

BY-LAWS
OF
WHISPERWOOD LAKES COMMUNITY ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is Whisperwood Lakes Community Association, Inc., an Indiana nonprofit corporation, hereinafter referred to as the "Association". The principal office of the Association shall be located at 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 but meetings of members and directors may be held at such places within the State of Indiana, County of Marion or other County where the Properties are located, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Whisperwood Lakes Community Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration as being within the jurisdiction of the Association.

Section 3. "Common Area" shall have the same meaning as set forth in the Declaration.

Section 4. "Lot" shall mean and refer to any platted lot shown upon any recorded subdivision map of the Properties.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding for all purposes persons or entities having an interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to Davis Homes, LLC, its successors and assigns if such successors or assigns are designated in one or more recorded instruments to have the rights of Developer hereunder.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties, dated as of September 8, 1998, recorded in the

Office of the Recorder of Hendricks County, Indiana on September 29, 1998 as Instrument No. 98-25881, Book 79, pages 1746-1766.

Section 8. "Member" shall mean and refer to those persons entitled to membership in the Association as provided in the Declaration.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and, unless otherwise specified by the Board of Directors, each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president, the Class B member or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

ARTICLE IV

BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) directors, who need not be members of the Association.

Section 2. Term of Office. At the first annual meeting, the members shall elect five (5) directors for a term of one (1) year; at each annual meeting thereafter the members shall elect five (5) directors for a term of one (1) year.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes

as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present in person or by telephone conference facility at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a general statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of the Association, and use all reasonable efforts to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date and/or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained in a reasonable manner.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution designate.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds and other written material instruments.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, unavailability or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring such seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual review of the Association books to be made by an accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and upon request deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Association shall appoint an Architectural Review Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours and with at least ten (10) business days prior written notice, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the 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 six percent (6%) over the prime rate of interest charged by Bank One Indianapolis per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII

CORPORATE SEAL

The Association shall, if necessary, have a seal in circular form having within its circumference the words: Whisperwood Lakes Community Association, Inc.

ARTICLE XIII

AMENDMENTS

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIV

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the directors of the Whisperwood Lakes Community Association, Inc., have hereunto set our hands this 6th day of October, 1998.

Ronald F. Shaddy Jr.
William R. White
Li-Ching Wu

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the Whisperwood Lakes Community Association, Inc., an Indiana corporation, and,

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 6th day of October, 1998.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 6th day of October, 1998.

Li-Ching Wu
Li-Ching Wu
Secretary

**FIRST SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF WHISPERWOOD LAKES**

(Section 2)

This First Supplement is made this 23rd day of March, 2001, by Davis Homes, LLC, an Indiana limited liability company (the "Developer").

2001-10704 Bk-235 p. 64-71

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes, dated September 8, 1998 and recorded the same on September 29, 1998 as Instrument No. 98-25881 in the Office of the Recorder of Hendricks County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Hendricks County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this First Supplement as follows:

1. Definitions. All terms used in this First Supplement not otherwise defined in this First Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

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2. First Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and made subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

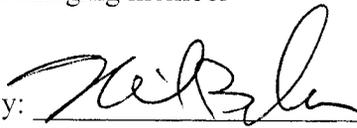
3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this First Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this First Supplement has been executed by Developer as of the date first above written.

By: Davis Homes, LLC,
an Indiana limited liability company

By: Davis Holding Corporation,
managing member

By: 
Michael B. Davis
Vice President

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STATE OF INDIANA)
)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared Michael B. Davis, Vice President of Davis Holding Corporation, who acknowledged the execution of the foregoing First Supplement to Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes.

WITNESS my hand and Notarial Seal this 23 day of March, 2001.

Briquette Solgan
Notary Public

Briquette L. Solgan
Printed Name

My Commission Expires: 5-15-08

Residing in Marion County

This instrument was prepared by Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317) 595-2907.

