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**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

FOR

TOWNE OAK ESTATES,
a residential subdivision in Hamilton County, Indiana

CROSS-REFERENCE: 2007003044, 2007003045,
2007003046, 2007003047

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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR TOWNE OAK ESTATES**

THIS DECLARATION is made this 21st day of June, 2007, by Towne East Development, LLC, an Indiana limited liability company.

Recitals

- A. Developer (defined in Article II below) is the owner of the Real Estate (defined in Article II below).
- B. Developer intends to subdivide the Real Estate into residential lots as generally shown on the Plat (defined in Article II below) as previously or hereafter recorded in the office of the Recorder of Hamilton County, Indiana.
- C. Before so subdividing the Real Estate, Developer desires to subject the Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements and liens for the purpose of preserving and protecting the value and desirability of the Real Estate for the benefit of each owner of all or any part thereof.
- D. Developer further desires to create the Association (defined in Article II below) to which shall be delegated and assigned, among other things, the powers of administering and enforcing the covenants, conditions and restrictions contained in this Declaration and set forth on the Plat.
- E. Developer desires to grant certain rights and privileges to Builder (defined in Article II) below in connection with the Real Estate, this Declaration, and the Association.

NOW, THEREFORE, Developer hereby declares that the Real Estate is and improved and occupied subject to the following provisions, agreements, covenants, conditions, restrictions, easements, and liens, all of which shall run with the land and shall 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 the Real Estate, or any part thereof.

Declaration

**ARTICLE I
NAME**

The name by which the Real Estate shall be known is "Towne Oak Estates."

**ARTICLE II
DEFINITIONS**

The following terms, when used in this Declaration with initial capital letters, shall have the meanings set forth in this Article II:

- 2.1 "Applicable Date" means the earlier of (i) the date on which construction of a Dwelling on each Lot has been completed by an approved builder or contractor in accordance with Article VI, Section 5 below; or (ii) the date on which Developer files for record in the office of the Recorder of Hamilton County, Indiana, an instrument waiving or releasing its

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right to appoint the Initial Board or Interim Board, as such terms are defined in the bylaws of the Association.

2.2 "Association" means Towne Oak Estates Homeowners' Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

2.3 "Board" means the Board of Directors of the Association.

2.4 "Builder" shall mean and refer to any person or entity authorized by the Committee for the original construction of a Dwelling Unit on a Lot. The Committee shall have the sole discretion to authorize a person or entity to construct a Dwelling Unit on a Lot.

2.5 "Committee" means the Towne Oak Estates Architectural Review Committee.

2.6 "Common Property" means (i) all areas designated on any Plat of all or any part of the Real Estate as "Common Area," (ii) all portions of the Real Estate shown on any Plat of all or any part of the Real Estate which are not Lots and which are not dedicated to the public, and (iii) all facilities and personal property owned or leased by the Association for the benefit, use, and enjoyment of the Owners from time to time.

2.7 "Developer" means Towne East Development, LLC, its successors and assigns, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

2.8 "Development" means the residential subdivision depicted on the Plat and consisting of all the real estate from time to time made subject to the provisions of this Declaration.

2.9 "Development Period" means the period of time commencing with the date of recording of this Declaration and ending on the later of the following: (i) the first date on which neither Builder nor Developer owns any Lot within or upon the Real Estate, or (ii) the date that is five (5) years after the date on which all improvements and installations required for the Development by the Subdivision Control Ordinance of the City of Carmel have been completed and, if applicable, accepted for public maintenance by all appropriate governmental units or agencies.

2.10 "Drainage and Utility Easements" means those areas designated on any Plat of all or any part of the Real Estate as Drainage Easements, either separately or in combination with any other easement designated on such Plat.

2.11 "Drainage, Utility and Sanitary Sewer Easements" means those areas designated by any Plat of all or any part of the Real Estate as Drainage, Utility and Sanitary Sewer Easements, either separately or in combination with any other easement designated on such Plat.

2.12 "Dwelling" means the single-family residence constructed upon a Lot.

2.13 "Guidelines" means the architectural and ecological guidelines, standards, rules and regulations established by the Committee from time to time.

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2.14 "Landscape Easements" means those areas designated on any Plat of all or any part of the Real Estate as Landscape Easements, either separately or in combination with any other easement designated on such Plat.

2.15 "Lot" means any numbered parcel of land shown and identified as a Lot on any Plat of all or any part of the Real Estate.

2.16 "Masonry" means brick, stone, cultured stone, stucco or EIFS.

2.17 "Mortgage" means a recorded first mortgage on any Lot.

2.18 "Mortgagee" means the holder of a Mortgage.

2.19 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation unless specifically indicated to the contrary.

2.20 "Plat" means each subdivision plat of the Real Estate identified as a Final Plat for Towne Oak Estates as previously or hereafter recorded in the office of the Recorder of Hamilton County, Indiana (as the same may be amended or supplemented from time to time).

2.21 "Real Estate" means the real property more particularly described on Exhibit A, attached to and made a part of this Declaration.

2.22 "Standards" means: (i) all covenants, conditions, restrictions and provisions of this Declaration; (ii) all covenants, conditions, and restrictions enumerated or depicted on any Plat of all or any part of the Real Estate; and (iii) all duly adopted Guidelines, rules, regulations, restrictions, decisions and resolutions of the Association, the Board or the Committee, or their respective representatives.

2.23 "Towne Oak Estates" means the Development.

ARTICLE III APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person owning, using or occupying a Lot or any part of the Real Estate, shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot; or (ii) by the act of occupancy and/or use of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy and/or use subject to the Standards. By acceptance of such deed, execution of such contract or undertaking of such occupancy and/or use, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this Declaration, and also for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the Standards.

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ARTICLE IV
PROPERTY RIGHTS/COMMON PROPERTY

4.1 Conveyance and Maintenance of Common Property. Prior to the Applicable Date, Developer shall convey all of its right, title and interest in and to the Common Property to the Association. Such conveyance shall be by quitclaim deed, and such Common Property shall then be the property of the Association. The Association shall thereafter be responsible for the maintenance and upkeep of the Common Property.

4.2 Rental of Dwellings. No Owner may lease his Dwelling to any person or entity except pursuant to a written lease for a term of not less than six (6) months that includes the full names and addresses of both landlord and tenant and a copy of the lease shall be provided to the Association prior to the commencement date thereof.

