

INSTR. # 9115493

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DECLARATIONS OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF

BENTLEY OAKS DEVELOPMENT COMPANY, INC.

RECORDED FOR RECORD

JUN 25 91

12:40 pm  
Sharon K. Cherry  
HAMILTON COUNTY RECORDER

THIS DECLARATION, made on this 3/3 day of MAY, 1991, by BENTLEY OAKS DEVELOPMENT COMPANY, INC., an Indiana corporation (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate located in Hamilton County, Indiana, which is more particularly described in Exhibit "A" attached hereto and by this, reference made a part hereof (hereinafter referred to as "Property");

WHEREAS, Declarant desires to subdivide and develop the Property as generally shown on the Secondary Plat for Bentley Oaks (hereinafter sometimes referred to as the Plat and sometimes referred to as the "Development"), by designating certain portions of the Property as Detention Easement as hereinafter defined), by designating certain portions, of the Property as "Landscape and Wall Maintenance Easement" (as hereinafter defined).

WHEREAS, Declarant intends to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions and covenants (hereinafter referred to as the "Restrictions"), under a general plan or scheme of improvement for the benefit and enjoyment of the lots and lands in the Development and future home owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development. Declarant specifically reserves unto itself the right and privilege, prior to the recording of the plat by Declarant of a particular lot or tract

within the Development as described in Exhibit A, to exclude an real estate as shown from the Development, or to include additional real estate.

#### ARTICLE I

##### NAME

The subdivision of the Property created by this Declaration shall be known and designated as BENTLEY OAKS, a subdivision located in Hamilton County, Indiana, the legal description for which is more particularly described on Exhibit A attached hereto and by reference made a part hereof.

#### ARTICLE II

##### DEFINITIONS

Section 2.1. "Association" shall mean BENTLEY OAKS Homeowner's Association, Inc., an Indiana not-for-profit corporation and its membership shall consist of lot owners who pay mandatory assessments for liability insurance, maintenance of the landscaped areas and signage located within the landscape and wall maintenance easement; maintenance of the other improvements installed by Declarant and located within the detention easements.

Section 2.2. "Articles" means the Articles of Incorporation of the Association filed with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time.

Section 2.3. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Block which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of any obligation. Unless specifically indicated to the contrary, the term Owner as used herein shall include the Declarant, so long as the declarant shall own any Lot.

Section 2.4. "Property" means the real estate described in Exhibit "A".

Section 2.5. "Plat" means the subdivision plat of the Property identified as Secondary Plat of BENTLEY OAKS recorded in the Office of the Recorder of Hamilton County, Indiana, as the same may be hereafter amended or supplemented.

Section 2.6. Lot\* means any parcel of land shown upon the Secondary Plat of BENTLEY OAKS and identified by a number 1 through 49 inclusive.

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**Section 2.7.** "Developer" shall mean BENTLEY OAKS DEVELOPMENT COMPANY, INC., an Indiana corporation, its successors and assigns as a Declarant.

**Section 2.8.** "Board of Directors" means the Board of Directors of the Association.

**Section 2.9.** "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate described in Exhibit A.

**Section 2.10.** "Committee" shall mean the Development Control Committee, composed of three (3) members appointed by Declarant who shall be subject to removal by Declarant at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment of Declarant until the end of the Development Period, at which time the BENTLEY OAKS Homeowner's Association, Inc., shall appoint from its membership this Committee. The initial members of the Committee appointed by Declarant are Rex A. Weiper, Dennis E. Copenhaver and Frank K. Regan.

**Section 2.11.** Approvals, determinations, permissions or consents required herein of the Declarant shall be deemed given only if they are given in writing and signed, by the Declarant.

### ARTICLE III

#### USE RESTRICTIONS AND ARCHITECTURAL CONTROL <sup>®</sup>

**Section 3.1.** "Lot Use and Conveyance." All Lots shall be used exclusively for, single-family residential purposes, except that Declarant, during the Development Period, reserves the rights provided herein respecting the Property generally. Except as provided, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions, and restrictions contained herein.