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EXHIBIT "A"

LAND DESCRIPTION

A portion of the North Half of the Fractional Northeast Quarter of Section 2, Township 15 North, Range 1 West in Center Township, Hendricks County, Indiana, being more particularly described as follows:

Commencing at a railroad spike found, per County ties, marking the Northeast corner of said Northeast Quarter Section; thence South 00 degrees 40 minutes 27 seconds East on and along the East line of said Quarter Section 737.00 feet to the Southeast corner of McClain's land as described in a deed recorded in Deed Book 273, Pages 307-308 in the Office of the Recorder of said County; thence South 89 degrees 56 minutes 04 seconds West on and along the South line of McClain's land 40.00 feet to the Northeast corner of Whisperwood Lakes, Section One a subdivision in the Town of Danville per the plat thereof recorded in Plat Cabinet 1, Slide 109, Pages 2 and 2A in the Office of the Recorder of said County; thence the following four (4) courses being on and along the East and South boundary of said subdivision; (1) South 00 degrees 40 minutes 27 seconds East 494.04 feet to the Southeast corner of said subdivision; (2) South 89 degrees 10 minutes 22 seconds West 39.12 feet; (3) South 44 degrees 21 minutes 39 seconds West 17.09 feet; (4) South 89 degrees 10 minutes 22 seconds West 444.72 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 40 minutes 14 seconds East 203.27 feet to a point on the South line of the North Half of said Quarter Section; thence South 89 degrees 10 minutes 22 seconds West on and along said South line 1533.40 feet; thence North 00 degrees 03 minutes 56 seconds West 345.00 feet; thence North 89 degrees 56 minutes 04 seconds East 900.00 feet; thence North 79 degrees 13 minutes 14 seconds East 49.71 feet; thence North 57 degrees 42 minutes 26 seconds East 50.24 feet; thence North 46 degrees 17 minutes 32 seconds East 300.00 feet to the Southwest corner of Lot Numbered Sixty Four (64) of Whisperwood Lakes, Section One a subdivision in the Town of Danville per the plat thereof recorded in Plat Cabinet 1, Slide 109, Pages 2 and 2A in the Office of the Recorder of Hendricks County, Indiana; thence the following four (4) courses being on and along the boundary of said subdivision; (1) South 43 degrees 42 minutes 28 seconds East 190.00 feet; (2) South 46 degrees 17 minutes 32 seconds West 39.26 feet; (3) South 43 degrees 42 minutes 28 seconds East 160.00 feet; (4) South 52 degrees 33 minutes 47 seconds East 138.06 feet to the POINT OF BEGINNING, containing 12.81 acres, more or less, subject to all restrictions, rights-of-way and easements of record.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

WHISPERWOOD LAKES

PC 12109 pg 2-2A

THIS DECLARATION ("Declaration") is made this 24th day of September, 1998 by Davis Homes, LLC, an Indiana limited liability company ("Developer").

Recitals

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer intends to subdivide the Initial Real Estate into residential lots.
3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain covenants, conditions and restrictions for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create an organization to which shall be assigned the responsibility for maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Initial Real Estate as hereafter recorded in the office of the Recorder of Hendricks County, Indiana and of collecting and disbursing assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tracts adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate" or the "Subdivision").

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be

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acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following covenants, conditions and restrictions, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

ARTICLE I

DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Association" means Whisperwood Lakes Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will hereafter cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Paragraph 6.1 of this Declaration.

1.3 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common Areas may be located within a public right-of-way.

1.4 "Common Expenses" means (i) expenses associated with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including without limitation expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping located on a Drainage, Utility or Sanitary Sewer Easement or on a Landscape Easement to the extent the Association deems it necessary to maintain such easement, (ii) expenses associated with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sanitary Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance provided for herein and (v) all expenses incurred in the administration of the Association or the performance of the terms and provisions of this Declaration.

1.5 "Developer" means Davis Homes, LLC, an Indiana limited liability company, and any successors or assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.6 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Lot within the Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.7 "Lake Easement" means those areas of ground so designated on a Plat of any part of the Real Estate.

1.8 "Landscape Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

1.9 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Real Estate.

1.10 "Mortgagee" means the holder of a duly recorded first mortgage lien on any Lot or Residence Unit.

1.11 "No Planting Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

1.12 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding for all purposes those persons or entities having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot in the Real Estate.

1.13 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the office of the Recorder of Hendricks County, Indiana.

1.14 "Residence Unit" means any single family home constructed on any part of the Real Estate.

1.15 "Utility, Drainage or Sanitary Sewer Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

ARTICLE II

APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the applicable covenants, conditions and restrictions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any other builder or any other Owner of the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions and restrictions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such

occupancy, each Owner covenants, for such Owner, such Owner's heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions and restrictions of this Declaration.

ARTICLE III

PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Lot and related Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas which are in addition to the regular and special assessments described herein;

(ii) the right of the Association to fine any Owner or make a special assessment against any Lot in the event a person permitted to use the Common Areas by the Owner of such Lot violates any rules or regulations of the Association;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Areas or grant easements therein to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;

(iv) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate; and

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas subject to the terms of this Declaration and any rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Developer may at any time and from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association by warranty deed, and such Common Areas so conveyed shall then be the property of the Association; provided, however, that the Common Areas for the Initial Real Estate and any additional lands added to the scheme of this Declaration, respectively, shall be conveyed to the Association on or before the time that the first Lot within the Initial Real Estate or such additional land, respectively and as the case may be, is conveyed for residential use.