ARTICLE V
EASEMENTS/LOT MAINTENANCE

5.1 Drainage and Utility Easements. Developer hereby declares, creates, grants, and reserves the Drainage and Utility Easements for the use of (i) Developer during the Development Period, (ii) all public utility companies (not including transportation companies), (iii) governmental agencies having relevant jurisdiction and authority, and (iv) the Association for the purpose of access to and installation, use, operation, maintenance, repair, and removal of poles, mains, ducts, drains, lines, wires, cables, storm and surface water drainage systems and components (including retention and/or detention basins and ponds), ditches, swales and other equipment and facilities for the furnishing of (a) utility services (including cable television services), and (b) transport, direction, retaining and removing storm and surface water. Each Owner of a Lot subject to a Drainage and Utility Easement shall be required to keep the portion of said Drainage and Utility Easement on his Lot free from obstruction so that surface water drainage will be unimpeded. No temporary or permanent structures shall be erected or maintained upon the Drainage and Utility Easements, except walks and/or driveways to the extent permitted by applicable law, approved in accordance with this Declaration, and constructed and situated so as not to impede or obstruct surface water drainage.

5.2 Drainage, Utility and Sanitary Sewer Easements. Developer hereby declares, creates, grants, and reserves the Drainage, Utility and Sanitary Sewer Easements for the use of (i) Developer during the Development Period, (ii) all public utility companies (not including transportation companies), (iii) governmental agencies having relevant jurisdiction and authority, and (iv) the Association for the purpose of access to and installation, use, operation, maintenance, repair, and removal of poles, mains, stations, manholes, ducts, drains, lines, wires, cables, storm and surface water drainage and sanitary sewer systems and components (including retention and/or detention basins and ponds), ditches, swales and other equipment and facilities for the furnishing of (i) utility services (including cable television services), and (ii) transport, direction, retainage, and removal of storm and surface water and sanitary sewage. Each Owner of a Lot subject to a Drainage, Utility and Sanitary Sewer Easement shall be required to keep the portion of said Drainage, Utility and Sanitary Sewer Easement on his Lot free from obstruction so that surface water drainage will be unimpeded. No temporary or permanent structures shall be erected or maintained upon the Drainage, Utility and Sanitary Sewer Easements, except walks and/or driveways to the extent permitted by applicable law, approved in accordance with this Declaration, and constructed and situated so as not to impede or obstruct surface water drainage.

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5.3 Landscape Easements. Developer hereby declares, creates, grants and reserves the Landscape Easements for the benefit of the Association for purposes of maintaining and preserving landscaping within the Common Property and/or affected areas of the Real Estate in accordance with the provisions of this Declaration and subject to the conditions set forth on any Plat. No Owner or other person shall plant, transplant, grow, clear, thin, prune, or otherwise disturb any tree(s), brush, shrub or other vegetation within a Landscape Easement without the prior approval of the Association, which approval may be granted or withheld by the Association in its sole and exclusive discretion. No temporary or permanent structures shall be erected or maintained upon a Landscape Preservation Easement.

5.4 Other Easement Rights. Developer hereby declares, creates, grants, and reserves: (i) during the Development Period, a non-exclusive easement for the use of Developer over the Common Property for the construction, reconstruction, alteration and maintenance of any improvements to be located thereon; (ii) a non-exclusive access and construction easement over that portion of the Real Estate outside the Common Property for the temporary occupation thereof by Developer in order to facilitate the exercise of any of the easement rights granted to Developer under this Declaration; and (iii) a non-exclusive easement in favor of Developer, the Committee, and the Association over the Lot of any Owner who is in violation of any Standard for the purpose of correcting or effecting the correction of such violation as provided for herein.

5.5 Private Utility Lines. The Owner of each Lot shall be responsible for the maintenance, repair or replacement of utility distribution lines and connections, as well as private sanitary sewer laterals (which connect a Lot to a sewer main) on such Lot. On such Lot, the Owner shall also be responsible for the maintenance, repair or replacement of storm sewer lines, mains, drains and other storm sewer system components located on the Lot, except to the extent such items are located within a Drainage and Utility Easement or a Drainage, Utility and Sanitary Sewer Easement, in which case such maintenance, repair and replacement shall be the Association's responsibility.

5.6 Relocation of Easements. Developer reserves the right to relocate any easement granted herein without notice to or the consent of any Owner(s); provided, however, that such relocation shall not materially diminish or unreasonably disrupt the essential function or resulting benefit of the easement being relocated with respect to any Lot.

ARTICLE VI

DEVELOPMENT AND CONSTRUCTION STANDARDS; USE RESTRICTIONS

6.1 Residential Use and Occupancy Restrictions. Except as expressly provided herein, every Lot is reserved exclusively for residential purposes. Except as may be erected by Builder in connection with the construction of a Dwelling or other improvements in the Development, outbuildings, sheds, storage barns, and other accessory buildings, structures, and improvements not specifically addressed in this Declaration are prohibited. There shall be no more than one (1) Dwelling per Lot and no Dwelling may be occupied until all prerequisites to occupancy set forth herein have been satisfied and an occupancy permit or similar permit or approval has been issued by the governmental body or agency with responsibility therefor.

6.2 Dwelling Size. No single-story Dwelling containing less than three thousand five hundred (3500) square feet of living space on the main floor shall be erected, constructed, or placed on any Lot. No multi-story Dwelling containing less than three thousand (3000) square feet of living space on the main floor shall be erected, constructed, or placed on

any Lot. For purposes of this Section 6.2, "living space" means all enclosed floor space within a Dwelling, excluding floor space contained within any basement, cellar, crawl space, porch, terrace, garage, carport, or other area of such Dwelling that is not equipped and intended for regular and continuous human habitation.

6.3 Building/Setback Lines. Front yard building/setback lines are depicted and/or noted on the Plat. No structure or part thereof, other than walks and driveways, shall be erected or maintained between such lines and the Lot lines of said Lot. Rear and side building/setback lines are established in accordance with the zoning ordinance of the City of Carmel, Indiana, applicable to the respective Lots or any variance granted therefrom, unless a greater setback line is established on any Plat or by the Standards. In the event a Dwelling is erected on more than one Lot, the side building/setback line requirements shall apply to the side lines of the extreme boundary of the multiple Lots.

6.4 Sidewalks. Each Lot shall include sidewalks constructed by Builder in connection with the construction of the Dwelling thereon and located in accordance with plans and specifications provided by the Committee. Except to the extent a temporary waiver is obtained from the Committee by the affected Owner, completion of all required sidewalks shall be a prerequisite to the occupancy of each Dwelling under this Declaration. Such temporary waiver may be requested only where inclement weather or other causes beyond the affected Owner's reasonable control result in the inability to complete the sidewalks prior to the Dwelling being fully ready for occupancy.

