, who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge.

Witness my hand and Notarial Seal this 15 day of July, 2011.

Wanda Woodridge  
(Wanda Woodridge) Notary Public  
My Commission Expires: 9-16-14 My County of Residence: Hamilton

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Thomas Butters, who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge.

Witness my hand and Notarial Seal this 15<sup>th</sup> day of July, 2011.

Wanda Woodridge  
(Wanda Woodridge) Notary Public  
My Commission Expires: 9-16-14 My County of Residence: Hamilton

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Alyssa Neal, who acknowledged the execution of the foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions for Oaks at Windridge

Witness my hand and Notarial Seal this 15<sup>th</sup> day of July, 2011



Wanda Woodbridge  
(Wanda Woodbridge) Notary Public

My Commission Expires: 9-6-14 My County of Residence: Harrison

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. W. Russell Wilson, Esq.

This instrument was prepared by W. Russell Wilson, Esq., Frost Brown Todd LLC, 2200 PNC Center, 201 E. Fifth Street, Cincinnati, OH 45202



**Exhibit A**

**Individuals / Owners**

Marcus Zickeloose  
Printed Name

6455 Southern Oak  
Address

8  
Lot Number

Michael A. Haas  
Printed Name

6461 Southern Oak  
Address

7  
Lot Number

Thomas K. Butters  
Printed Name

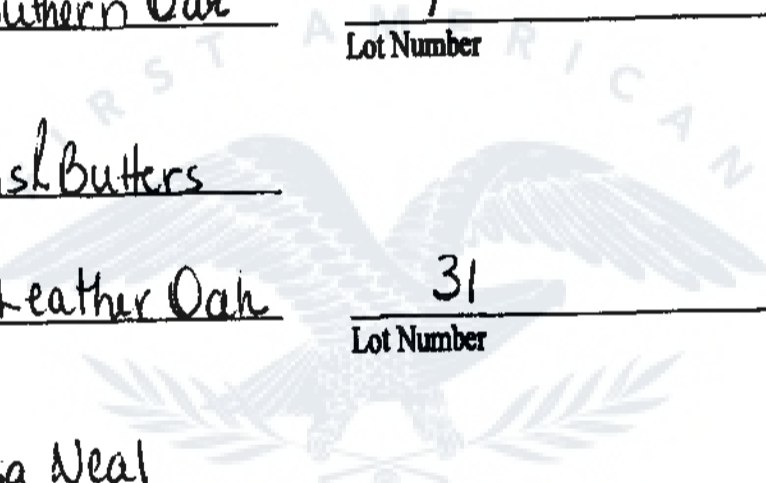
6447 Leather Oak  
Address

31  
Lot Number

Alyssa Neal  
Printed Name

6467 Southern Oak  
Address

6  
Lot Number





**Exhibit B**

**Declarant's Lots**

**Lots numbered 1-3, 10, 12, 14-24, 26, 33-35, 37-49, and 51-53 in Oaks at Windridge Section 1, as per plat thereof, recorded November 23, 2005 as Instrument Number 200500036124 in the Office of the Recorder of Hendricks County, Indiana.**

CINLibrary 7599924.0583066 2314011v3