ARTICLE IV

USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating, fishing in or on or other recreational use of any lake, pond, creek, ditch or stream on the Real Estate. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

4.2 Use of Common Areas. Subject to section 4.1 above, the Common Areas shall be used only for recreational purposes and other purposes permitted or sanctioned by the Association.

4.3 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision. No direct access is permitted to any Lot via County Road 100 N nor via County Road 200 E.

4.4 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contain additional restrictions on the use of the Lots in the Subdivision, including, without limitation, prohibitions against commercial use, detached accessory buildings and nuisances; restrictions relating to the use of Landscape Easements, and Utility, Drainage and Sanitary Sewer Easements; and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

ARTICLE V

ASSOCIATION

5.1 Membership. Each Owner shall automatically become a member of the Association and shall remain a member of the Association so long as he or she owns a Lot.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the immediately following subparagraph). Each Class A member shall be entitled to one (1) vote per Lot owned.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B

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membership shall cease and be converted to Class A membership upon the Applicable Date (as defined in Section 5.3 below).

5.3 Applicable Date. The term "Applicable Date" shall mean when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or the expiration of the Development Period, whichever shall first occur.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote and no Lot's vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

5.6 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer 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, without any termination penalty, on written notice as provided therein, but in any event, with at least ninety (90) days prior written notice.

5.7 Responsibilities of the Association. The responsibilities of the Association shall include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Landscape Easements as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of any entrance street light, any private street signs and any private streets which may be shown on any Plat of a part of the Real Estate as Common Area.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of each Owner of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on such Lot free from obstructions so that the storm water drainage will be unimpeded.

(v) Maintenance of lake water so as not to create stagnant or polluted waters affecting the health and welfare of the community.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration.

(vii) Assessment and collection from the Owners and payment of all Common Expenses.

(viii) Performing or contracting for property or Association management, snow removal, Common Area maintenance, trash removal or other services as the Association deems necessary or advisable.

(ix) Enforcing the rules and regulations of the Association and the requirements of this Declaration and any applicable zoning or other recorded covenants, in each case, as the Association deems necessary or advisable.

5.8 Powers of the Association. The Association may adopt, amend or rescind reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, in each case as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges or fines against any Owner or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer, except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof or to enforce the indemnity rights contemplated hereby except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of

gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any such action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any accountant, attorney or other person or firm employed or retained by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend any meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this section 5.11.

ARTICLE VI

ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established an Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The three persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots but need not be members of the Board of Directors. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, structures or any other improvements placed or modified by any person on any Lot and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, in such a manner as to preserve the value and desirability of the Real Estate and the harmonious relationship among Residence Units and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, walkway, fence, deck, pool, tennis court, basketball goal, wall, patio or other improvement of any type or kind shall be

erected, constructed, placed or modified, changed or altered on any Lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise permitted by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application (a "Requested Change") made to it when:

(a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration or the Plat Covenants and Restrictions applicable to any part of the Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent Residence Units or related improvements; or

(c) The Requested Change in the opinion of the Architectural Review Committee would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) Rules and Regulations. The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations or building policies or procedures as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of Requested Changes.

6.3 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within forty-five (45) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association, the Developer nor any agent or member of any of the foregoing,

shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

ARTICLE VII

ASSESSMENTS

7.1 Purpose of Assessments. Each Owner of a Lot by acceptance for itself and related entities 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 for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. The general purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following specific purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, Landscape Easements, Drainage, Utility or Sanitary Sewer Easements and the drainage system, (iii) for the performance of the responsibilities and duties and satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots within the Subdivision.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the "Maximum Regular Assessment" as follows:

(i) Until December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Two Hundred Forty Dollars (\$240.00).

(ii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) per

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year above the Regular Assessment for the previous calendar year without a vote of the members of the Association.

(iii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called and held for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called and held for such purpose.

7.4 No Assessment against Developer During the Development Period. Neither the Developer nor any affiliated entity shall be assessed any portion of any Regular or Special Assessment during the Development Period.