6.5 Construction, Completion, and Restoration of Dwellings. All Dwellings on a Lot shall be constructed by a builder or contractor that has been approved in writing by the Committee. The Committee shall have no obligation to approve any builder or contractor. Except as approved by the Committee, every Dwelling, building, structure, and improvement to be constructed, erected, or placed on any Lot shall be built of new building materials and no pre-existing Dwelling, building, structure, or improvement may be relocated to or otherwise placed upon any Lot. Restoration, replacement or removal of any Dwelling, building, structure, or improvement partially or totally damaged or destroyed by fire or other casualty shall be commenced no more than ninety (90) days after the occurrence of such casualty and continuously and diligently prosecuted to completion thereafter. The Owner of the Lot upon which any Dwelling, building, structure or improvement partially or totally damaged or destroyed by fire or other casualty is or was located shall provide to the Association, no more than thirty (30) days from the date on which such casualty occurred, written notice of such Owner's intent to restore or remove such Dwelling, building, structure or improvement.

6.6 Garages and Driveways. Each Dwelling must include an attached multiple-car garage consistent in design, construction, and materials with such Dwelling, and a concrete driveway connecting the garage entryway with the adjoining public or private street. Front-loading garages shall not be permitted. Garages shall not be the dominant feature of the front façade of the Dwelling. If garages are off-set, side-loading, courtyard-loading or carriage-loading, the façade facing the street shall have at least one window. Colored, stamped or other specialty concrete driveways shall be subject to Committee approval.

6.7 Exterior Construction. The exterior color and finish materials of every Dwelling, building, structure, and improvement on any Lot shall be as approved by the Committee.

6.8 Landscaping. The front and side yards within a Lot shall be sodded unless an in-ground irrigation system is installed, in which case hydroseeding is permitted. The

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rear yard within a Lot may be sodded or seeded. Minimum landscaping requirements, as established by the Committee from time to time and by the City of Carmel, Indiana, shall apply to each Lot. Such requirements may include the number and types of trees and shrubs required, and may vary from Lot to Lot. Planting and sodding pursuant to this Section and any landscaping requirements established by the Committee from time to time and by the City of Carmel, Indiana, shall be accomplished immediately after construction of a Dwelling or within one (1) year from issuance of the building permit, whichever is earlier, unless a variance is granted by the Committee due to seasonal issues.

6.9 Mailboxes. Each Dwelling must include a mailbox complying with the design, color, and placement standards established by the Committee from time to time.

6.10 Yard Lights. Each Dwelling shall include an outdoor dusk-to-dawn light located in the front yard of the Lot on which such Dwelling is located and additional yard lights/coach lights complying with the Standards therefor established by the Committee from time to time. Each Lot Owner shall keep the yard lights located on such Owner's Lot in good and operable condition and repair at all times. Notwithstanding this requirement, no exterior lighting shall be directed outside the boundaries of any Lot, nor shall any lighting be used which constitutes more than normal convenience lighting or lighting required under this Section 6.10.

6.11 Fences. Fences must be approved by the Committee. Only four (4) foot wrought iron fences may be considered for approval. No part of any fence may extend forward on the affected Lot beyond the primary rear wall of the Dwelling, cross any building line, or be located in a manner that impedes or restricts drainage of any Lot.

6.12 Gardens. Vegetable, wild flower, and other gardens may be located only in the rear yard of a Lot and may not exceed one hundred (100) square feet in size.

6.13 Swimming Pools. All swimming or wading pools, other than professionally constructed, permanent, in-ground pools, are prohibited. No swimming pool of any type shall be permitted on any Lot except as approved by the Committee. Notwithstanding the foregoing, temporary wading pools measuring no more than six feet (6') in diameter are permitted without Committee approval. Such temporary wading pools must be drained and stored indoors on a nightly basis.

6.14 Trash Collection. Trash may be placed at the curb of each Lot no earlier than 7:00 p.m. the night before scheduled collection, and trash receptacles shall not be permitted to remain outside for more than twenty-four (24) consecutive hours. The burning of trash and open fires not contained within a cooking grill for the purpose of preparing food are prohibited.

6.15 Prohibited Items and Activities. Trampolines, clotheslines, wells providing water for human or household consumption, septic tanks and systems, and electronic insect eradication devices ("zappers") are prohibited.

6.16 Basketball Goals. Basketball goals are permitted subject to approval by the Committee. Only permanent goals with black posts and glass or white/translucent fiberglass backboards may be considered for approval. No basketball goal positioned in a manner likely to result in the use of an adjoining public or private street in connection with the use of such goal may be approved.

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6.17 Playground Equipment. Playsets and other recreational equipment or items must be approved by the Committee. All approved playsets must be located behind the Dwelling in the rear yard of the affected Lot and must be constructed primarily of wood. No playset may exceed twelve feet (12') in height. All playsets shall be kept in good condition and repair, and shall be stained and/or painted as reasonably necessary as determined by the Committee.

6.18 Flag Poles. Flag poles must be approved by the Committee and there may be no more than one (1) flag pole on each Lot. No flag poles shall exceed twenty feet (20') in height. Flags exceeding thirty (30) square feet are prohibited. No more than two (2) flags may be flown from a single flag pole at any time.

6.19 Exterior Antennae. No antenna or satellite dish may be erected on any Dwelling or Lot without Committee approval. Approved satellite dishes must be no more than twenty-four inches (24") in diameter and must be mounted in an inconspicuous location as approved by the Committee.

6.20 Parking. Overnight parking on any public or private street in the Development is prohibited. Temporary parking of automobiles, SUVs, pickup trucks, and motorcycles on any such street is permitted only when the Owner of such Lot hosts a social function for which available driveway space is insufficient to accommodate all guests. Other types of vehicles may be parked in the Development only in accordance with Section 6.30 below.

6.21 Additional Restrictions and Building Standards. Lots and Dwellings shall be constructed and maintained in compliance with, and Owners shall abide by, all additional rules and restrictions, as well as all building requirements and restrictions, construction material specifications, and similar standards adopted by the Committee from time to time or contained in the Commitments for Towne Oak Estates which were submitted to the Carmel Plan Commission on December 19, 2006, a copy of which are attached hereto as Exhibit B and incorporated herein by this reference (the "Commitments").

6.22 Subdivision of Lots. No Lot shall hereafter be subdivided into parcels for additional residential purposes, except as approved by the Committee.

6.23 Motor Vehicle Repair. The repair or storage of inoperative motor vehicles or the material alteration of motor vehicles shall not be permitted on any Lot, unless entirely within a garage permitted to be constructed under this Declaration.