**Section 3.2.** "Building Control." Prior to construction of any structure upon a lot, the building plans there of, including plot plans, site storm drainage and grading plan, specifications, plan for landscaping, and any other data or information which may be requested, must be submitted to the Developer and delivered to the person or persons requesting such approval. The Developer is authorized to determine whether the proposed structures, plans and specifications show conformity and harmony of external design with existing structures, whether the building and property set-back lines are in conformity with applicable plat requirements, and whether the proposed site storm drainage plan conforms to the overall project and lot drainage plans as specified in the approved final construction plans for Bentley Oaks. No charge will be made to any purchaser of a lot for examination of plans or for giving approval for construction thereon. In the event the Developer does

not indicate in writing its approval or disapproval of plans submitted for its review within a period of fifteen (15) days after submission, the Developer is deemed to have approved such plans.

Section 3.3. "Occupancy or Residential Use of Partially Completed Dwelling House Prohibited." No dwelling house constructed on any Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the house shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties. Issuance of a Certificate of Occupancy by the Carmel Department of Community Development shall be conclusive of completion.

Section 3.4. "Other Restrictions." All of the Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the development, all of which are incorporated herein by reference.

Section 3.5. "Building Location and Grade Line Elevation." No building may be erected between the building line shown on the Plat and the front lot line; and no structure or part thereof may be built or erected nearer than 6 feet to an side yard line or nearer than 20 feet to any rear lot line. Any Lot on which a side yard building line is reduced to less than 10 feet shall maintain a minimum of 10 feet on the opposite side yard. Any Lot immediately adjacent to a Lot utilizing less than a 10 foot side yard shall be required to establish and maintain a minimum 10 foot distance between any residential structure located on such adjacent lot. A minimum grade line elevation, shown on the Plat is hereby established for each lot and no grade line can be constructed lower than said minimum without the written consent of the "Developer" and the Department of Community Development of the City of Carmel. Demonstration of adequate storm water drainage with both on lot and overall project drainage plans shall a prime requisite of alternative grade line elevations.

Section 3.6. "Architectural Guidelines." As noted previously, any new building or improvement or any addition to an existing building or an exterior alteration or change to an existing building must have the prior written approval of the Developer before any work is undertaken. The Developer has established the following guidelines for specific types of construction and improvements. Any addition, exterior alteration or change to an existing building shall be compatible with the existing structure.

A. Size of Dwelling. The ground floor area of the main structure, shall be less than 1200 square feet in the case of a one story structure nor less than 800 square feet in the case of a two story dwelling. The first and second floors of a two story or multi level shall contain at least 1600 square feet. These square footages refer only to finished interior living space, excluding open patios, finished lower levels, porches, garages, etc.

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B. Garages. All homes to have minimum two car attached garages. All garage doors to be of wood or masonite material and be painted or stained to match or compliment the dwelling.

C. Driveways. All driveways to be asphalt, concrete or paving brick material.

D. Flat Roofs. No home designs will be permitted which include flat or nearly flat roofs over the main parts of the house, excluding small rear porches.

E. Sidewalks. Each home shall have a continuous concrete or brick sidewalk from the driveway to the front porch. In addition, each lot shall be serviced by a 4' concrete walk on all portions of the lot with street frontage. Sidewalk to be installed by the builder and included in the purchase price. If the home is completed in the winter then the sidewalks shall be installed no later than April 30th of the following spring.

F. No heat pumps, air conditioning units, or gas meters will be installed on the front of the house.

G. Windows-Doors. If storm doors are installed, they must be painted to match the exterior of the house. No unfinished aluminum doors will be allowed. All windows must be wood or wood windows with clad exterior.

H. All gutters and downspouts other than copper, will be painted or prefinished painted aluminum to match the exterior of the home.

I. All metal roof or range vents will be painted to blend with roof color. Every effort should be made to locate such vents to rear of the house.