7.5 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner, provided that, in the case of the conveyance by Developer of a Lot to any builder in the Subdivision not related to Developer, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to such builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The installment periods and due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment (as described in section 7.7 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association on the first day of each month of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to attorneys fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this section 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. All Regular Assessments and Special Assessments, together with interest, costs of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sanitary Sewer Easement Deemed a Special Assessment. As provided in the Plat Covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sanitary Sewer Easement including any builder, shall be required to keep the portion of said Drainage, Utility or Sanitary Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Developer and the Association. Also, no structures or improvements, including without limitation decks, patios, pools, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's or the Association's written request, be promptly removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of such written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer or the Association may enter upon the Lot and cause such obstruction, structure or improvement to be removed so that the Drainage, Utility or Sanitary Sewer Easement is returned to its original designed condition. In such event, Developer or the Association shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a special assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any Regular Assessment or Special Assessment may be collected.

ARTICLE VIII

INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if practicable, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as Common Expenses.

ARTICLE IX

MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Drainage, Utility or Sanitary Sewer Easements located on the Lot, free of weeds, trash or construction debris and otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner reasonably satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a special assessment against such Lot and the owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the offending Owner for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association owns or is required to maintain hereunder, including without limitation any Subdivision improvement, such as fences or columns erected by the Developer in right-of-way areas, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas and other improvements if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, subcontractor, employee, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any other improvements maintained by the Association pursuant to this Paragraph 9.2, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and

such Owner shall pay for such damage and such maintenance, repairs and replacements, 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 constitute a special assessment against such Owner, whether or not a builder, and its Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

ARTICLE X

MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of any Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot may notify the Secretary of the Association by certified mail (return receipt requested) of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary as herein provided, no notice to any Mortgagee shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become liens against any Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee with respect to any Lot may make the payment on behalf of the Association.

ARTICLE XI

AMENDMENTS

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than ninety percent (90%) in the aggregate of all votes entitled to be cast by all Owners if the proposed amendment is considered and voted upon on or before twenty (20) years after the date hereof; and not less than seventy-five percent (75%) of such votes if the proposed amendment is considered and voted on after twenty (20) years from the date hereof. In any case, provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit within the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner provided the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing sub-section 10.2. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication or mortgaging of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing section 10.2.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such

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proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days after the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Real Estate, to make any technical amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation: to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided, however, that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Paragraph 11.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Paragraph 11.1 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Hendricks County, Indiana, and no amendment shall become effective until so recorded.

ARTICLE XII

MISCELLANEOUS

12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Hendricks County, Indiana, shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Association and the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land comprising the Real Estate and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2018, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

12.4 Severability. Invalidation of any of the covenants, conditions or restrictions 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.

12.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

12.6 Annexation. Additional land adjacent to the Real Estate may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation by Developer in the Office of the Recorder of Hendricks County, Indiana, of a supplemental declaration, and such action shall require no approvals or other action of the Owners.

ARTICLE XIII

DEVELOPER'S RIGHTS

13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all of the Real Estate for the use of Developer and its representatives, agents, designees, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this section 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or the foundation of a building properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate and such parties shall, to the extent reasonably practicable, repair any damage or destruction caused by reason of such parties' exercise of this access license.

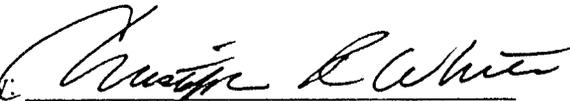
13.2 Signs. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat Covenants with respect to signs during the Development Period. The Developer and its designees shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

13.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Hendricks County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer, the Association or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

Davis Homes, LLC, an Indiana limited liability company, by its manager-member

Davis Holding Corporation, an Indiana corporation

By: 

Christopher R. White,
Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared Christopher R. White, Vice President of Davis Holding Corporation, an Indiana corporation, who acknowledged the execution of the foregoing Declaration.

WITNESS my hand and Notarial Seal this 8th day of September, 1998.

My Commission Expires:

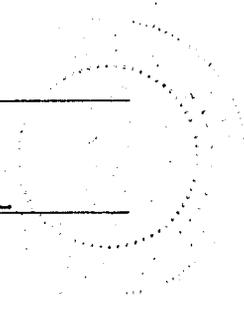
4-21-00

County of Residence:

Hamilton

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed Name



This instrument was prepared by and return recorded instrument to: Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240, (317) 595-2900.

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Exhibit "A"

LAND DESCRIPTION

That portion of the North Half of the fractional Northeast Quarter of Section 2, Township 15 North, Range 1 West of the Second Principal Meridian, Hendricks County, Indiana, more particularly described as follows:

Considering the North line of said Northeast Quarter as bearing North 89 degrees 56 minutes 04 seconds East with all bearings contained herein being relative thereto.