6.24 Noxious or Offensive Activities. No noxious, unlawful or otherwise disruptive or offensive activity shall be carried on upon any Lot; nor shall anything be done thereon that may become an annoyance or nuisance to other Owners and/or their guests.

6.25 Lot and Dwelling Maintenance. Each Owner shall keep his Lot and the Dwelling thereon in a good and well-maintained condition, free and clear of rubbish and trash and in good repair. Lot Owners shall keep their Lots reasonably clear from unsightly weeds and growth at all times. Lawns shall be groomed, well-maintained, and regularly cut. Grass shall not be permitted to exceed six inches (6") in height.

6.26 Business Activity. No business shall be conducted on any Lot, other than the home occupations permitted by the zoning ordinance of the City of Carmel, Indiana, if any. Notwithstanding the above, and to the extent such a limitation is consistent with applicable law,

no school, preschool, day-care facility, church or similar institution of any kind shall be maintained, conducted or operated upon any Lot.

6.27 Animals. No animals, livestock or poultry shall be raised, bred or kept on any Lot except that dogs, cats and other domesticated household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose; that no more than six (6) pets (excluding fish) are kept on a given Lot in the aggregate; and that no more than two (2) pets are outside the Dwelling on such Lot at a given time.

6.28 Compliance with Drainage Requirements. Each Owner of a Lot shall comply at all times with the provisions of any drainage plan as approved for the Development of all or any part of the Real Estate. It shall be the duty of every Owner of a Lot to keep any storm drainage ditches and/or swales on such Lot open, unobstructed, and in good condition and repair. Water discharged from sump pumps, geo-thermal systems, or other sources located on any Lot may be discharged only into underground drainage facilities located thereon. Under no circumstances shall such water be discharged above ground and/or into any adjoining street or onto any adjacent Lot or Common Property.

6.29 Signs. No signs of any type may be erected, posted or displayed on any Lot except street identification signs, signs erected by Builder or the Association, and one (1) temporary sign no more than six (6) square feet in area advertising the Lot upon which such sign is located for sale or rent. This restriction shall not apply to Lots owned by Developer or Builder.

6.30 Automobiles, Recreational Vehicles, Boats, Travel Trailers. No recreational vehicle, mobile home, boat, personal watercraft, snowmobile, travel trailer or similar vehicle or equipment, or vehicle not specifically provided for under Section 6.20 above shall be parked or stored on any Lot for a period in excess of forty-eight (48) hours during any calendar month, unless the same is in the garage and completely out of view. Commercial vehicles and trucks exceeding a three-quarter (3/4) ton rating are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view.

6.31 Lakes. All lakes, ponds, basins, and streams within the Development, if any, shall be aesthetic amenities or drainage/retention/detention facilities only and no other use thereof, including without limitation, swimming, boating, fishing, playing or use of personal flotation devices, shall be permitted except in accordance with all applicable Standards. Neither Developer, Builder nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, ponds, basins, or streams within the Development.

6.32 Trash. No burning of any trash and no accumulation or storage of litter, new or used building materials, or refuse of any kind shall be permitted on any Lot. This provision shall not apply to any Lots owned by Builder and held for sale.

6.33 Lot Coverage. No more than thirty five percent (35%) of the surface of a Lot may be covered by the Dwelling thereon.

6.34 Building Height. No Dwelling may measure more than thirty-five feet (35') in height. No accessory structure on a Lot may measure more than twenty feet (20') in height.

6.35 Off-Street Parking. Each Dwelling shall have a minimum of two (2) off-street parking spaces, each measuring at least nine feet (9') wide by twenty feet (20') long.

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6.36 Preservation of Existing Trees. Trees shall be preserved in accordance with the Tree Protection Guidelines contained in Exhibit C of the Commitments.

6.37 Masonry Requirements. Except as otherwise approved by the Committee, all Dwellings shall have Masonry on at least three (3) sides of the first story and on at least fifty percent (50%) of the front elevation, exclusive of doors and windows. Unless otherwise approved by the Committee, the chimney of Dwelling fireplaces shall be Masonry.

6.38 Siding and Window Requirements. The siding on Dwellings shall be Masonry, wood or cement fiberboard-type material. Aluminum and vinyl siding is prohibited. All windows shall be of wood, vinyl, vinyl-clad, or aluminum-clad construction. Except as otherwise approved by the Committee, Dwellings shall have at least two (2) windows on each façade and each occupied level; provided that one (1) window shall be permitted on half stories.

6.39 Roof Requirements. Dwelling roofs shall have a minimum pitch 6 vertical to 12 horizontal. Except as otherwise approved by the Committee, a minimum twelve-inch (12") overhang is required on all sides of the Dwelling.

6.40 Chimneys. The chimneys of Dwelling fireplaces shall comply with: (i) the Masonry requirements under Section 6.38; and (ii) shall extend fully to the ground, and above the eaves, if external. "Shed-style" or bump-out chimneys shall not be permitted.

6.41 Basements/Crawlspace. Dwellings shall include a basement or crawlspace. "Slab" construction is prohibited.

6.42 Storage Tanks. No gas, oil or other storage tanks shall be installed on any Lot.

6.43 Entryways. Entryways to Dwellings shall be clearly visible from the street and shall be the dominant feature of the front façade, or the side façade. Except as otherwise approved by the Committee, entryways to Dwellings shall contain porches that are a minimum of six feet (6') deep.

ARTICLE VII ASSOCIATION

7.1 Membership. Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

7.2 Classes of Membership. The Association shall have two (2) classes of voting membership:

- (i) **Class A Members.** Class A members shall be all Owners other than Developer (unless the Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which event Developer shall then be a Class A member). Class A members shall be entitled to one (1) vote for each Lot owned.

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(ii) Class B Members. The Class B member shall be Developer. The Class B member shall be entitled to the number of votes necessary to constitute seventy-five percent (75%) of the total voting power of the Association. The Class B membership shall cease and terminate and be converted to Class A membership upon the Applicable Date.

7.3 Co-Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In the absence of such a determination, the vote in respect of such Lot may not be cast. In no event shall more than one (1) vote be cast with respect to such Lot.

7.4 Board of Directors. The Board shall manage the affairs of the Association.

7.5 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to: (i) the administration and enforcement of the covenants, conditions and restrictions contained in this Declaration; (ii) the maintenance and upkeep of the Common Property and the establishment and enforcement, from time to time, of rules and regulations governing the use thereof; (iii) the payment of all assessments and charges against the Common Property, if any; and (iv) maintaining the policy or policies of insurance required to be maintained by the Association by this Declaration. The Association may fulfill any or all of its responsibilities under this Declaration by contracting with a professional management company upon such terms and conditions as may be agreed upon between the Board and such management company; provided, however, that no such agreement shall be for a term longer than twenty-four (24) months.

7.6 Correction of Violations. In the event of an Owner's breach of any Standard, the Association may impose such fines, penalties, or other sanctions as it may determine to be reasonable and appropriate in its sole discretion and may pursue any and all other remedies provided under this Declaration or otherwise available at law or in equity. In addition, upon reasonable notice to the affected Owner and acting pursuant to a duly adopted resolution of the Board, Developer or the Association may enter upon a Lot in order to correct, or direct an Owner to correct, a violation or breach of any Standard. Any costs or expenses incurred by the Association or Developer in correcting or attempting to correct a violation or breach under this Section 7.6 (including court costs, legal expenses, and reasonable attorneys' fees), as well as any unpaid fines imposed under this Section, shall be a charge against the affected Lot and a personal obligation of such Owner. The Association shall have a lien against said Lot for such costs, expenses, and amounts, together with all costs of collection. Such lien shall be subordinate to any Mortgage and other liens made superior by applicable law and may be imposed and foreclosed against the Lot in the manner that mechanics' liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this Section shall be perfected upon the filing in the office of the Recorder of Hamilton County, Indiana, at any time after the date payment is due, a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

7.7 Compensation. No director of the Association shall receive compensation for his services as director.

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7.8 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, bad faith or gross negligence.

7.9 Owner Disputes. In addition to the responsibilities set forth in Section 7.5 above, the Board shall, upon the receipt of a detailed written complaint from an Owner summarizing a dispute between such Owner and any other Owner(s) regarding the application of this Declaration or any rule or regulation promulgated hereunder, conduct a hearing to resolve such dispute. Such hearing shall be held no later than thirty (30) days after the Board's receipt of the complaint upon no fewer than five (5) days' written notice to the affected Owners. The Board shall serve as arbitrator at the hearing, shall entertain and review such evidence and arguments as it deems appropriate, and shall issue a written decision to the affected Owners no more than thirty (30) days after the hearing is concluded. No Owner involved in such dispute shall institute legal action regarding that dispute until the arbitration provided for in this Section has been completed or all affected Owners have waived this requirement for arbitration.

ARTICLE VIII ASSESSMENTS

8.1 Covenant for Assessments. Each Owner of any Lot (excluding Developer and Builder), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (i) an initial assessment, (ii) annual assessments, and (iii) special assessments for the purposes herein provided, such as initial, annual and special assessments to be established and collected as hereinafter provided. The initial, annual and special assessments, together with costs of collection and reasonable attorneys' fees and interest from the date such assessments are due at the rate of twelve percent (12%) *per annum*, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessments are made. Each such assessment, together with costs of collection and reasonable attorneys' fees and interest from the date such assessment is due at the rate of twelve percent (12%) *per annum*, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

8.2 Initial Assessment. Upon the first conveyance of each Lot to any Owner other than Developer or Builder, such Owner shall pay to the Association a uniform, non-refundable initial assessment in the amount then in effect as established by the Board. As of the initial date of this Declaration, such amount shall be Five Hundred Dollars (\$500.00). The initial assessment shall be used as working capital for the Association and is not in lieu of any installment of the annual assessment or any special assessment provided for herein.

8.3 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively: (i) for the maintenance and upkeep of the Common Property; (ii) to pay the premiums for the insurance required to be maintained by the Association by this Declaration; (iii) to promote the health, safety and welfare of the Owners and residents occupying the Lots; (iv) to pay all taxes, assessments and charges against the Common Property; and (v) for the effective management and operation, and the performance of the responsibilities and duties, of the Association. A portion of the annual assessments may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any buildings, structures or other amenities that are part of the Common Property.

8.4 Maximum Annual Assessment. Until January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner (other than Builder), the maximum annual assessment shall be Five Hundred Dollars (\$500.00) per Lot. From and after January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner (other than Builder) occurs, the maximum annual assessment may be increased each year not more than fifteen-percent (15%) above the maximum annual assessment for the previous year without a vote of the membership of the Association. From and after January 1 of the year immediately following the year in which the conveyance of the first Lot to an Owner (other than Builder) occurs, the maximum annual assessment may be increased by more than fifteen percent (15%) above the maximum annual assessment for the previous year only by a vote of two-thirds (2/3) of the total voting power of the Association at a meeting duly called for this purpose. The Board may fix the annual assessment at an amount not in excess of the maximum annual assessment.

8.5 Special Assessments for Capital Improvements and Operating Deficits. In addition to the initial assessment and annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of collecting or reimbursing in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Property, or to recover or offset an operating deficit incurred by the Association, provided that any such special assessment shall have the assent of two-thirds (2/3) of the total voting power of the Association at a meeting duly called for this purpose.

8.6 Special Assessments for Breaches of Standards. In addition to the corrective actions and remedies provided for in Section 7.6 above, the Association may establish and levy a special assessment on a Lot to secure the personal liability of the Owner of that Lot for costs and expenses incurred by the Association or the Committee in correcting or attempting to correct such Owner's breach of any Standard.

8.7 Notice and Quorum for Any Action Authorized Under Section 8.4(b) or Section 8.5. Written notice of any meeting of the members of the Association called for the purpose of taking any action requiring a vote of the members of the Association under Section 8.4 or Section 8.5 shall be sent to all members of the Association no fewer than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to sixty percent (60%) of the total voting power of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the total voting power represented at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.8 Uniform Rate of Assessment. Except as provided for in Section 8.6, initial, annual and special assessments must be fixed at a uniform rate for all Lots (except those owned by a Builder or the Developer) and may be collected on a monthly basis.

8.9 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Property to the Association as provided in Section 4.1. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the commencement of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner

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subject thereto. The due date(s) shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

8.10 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) *per annum*. The Association may bring an action at law against the Owner personally obligated to pay the same, together with costs of collection and reasonable attorneys' fees, to recover a money judgment and such amounts may be further enforced by imposition of a lien and foreclosure of such lien against such Owner's Lot in the manner that mechanics' liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this Section shall be perfected upon the filing in the office of the Recorder of Hamilton County, Indiana, at any time after the date payment is due, of a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

8.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for in Section 8.10 shall be subordinate to the lien of any Mortgage on the affected Lot. Sale or transfer of any Lot shall not affect the lien of the assessments provided for in Section 8.1. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof with respect to a Mortgage shall extinguish the lien of the assessments provided for in Section 8.1 as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

8.12 Exemption from Assessments. Notwithstanding the provisions of this Article and the Declaration to the contrary, Lots owned by Developer or Builder shall not be subject to assessments.