Commencing at a railroad spike found, per county ties, marking the Northeast corner of said Northeast Quarter; thence South 00 degrees 40 minutes 27 seconds East along the East line of said Northeast Quarter 737.00 feet to the southeast corner of McClain's land as described in deed recorded in Deed Book 273, Pages 307-308 in the Office of the Recorder of said county; thence South 89 degrees 56 minutes 04 seconds West along the south line of said land 40.00 feet to the west 40.00 foot right-of-way line of County Road 200 East as per Right-of-Way Grant recorded as Instrument No. 9600022253 in Volume 3, Pages 568-570, in said county records; said point being the POINT OF BEGINNING of this description; thence South 00 degrees 40 minutes 27 seconds East along said right-of-way line 494.04 feet to the north line of Reed's land as described in deed recorded as Instrument No. 9700013517 in Volume 16, Pages 1182-1183, in said county records, with the following three (3) courses being along said north line: 1) thence South 89 degrees 10 minutes 22 seconds West 39.12 feet; 2) thence South 44 degrees 21 minutes 39 seconds West 17.09 feet; 3) thence South 89 degrees 10 minutes 22 seconds West 444.72 feet to the northwest corner of Reed's land; thence North 52 degrees 33 minutes 47 seconds West 138.06 feet; thence North 43 degrees 42 minutes 28 seconds West 160.00 feet; thence North 46 degrees 17 minutes 32 seconds East 39.26 feet; thence North 43 degrees 42 minutes 28 seconds West 330.00 feet; thence North 46 degrees 17 minutes 32 seconds East 15.11 feet; thence North 43 degrees 42 minutes 28 seconds West 190.00 feet; thence South 46 degrees 17 minutes 32 seconds West 235.18 feet; thence South 89 degrees 56 minutes 04 seconds West parallel with the North line of said Northeast Quarter 391.43 feet; thence North 00 degrees 03 minutes 56 seconds West 228.27 feet; thence South 89 degrees 56 minutes 04 seconds West parallel with said North line 75.00 feet; thence North 00 degrees 03 minutes 56 seconds West 164.32 feet; thence North 64 degrees 56 minutes 04 seconds East 14.52 feet; thence North 25 degrees 03 minutes 56 seconds West 50.00 feet; thence North 17 degrees 51 minutes 15 seconds West 119.97 feet to the southeast corner of Bear's land as described in deed recorded in Deed Book 352, Pages 672-673, in said county records; thence North 00 degrees 22 minutes 14 seconds West along the east line of said land 240.00 feet to the North line of said Northeast Quarter; thence North 89 degrees 56 minutes 04 seconds East along said North line 950.71 feet to the northwest corner of Minor Plat No. 662, as per plat recorded in Plat Cabinet 4, Slide 24, Page 1, in said county records; thence South 00 degrees 38 minutes 21 seconds East along the west line of said plat 340.00 feet to the southwest corner thereof; thence North 89 degrees 56 minutes 04 seconds East along the south line of said plat 600.00 feet to the southeast corner of Lot 2 of said plat; thence South 00 degrees 47 minutes 48 seconds East along the west line of Lot 1 of said plat 97.15 feet to the northwest corner of McClain's land as described in deed recorded in Deed Book 337, Pages 593-594, in said county records; thence South 00 degrees 40 minutes 27 seconds East along the west line of said McClain's land 299.85 feet to the southwest corner of McClain's land as described in deed recorded in Deed Book 273, Pages 307-308, in said county records; thence North 89 degrees 56 minutes 04 seconds East along the south line of said McClain's land 154.00 feet to the POINT OF BEGINNING, containing 29.786 acres, more or less, subject to all rights-of-way and easements of record.



**Cross-Reference: Inst. No. 9800025881
Inst. No. 200100010706**

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
WHISPERWOOD LAKES**

This Amendment to the Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes was made on the date set forth below by the Whisperwood Lakes Community Association, Inc.

WITNESSETH:

WHEREAS, the subdivision located in Hendricks County, Indiana, commonly known as Whisperwood Lakes, was established by the developer upon the recording of certain plats with the Office of the Recorder of Hendricks County; and

WHEREAS, in conjunction with the plats, the community's developer recorded a certain "Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes" in the Office of the Recorder of Hendricks County, Indiana on September 29, 1998, as **Instrument No. 9800025881** (hereafter, the "Declaration"); and

WHEREAS, the First Supplement to the Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes was recorded in the Office of the Recorder of Hendricks County, Indiana on April 25, 2001, as **Instrument No. 200100010706** (hereafter, the "Supplement"); and

WHEREAS, the Whisperwood Lakes Community Association, Inc., an Indiana not-for-profit corporation, was established to supervise, maintain, and administer the affairs of Whisperwood Lakes, including enforcement of the terms, covenants, and restrictions set forth in the Declaration; and

WHEREAS, the Declaration, together with all recorded supplements and amendments thereto, is applicable to and binding upon all property and Owners within the Whisperwood Lakes subdivision; and

WHEREAS, to govern and administer the affairs of Whisperwood Lakes, the developer caused to be incorporated under the laws of the State of Indiana, a nonprofit corporation under the name Whisperwood Lakes Community Association, Inc. (hereafter, the “Association”); and

WHEREAS, the Owners of Whisperwood Lakes desire to amend the Declaration; and

WHEREAS, Article XI, Section 11.1(iv) of the Declaration sets forth that the Declaration may be amended upon the approval of Owners representing at least seventy-five (75%) percent of the Lots in Whisperwood Lakes; and

WHEREAS, the Owners representing at least seventy-five (75%) percent of the Lots in Whisperwood Lakes have voted to approve the following First Amendment to the Declaration.

NOW, THEREFORE, the Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes is hereby amended as follows:

1. A new Article XIV is added to the Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes, which shall read, in its entirety, as follows:

ARTICLE XIV

Leasing Restrictions

Section 14.1. General Prohibition of Leased Dwelling Lots (“Rental Ban”). The Association’s members recognize that Owner-occupants are both psychologically and financially invested in a home to a greater extent than a renter, and thus Owner-occupants maintain their property better than renters generally. The Association’s members wish to ensure that the residents within the community share the same proprietary interest in and respect of the Lot and the Common Areas, and to encourage residents to not only maintain property values but also to improve them by recognizing that Owner-occupants have more incentive to do so compared to non-Owner Occupants. Thus, there shall be no leasing or rental of any Lot except as otherwise provided in this Article XIV.

Section 14.2. “Rental” and “Lease” Defined. The “Rental Ban” described in this Article XIV is intended to apply to all forms of non-Owner occupancies, including but not limited to Leases, Rentals, Land Contracts, or Rent to Own Agreements, except as specifically provided herein. For the purposes of this Article XIV, “rented” or “leased,” as used interchangeably herein, means leased or rented or occupied, whether or not for compensation of any kind, by anyone other than an Owner of the Lot together with members of his or her household.

However, the “Rental Ban” will not apply to any situation where a Lot is occupied by members of the Owner’s family (persons related by blood, marriage, adoption or foster care, to include parents, children, grandparents and grandchildren), or where the Owner continues to live in the Lot as his or her principal place of residence. “Family” occupancy will not be considered to be a “rental” in the context of the Rental Ban; provided, however, the Owner and occupants are still subject to the remaining provisions and requirements of this Article XIV. In the case of any such “Family” occupancy, the Owner shall be required to provide a statement by affidavit as to the familial relationship, within thirty (30) days to the Association.

Any Lot owned by a Trustee or by a Fiduciary shall not be deemed to be a rental, provided that the resident is the Trustee, the Fiduciary of an Estate, or a beneficiary of the Trust or Estate, and further provided that no rent, payment, service, or other consideration is paid or provided to the Owner or any other party in connection with that occupancy. The Trustee or Fiduciary shall submit a certificate to the Association indicating who is authorized to reside in the Lot within thirty (30) days to the Association.

If the Lot is occupied by a manager of an Owner that is a limited liability corporation, or a shareholder of an Owner that is a corporation, it will not be deemed a rental, provided that no rent, payment, service, or other consideration is paid or provided to the Owner or any other person or party in connection with that occupancy. All other occupancies of a Lot by representatives, employees, agents, guests, or lessees of a corporation, partnership or other entity shall be considered rentals for the purpose of this Rental Ban and are therefore prohibited. Any corporate entity that owns a Lot shall submit a certificate of designated representative to the Association within thirty (30) days. This certificate will indicate both who is authorized to vote on behalf of the corporation as well as who is authorized to reside in the Lot.