ARTICLE IX TOWNE OAK ESTATES ARCHITECTURAL REVIEW COMMITTEE

9.1 Creation. There shall be and hereby is, created and established the Committee. The Committee shall perform the functions provided for herein. Until the Applicable Date, the Committee shall consist of three (3) members appointed, from time to time, by Developer. Such members shall be subject to removal by Developer at any time with or without cause. After the Applicable Date, the Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board.

9.2 Purposes and Powers of the Committee. The Committee shall regulate (i) the external design, construction, appearance and location of the Dwellings, buildings, structures, and improvements on the Lots; (ii) the removal or addition of any tree, vegetation or landscaping feature or element from or to any Lot; and (iii) to grant variances from the Standards. The Committee shall promulgate, and shall subsequently have the right to modify, supplement, amend, and repeal at any time from time to time, the Guidelines for the review, approval, and completion of the items and actions referred to in this Section. The Guidelines shall include, but shall not be limited to, standards for landscaping, fences, and mailboxes. The Guidelines may set forth requirements in addition to those set forth in the Declaration, Plat and Commitments so long as such Guidelines are not inconsistent therewith. The Guidelines shall be binding on all Owners.

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9.3 Approval Procedures and Standards. No Dwelling, building, fence, wall, or other permanent or temporary structure, or improvement of any kind, including, but not limited to, "invisible fences" and other underground improvements, shall be constructed, erected, placed or maintained on any Lot, nor shall any exterior change (including changes in the exterior color and/or material of a Dwelling or other improvement) or alteration of such Lot or Dwelling or improvement thereon (including material changes in landscaping elements or features) be made without the prior written approval of the Committee. Such approval shall be obtained based upon a written application made to the Committee by the Owner of the affected Lot requesting authorization for such Owner's intended addition or change to the Lot from the Committee. All applications and plans shall be submitted to the Committee, together with a review fee in an amount to be determined by the Committee, not to exceed the sum of four hundred fifty dollars (\$450.00). Such written application shall be in the form prescribed from time to time by the Committee, and shall require (to the extent applicable) the following:

- (a) building plan information that includes the proposed Dwelling's: (i) floor plan; (ii) building elevations; and (iii) materials and colors proposed for exterior walls, roof and driveway;
- (b) site plan information that includes: (i) existing grades and a finished grading plan (in conformance with applicable building, zoning and similar codes); (ii) building location with dimensions to property lines; (iv) drives, walks, walls, pools and enclosures, terraces and decks; (v) areas to be grassed and irrigated including the type of grass to be planted; (vi) irrigation system design; and (vii) a landscape planting plan.
- (c) certification that the proposed application conforms with applicable building, zoning and similar codes

The Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. The Committee shall approve or disapprove in writing any application submitted to it within thirty (30) days of such submission. Written disapproval shall specify the reason(s) for such disapproval, which may include:

- (a) an inadequate or incomplete application;
- (b) an application proposing an improvement or change that, if completed or made on the Lot, would: (i) result in the violation of a duly adopted Standard, or (ii) be aesthetically or otherwise inconsistent with or detrimental to the character, utility, function, or value of the Development as a whole or of any portion thereof; or
- (c) an application proposing an improvement or change that would be dangerous, potentially damaging, or otherwise detrimental to the health, safety and welfare of any Owner or other person or property on or in the Development.

If plans are not approved or disapproved by the Committee within such thirty (30) day period, the plans shall be deemed disapproved.

9.4 Enforcement. The Committee shall have the right to enforce this Article and impose fines for the violation thereof as provided for in Section 14.1 of this Declaration, any organizational document of the Association, or any statute, law, rule or regulation. The

Committee may, in its sole and exclusive discretion, refer such violations to the Board for enforcement under Section 7.6.

9.5 Committee Liability. The approval of plans and related application materials by the Committee shall not constitute a representation or warranty as to the legal or technical adequacy, completeness, or quality of such plans and materials, and neither the Committee nor the Association nor any member thereof shall be in any manner liable or responsible for defects or omissions in those plans or materials, any aspect of work performed thereunder, or alleged damages or losses connected with the Committee's approval or disapproval of any matter.

ARTICLE X MORTGAGES

10.1 Notice to Association. Any Mortgagee who places a Mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such Mortgage and provide the name and address of such Mortgagee. A record of such Mortgagee's 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 bylaws of the Association or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such Mortgage and the name and address of Mortgagee are furnished to the Secretary of the Association, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the bylaws of the Association or otherwise shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled to vote by virtue of this Declaration, the bylaws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

ARTICLE XI AMENDMENT/ANNEXATION

11.1 Amendment by Association. Except as otherwise provided in this Declaration or by applicable statute, amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board or Owners having in the aggregate at least a majority of the total voting power of the Association.
- (c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting of the members of the Association duly called and held in accordance with the provisions of the bylaws of the Association.

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) of the total voting power of the Association; provided, however, that any such amendment shall also require the prior written approval of Developer so long as Developer owns any Lot that will be subject to such amendment. In the event any Lot is subject to a Mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its Mortgage interest to the Board in accordance with the provisions of the foregoing Section 10.1.

11.2 Recording. Each amendment to the Declaration made pursuant to Section 11.1 above shall be executed by the President or Vice President and Secretary of the Association. All amendments shall be recorded in the office of the Recorder of Hamilton County, Indiana, and no amendment shall become effective until so recorded.

ARTICLE XII INSURANCE

12.1 Liability Insurance. The Association shall maintain at all times a policy or policies of commercial general liability insurance insuring the Association, the Board, Developer, and the Owners against liability for personal injury or property damage occurring in or about, or arising in connection with, the Common Property or any other areas of the Property maintained by the Association, or the acts or omissions of the Association. Such insurance shall be in such coverage amounts as the Board may determine, in its sole discretion, are appropriate from time to time.

12.2 Other Insurance. The Association may maintain officers' and directors' liability insurance and such insurance or extended coverage insurance insuring the Common Property in such amounts, against such perils, for such time periods and under such circumstances as the Board determines, in its sole discretion, are appropriate and in the best interest of the Development.

12.3 Insurance Proceeds. Any and all insurance proceeds received by the Association shall be held by the Association and used for the benefit of the Owners, the Common Property, and the Lots as the Board shall, from time to time, determine. No Owner shall have any right in or to the proceeds of any such insurance.