Section 14.3. Effective Date of “Rental Ban.” As of the date on which this Amendment is recorded in the Office of the Recorder of Hendricks County (the "Recording Date"), these rental restrictions shall be deemed effective. Within thirty (30) days after the Recording Date, the Board shall provide written notice to all Owners setting forth the Recording Date. The Rental Ban shall not apply to any existing lease or rental in place as of the Recording Date, so long as the Owner-landlord mails or otherwise delivers to the Board (at the address shown in the notice of the Recording Date), within sixty (60) days after the Recording Date, a copy of each executed lease of such Unit which is in effect as of the Recording Date. The Owners of such pre-Recording Date rented Lots shall not be subject to the Rental Ban but shall be subject to the remaining provisions of this Article XIV. However, when the legal Owners of record of any of the pre-Recording Date rented Lots sell, transfer, or convey such Unit(s) to another Owner after the date of recording of this Amendment, such Units shall immediately become subject to the Rental Ban. The failure of any such Owner-landlord of a leased or rented Lot to deliver a copy of such pre-Recording Date lease within said sixty (60) day period to the Board or Managing Agent shall result in said Owner-landlord's Lot(s) being subject to the Rental Ban (from and after the date of expiration of such pre-Recording Date lease).

Section 14.4. Hardship Exceptions and Waiver. An Owner may request the Board to waive the Rental Ban if the Owner establishes to the Board's satisfaction that the Rental Ban will cause undue hardship. If the Board approves in writing of the Owner's request, the Owner may rent or lease said Lot, subject to any further conditions or limitations imposed by the Board in the Board's discretion, but only if the Owner satisfies all other requirements of Article XIV. Such decision shall be at the sole discretion of the Board and shall be subject to further conditions and limitations as the Board deems appropriate. The Board may, but is not required to, consider the following as an "undue hardship":

- i. Temporary relocation, of no more than one (1) year, of the residence of an Owner to a point outside of a fifty (50) mile radius of the perimeter of Whisperwood Lakes made necessary due to a change of employment of at least one (1) of such Owners, which must be documented by written confirmation from the Owner's employer addressed to the Association that indicates the length of time of the relocation and where the Owner will be relocated to, along with the expected return date, or
- ii. Necessary and temporary relocation of the residence of an Owner due to mental or physical infirmity or disability of at least one (1) of such Owners; or
- iii. The Owner is a reservist in the United States Armed Forces who is called to temporary active duty or is active-duty personnel in the United States Armed Forces who is temporarily deployed more than fifty (50) miles from the Boulders.

If an Owner desires to request an exception based upon hardship circumstances, the Owner must submit a written request describing the nature of the alleged hardship and need to rent. The Board may approve or deny such requests as it deems appropriate.

Section 14.5. General Lease Conditions.

- (a) All leases, including renewals, shall be in writing, and no lease shall be entered into for an initial term of less than one (1) year without the prior written approval of the Board of Directors. Owners may not lease, rent, or otherwise operate their home and Lot on a hotel, transient or short-term rental basis. For the purpose of this Section 14.5, "short-term rental" is defined as any term of less than one (1) year. This short-term rental prohibition includes, but is not limited to, the use of a short-term rental platform through which unaffiliated parties offer to rent a home and Lot or portion thereof to an occupant and collects consideration for the rental from the occupant (for example, Airbnb or VRBO).
- (b) A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted as well as personal identifying information such as social security numbers) shall be provided to the Board of Directors or the Managing Agent by the Owner within thirty (30) days after execution.
- (c) No portion of any Lot other than the entire Lot shall be leased for any period.
- (d) No subleasing shall be permitted.

- (e) All leases shall be made expressly subject and subordinate in all respects to the terms of this Declaration, the Plat Covenants, the By-Laws, and the rules and regulations adopted by the Board of Directors, as amended (collectively referred to hereafter as the “Governing Documents”), to the same extent as if the tenant were an Owner and a member of the Association.
- (f) All leases shall provide for direct action by the Association and/or any Owner against the tenant with or without joinder of the Owner of such Lot. If such provision is not in the lease, it will be deemed to be in such lease.
- (g) The Owner shall supply copies of the Governing Documents to the tenants prior to the effective date of the lease.
- (h) The Owner cannot be delinquent in the payment of any assessments or other charges to the Association. If at any time an Owner becomes delinquent, the Board shall have the right to revoke said Owner’s right to lease the Owner’s Lot, even if during the term of a lease.
- (i) Owners must provide the Board of Directors or Managing Agent with the name of the tenant(s) and any other residents living in the Lot, together with the phone number of the tenant(s). Also, the Owner must provide the Board of Directors or Managing Agent with the Owner’s contact information such as address and phone number.
- (j) To be eligible to lease his or her Lot, the Owner cannot be in violation of any provisions of the Governing Documents. If at any time an Owner violates any such provisions through the actions or omissions of the Owner’s tenant, the Board shall have the right to revoke said Owner’s right to lease the Owner’s Lot, even if during the term of a lease.