12.4 Casualty. If any portion of the Common Property is damaged or destroyed, the Association shall restore the affected portion of the Common Property to substantially the same condition as existed immediately prior to such damage or destruction to the extent reasonably practicable. If such damage or destruction is not covered by insurance maintained by the Association, or the proceeds are insufficient to fully restore the affected portion of the Common Property as a result thereof, then the Association shall effect the restoration thereof in such a manner as the Association may determine appropriate in its sole judgment and shall levy a special assessment against each Owner for any deficiency in proportion to his respective share thereof.

ARTICLE XIII REAL ESTATE TAXES AND ASSESSMENTS

13.1 Real Estate Taxes. Each Owner shall be responsible for and pay all taxes and assessments, general and special, levied or imposed upon his or its respective Lot(s)

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and improvements. The Association shall be responsible for and pay all real estate taxes and assessments levied against the Common Property.

13.2 Allocation. Prior to the time the Auditor of Hamilton County, Indiana, or any other applicable taxing authority, establishes separate tax parcels for each Lot, Developer shall allocate the real estate taxes and assessments upon the Real Estate among and against the Lots and against the remainder of the Real Estate in a fair and equitable manner as determined by Developer in its sole discretion. The allocation made in accordance with the terms hereof shall be binding upon all Owners.

ARTICLE XIV GENERAL PROVISIONS

14.1 Right of Enforcement. Each Owner, tenant, or occupant of a Lot shall comply with all Standards. Violation or threatened violation of any Standard shall be grounds for an action by Developer, the Association, the Committee, any Owner, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such Standard. 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, and declaratory relief and the recovery of costs and reasonable attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association nor the Committee shall be liable for damages of any kind to any person for failing to enforce or carry out any such Standards.

14.2 Government Enforcement. Neither the City of Carmel, nor any other political subdivision or agency, nor any of their respective successors and assigns, shall have the right, power or authority to enforce any Standard other than those covenants, conditions, restrictions or limitations, if any, that expressly run in favor of such entities; provided further, that nothing herein shall be construed to prevent any governmental agency in the exercise of its proper jurisdiction from enforcing any applicable law, code, ordinance or regulation or any conditions attached to approval of any Plat of all or any part of the Real Estate.

14.3 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any Standard shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him or it upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

14.4 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 and shall be binding on all parties, entities and persons 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, 2045, and thereafter shall be automatically be extended for successive periods of ten (10) years each, unless, prior to the commencement of any such extension period, by vote of the majority of the total voting power of the Association, it is agreed that this Declaration shall be terminated in its entirety; provided, however, that no termination of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

14.5 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

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14.6 Titles. The underlined titles preceding the various Sections and Subsections of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

14.7 Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the internal laws of the State of Indiana.

14.8 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any Plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Hamilton County, Indiana, Developer, any entity related to Developer, and any other person or entity with the prior written consent of Developer shall, during the Development Period, be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer or such other 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 and the sale of Lots and the construction of Dwellings thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices; provided, however, that such facilities shall comply with applicable law and ordinances.

[Remainder of page intentionally left blank. Signature page follows.]

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

Towne East Development, LLC,
an Indiana limited liability company

By: Towne West, LLC, its Manager
By: Richard V. Huffiman
Richard V. Huffiman, Manager

"Developer"

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

Before me, a Notary Public in and for the State of Indiana, personally appeared Richard V. Huffiman, the Manager of Towne West, LLC, the Manager of Towne East Development, LLC, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions for Towne Oak Estates on behalf of said Manager and Company.



WITNESS my hand and Notarial Seal this 29th day of June, 2007.

Joyce F. Smith
Notary Public
Joyce F. Smith
Printed Name

My Commission Expires: _____
2-2-13
I am a resident of Marion
County, Indiana.

This instrument was prepared by and should be returned after recording to Marc Pfleging, Baker & Daniels, 600 East 96th Street, Suite 600, Indianapolis, Indiana 46240.

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: Marc Pfleging.

Exhibit A

Part of the West Half of the Southwest Quarter of Section 33, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said West Half of the Southwest Quarter; thence South 00 degrees 27 minutes 03 seconds East (bearings based upon the Village of West Clay Section, 10003, Instrument No. 200400030208, P.C. No. 3, Slide No. 396) along the West line of said West Half a distance of 48.00 feet to the Point of Beginning marked by a M.A.G. nail with a washer stamped "Schneider Firm #0001"; thence North 89 degrees 21 minutes 25 seconds East parallel with the north line of said West Half a distance of 1331.64 feet to the east line of said West Half marked by a rebar with a yellow cap stamped "Schneider Firm #0001"; thence South 00 degrees 25 minutes 30 seconds East along said east line a distance of 606.30 feet; thence South 89 degrees 21 minutes 25 seconds West parallel with the north line of said West Half a distance of 1331.36 feet to the west line of said West Half; thence North 00 degrees 27 minutes 03 seconds West along said west line a distance of 606.30 feet to the Point of Beginning, containing 18.53 acres, more or less.

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EXHIBIT B**COMMITMENTS CONCERNING THE USE
AND DEVELOPMENT OF REAL ESTATE**

Towne East Development, LLC (the "Developer") makes the following commitments to the Carmel Plan Commission (the "Plan Commission") regarding the use and development of the following described real estate (the "Real Estate") located in Hamilton County, Indiana:

Section 1. Description of Real Estate:

See attached Exhibit "A".

Section 2. Petitions: 06090041 PP, 06100025 SW and 06100026 SW**Section 3. Statement of Commitments:**

These commitments shall run with land, be binding on the Developer of the Real Estate, subsequent owners of the Real Estate and other persons acquiring an interest therein.

- A. Homes built on the Real Estate shall comply with the architectural standards attached hereto as Exhibit "B."
- B. The Developer agrees to work with Brenwick Development to provide a trail connection from the Towne Oak Estates cul-de-sac to the existing north/south trail along the eastern property line of the Real Estate. In the event that the Developer is not able to reasonably make the trail connection as described in the preceding sentence, the Developer agrees to provide a trail connection to the same pedestrian trail at an alternative location on the Coxhall Gardens property, providing such connection is desired by the Hamilton County Parks & Recreation Department.
- C. The Real Estate shall be developed in accordance with the tree protection guidelines attached hereto as Exhibit "C".

(a) Section 4. Modification of Commitments

These commitments may be modified or terminated only by a decision made at a public hearing after notice has been given in accordance with the Plan Commission's Rules of Procedures.

(b) Section 5. Effective Date

The commitments contained herein shall be effective upon the approval of Petitions 06090041 PP, 06100025 SW and 06100026 SW and shall continue in effect until modified or terminated by the Carmel Plan Commission.

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(c) Section 6. Recording

The undersigned hereby authorizes the Secretary of the Plan Commission to record these commitments in the Office of the Recorder of Hamilton County, Indiana, upon approval of Petitions 06090041 PP, 06100025 SW and 06100026 SW.

(d) Section 7. Enforcement

These commitments may be enforced by the Carmel Plan Commission.

IN WITNESS WHEREOF, Towne East Development, LLC, has caused this commitment to be executed as of the _____ day of _____, 2006.

Towne East Development, LLC

By: Ric Huffman, Member

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Ric Huffman, who having been duly sworn acknowledged the execution of the foregoing Commitments.

Witness my hand and Notarial Seal this _____ day of _____, 2006.

My Commission Expires:

Notary Public

Printed _____
Residing in _____ County

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. Matthew S. Skelton.

This instrument prepared by: Matthew S. Skelton, Attorney at Law, Baker & Daniels, LLP, 600 East 96th Street, Suite 600, Indianapolis, Indiana 46240, (317) 569-9600.

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Exhibit A

LEGAL DESCRIPTION

Part of the West Half of the Southwest Quarter of Section 33, Township 18 North, Range 3 East, Clay Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said West Half of the Southwest Quarter; thence South 00 degrees 27 minutes 03 seconds East (bearings based upon the Village of West Clay Section 10003, Instrument No. 200400030208, P.C. No. 3, Slide No. 396) along the West line of said West Half a distance of 48.00 feet to the Point of Beginning marked by a M.A.G. nail with a washer stamped "Schneider Firm #0001"; thence North 89 degrees 21 minutes 25 seconds East parallel with the north line of said West Half a distance of 1331.64 feet to the east line of said West Half marked by a rebar with a yellow cap stamped "Schneider Firm #0001"; thence South 00 degrees 25 minutes 30 seconds East along said east line a distance of 613.35 feet; thence South 89 degrees 21 minutes 25 seconds West parallel with the north line of said West Half a distance of 1331.36 feet to the west line of said West Half marked by a M.A.G. nail with a washer stamped "Schneider Firm #0001"; thence North 00 degrees 27 minutes 03 seconds West along said west line a distance of 613.35 feet to the Point of Beginning, containing 18.75 acres, more or less.

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Exhibit B**ARCHITECTURAL STANDARDS****14.9 STRUCTURE AND DESIGN STANDARDS AND PROVISIONS**

Buildings shall maintain a consistent architectural style, in both form and trim, throughout. The trim shall be present on all sides of the building, as appropriate. Appropriateness shall be defined as utilizing features and forms that are considered typical to the chosen architectural style, and shall be determined by staff review. *All building elements are subject to the most current edition of the Indiana Building Code.*

A. WINDOWS

1. At least two windows shall be present on each facade, and each occupied level, as architecturally appropriate. One window shall be permitted on half stories.
2. All windows, on all sides of the house, shall have trim as architecturally appropriate.

B. ENTRYWAYS

1. Entryways shall be clearly visible and shall be the dominant feature of the front facade, or the side facade.
2. Porches shall be a minimum of six feet deep, and shall be provided where architecturally appropriate.

C. CHIMNEYS

1. Chimneys shall extend fully to the ground, and above the eaves, if external.
2. Chimneys shall be made of masonry or stucco material or panels, or material with a similar, durable appearance.
3. "Shed-style" or bump-out chimneys shall not be permitted.

D. GARAGES

1. Front-loading garages shall not be permitted on the Real Estate.
2. Garages shall not be the dominant feature of the front facade.
3. If garages are off-set, side-loading, courtyard-loading or carriage-loading, the facade facing the street shall have at least one window.

E. ROOFLINES

1. Roofs shall have minimum 12" overhangs, on all sides of the structure, if architecturally appropriate.

F. MATERIALS

1. If more than one material or color is used, the transition between materials and/or colors shall be logical, i.e. to highlight an architectural feature. If a material such as brick or stone is used on the front facade but not the side facades, a logical transition with trim, such as quoins, shall be provided. Vinyl siding, if used, shall not be less than 0.048 thickness. Aluminum siding shall not be used.

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Exhibit C**TREE PROTECTION GUIDELINES**

1. The Developer shall prepare a tree protection plan to be approved by the city arborist as part of the secondary plat approval process.
2. All individuals, developers and contractors on the site shall follow each standard of the tree protection plan with care. All planners, utility and construction crews and individuals associated with the project shall be made aware of each standard and specification along with the consequences for violating them. Penalties and reforestation conditions are to be incorporated in the specific site specifications of the final plan.
3. All woodlands and trees to be preserved shall be enclosed by an appropriate construction barrier, such as a snow fence, and identified by signs stating "Tree Preservation Zone" prior to commencing any land disturbance. Fences need to remain in place during all phases of construction. They are not to be removed until the construction is finished unless the community development director or city arborist gives written consent.
4. The protective zone for woodland groups and specimen trees should be specified in the final plan, but shall be no less than the total area beneath the trees' canopy defined by the farthest canopy of the tree(s) plus an additional 5 feet unless otherwise approved by the community development director or the city arborist.
5. Designated material and debris holding areas along with construction parking areas should be established at least 25 feet from any preservation zone.
6. Prior to commencing any land disturbance, a meeting shall be held with the city arborist and representatives from the developer, contractor and builder.
7. If the trees being preserved will be affected by construction activities, the individual trees need to be listed in the site specifications. If there are branches or roots that need pruning, it should be done by trained personnel using equipment designed specifically for that purpose. For installation of utilities, tunneling or directional boring is encouraged to limit the destruction of the root systems. Any trenches affecting tree root systems should be immediately backfilled and mulched or covered as addressed in the erosion control site specifications (327 IAC 15-5 Rule 5).
8. Areas adjacent to tree preservation zones shall be mulched (a minimum of 6") to provide additional protection to tree roots. Care needs to be taken, especially around driveways and "housepad" areas so that no substantial disruption, or removal of major roots, takes place except by approved plan, or with the city arborist's consent.
9. No materials or construction debris should be stored, discharged, or abandoned in the tree preservation zones. This includes but is not limited to construction materials, paint, oils, solvents, asphalt, concrete, wash-out, etc. This also includes backfill that substantially changes the grade over any root system.
10. No equipment or construction traffic should be driven or parked within the tree preservation zones.
11. The developer shall agree to keep an arborist on staff until completion of the construction project.

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12. Post-construction tree care and maintenance (including watering) of newly planted vegetation should be specified in the final plan site specifications.

13. The object of these standards is to provide construction practices that will cause the least amount of destruction to a property's assets, namely its trees. The developer voluntarily adopts this tree preservation policy. The general standards and site specifications should be closely followed and not changed unless prior approval is given in writing from the community development director or city arborist.

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