Section 14.6. Owner is Still Liable. No lease shall provide, or be interpreted or construed to provide, for a release of the Owner from his or her responsibility to the Association and the other Owners for compliance with the provisions of the Governing Documents, or from the Owner’s liability to the Association for payments of assessments or any other charges.

Section 14.7. Association’s Copy of Lease. A copy of each executed lease by an Owner which identifies the tenant (but which may have the rental amount deleted) shall be provided to the Board by the Owner within thirty (30) days after execution.

Section 14.8. Violations. Any lease or attempted lease of a Lot in violation of the provisions of this Article XIV shall be voidable at the election of the Association’s Board of Directors or any other Owner, except that neither party to such lease may assert this provision to avoid its obligations thereunder. In the event of a violation, the Board of Directors, on behalf of the Association, or any Owner, shall have the right to exercise any and all available remedies at law or equity, including the right to recover from the violating Owner all attorneys fees, costs

and expenses.

Section 14.9. Institutional Mortgagees. The provisions of this Article XIV shall not apply to any institutional mortgagee of any Lot which comes into possession of the Lot. However, when a Lot is sold or conveyed by such an institutional mortgagee to a subsequent purchaser, that subsequent purchaser or Owner shall be bound by the provisions of this Article XIV.

Section 14.10. Burden of Proof. Anything to the contrary herein notwithstanding, if at any time a Lot is not occupied by one of the Owners thereof, there shall be a presumption that the Lot is being leased and subject to the provisions of this Article XIV and the Owners shall have the burden of proving to the satisfaction of the Board of Directors that the occupancy is not in violation of the terms of this Article XIV, including but not limited to the delivery to the Board of Directors of a written statement of the nature and circumstances of the occupancy and any written document or memorandum that is the legal basis for the occupancy. For purposes of this Article XIV and this Section 14.9, any occupancy (including occupancy pursuant to a rent-to-buy contract or similar arrangement or pursuant to any option to purchase) by anyone other than an Owner shall be deemed to be a lease, rental or other similar arrangement, unless the Owner delivers to the Board of Directors a written purchase contract, conditional sales contract or similar contract whereby the occupant is unconditionally and presently legally obligated to purchase the Lot. If the Owner is selling his or her Lot via land contract, contract for deed, or similar agreement, the contract or memorandum thereof must be recorded with the County Recorder to be deemed valid. Failure to record the contract or memorandum thereof will automatically deem the document to be a lease for purposes of this Declaration.

2. All other terms and provisions of the Declaration and the exhibits thereto shall remain unchanged and in full force and effect. Any capitalized term not defined herein shall have the meaning prescribed to it in the Declaration.
3. Certification. The undersigned persons hereby represent and certify that all requirements for and conditions precedent to this First Amendment to the Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes have been fulfilled and satisfied.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, we, the undersigned, do hereby execute this First Amendment to the Declaration of Covenants, Conditions and Restrictions of Whisperwood Lakes, and certify that the Owners of at least seventy-five percent (75%) of the total number of Lots in Whisperwood Lakes have approved such Amendment, and further certify the truth of the facts herein stated this 24 day of June, 2023.

WHISPERWOOD LAKES COMMUNITY ASSOCIATION, INC.

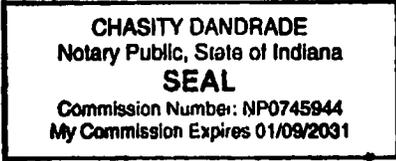
Patrick M. Sturgeon Sr.
Signature of President

Patrick M. Sturgeon Sr.
Printed

ATTEST:

James S. Lawler
Signature of Secretary

James S. Lawler
Printed



STATE OF INDIANA)
)
COUNTY OF Indiana)

Before me a Notary Public in and for said County and State, personally appeared Patrick Sturgeon and James Lawler, the President and Secretary, respectively, of Whisperwood Lakes Community Association, Inc., for and on behalf of said corporation, and who, having been duly sworn, stated that the representations contained herein are true.

Witness my hand and Notarial Seal this 23 day of June, 2023.

My Commission Expires:
1/9/2031

Chasity Dandrade
Notary Public

Residence County:
Hendricks

[Signature]
Signature

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." Jacob A. Lawrence, Esq.

This instrument prepared by, and should be returned to, Jacob A. Lawrence, Esq.
Eads Murray & Pugh, P.C., Attorneys at Law, 9515 E. 59th St., Suite B, Indianapolis, IN 46216