J. Plumbing. All plumbing vent stacks to be on the rear of the house. Sump pump lines shall be connected to underground laterals or storm sewers as provided in the plat.

K. Street Cleaning. Builder to finish cleaning in front of the house upon completion and rough clean the street periodically during construction. Rough cleaning should be done immediately after foundation excavation and basement pouring and all other times when mud is carried into the street.

L. Yard Lights. All lot owners will be required to furnish and install dusk to dawn light fixtures at all driveway entrances to their lots, the style and type of which will be selected by the Developer and shall be the standard for the entire subdivision. Builders shall furnish and install said lights on behalf of the owner prior to closing.

M. Awnings. No metal, fiberglass or similar type material awnings or patio covers will be permitted in the development.

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N. Mailboxes. All mailboxes installed at the street to service lots in Bentley Oaks shall be uniform and shall be of a type, color and manufacture approved by the Developer. Such mailboxes shall be installed by the Builder upon posts approved as to type, size and location by the Developer.

O. Landscaping. All landscaping will be furnished with the house and completed before closing unless weather requires completion to be carried over to the next season. Builder shall sod the front yard and at least 50% of the side yard. Landscape mulch will be allowed in "natural areas". The balance of the yard may be seeded. Each home shall include a minimum of \$500.00 worth of plantings and landscape. This allowance includes labor and is exclusive of sod. All work on the minimum landscape requirement above shall be completed prior to the closing or as soon as weather conditions permit but no later than May 30th of the following spring. Trees, hedges, and shrubs which restrict visual lines or vehicular traffic shall be cut back or removed. Special landscaping beyond that normally associated with a single family residence must be approved by the Developer prior to installation.

P. Fireplaces. The exterior of fireplace chimneys shall be brick or stone.

Q. Swimming Pools. Only permanent, in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to regulations and shall be of harmonious design.

R. Tennis Courts, Racquetball Courts, Paddle Ball Courts, Etc. Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational facilities or sporting facilities will be permitted, provided that all fencing shall be vinyl coated variety and that all views of adjacent properties, in Bentley Oaks be screened by pines of at least 6 feet in height. All lighting must be of a baffled variety so to minimize the effect on other properties in Bentley Oaks.

S. Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth less than 24 inches, swing and slide sets, playhouses and tents shall not require approval by the Developer, provided such equipment is not more than six (6) feet high, maintained by the lot owner in good repair (including painting) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view. Equipment higher than six (6) feet shall require approval of the design, location, color, material and use by the Developer.

T. Solar Heating Systems. The Developer acknowledges the increased use of residential solar heating systems which utilize solar heating panels and related equipment. The Developer will carefully review solar heating plans to ensure that their use and location have minimum detrimental effect on adjoining properties.

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Geothermal heat systems are acceptable. However, the closed loop variety shall be used.

**U. Miscellaneous.** All exterior lighting shall be directed in such a manner so as not to create annoyance to adjacent properties. Lot owners shall keep garage doors close at all times except during the times of actual use of the garage facility. Collapsible and removable clotheslines will be permitted, but permanent clotheslines are not acceptable.

**V. Liability of Developer.** Neither the Developer, nor an agent thereof, 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 according thereto. Further, the Developer does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

**W. Inspection.** The Developer may inspect work being performed to assure compliance with these Restrictions and applicable regulations.

**Section 3.6. "Home Occupations."** No lot or lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is: (a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling; b) No commodity sold upon the premises; c) No person is employed other than a member of the immediate family residing on the premises; and d) No mechanical or electrical equipment is used, provided that, in no event shall the following or similar activities be conducted: a barber shop, styling salon, beauty parlor, tea room, fortune-telling parlor, tan salon, animal hospital, or any form of animal care or treatment such as dog trimming, be construed as a home occupation.

#### ARTICLE IV

##### GENERAL PROHIBITIONS

**Section 4.1. "In General."** No noxious or offensive activities shall be carried on on any lot, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any Owner of another lot.

**Section 4.2. "Vehicle Parking."** No trucks, camper, trailers, recreational vehicles, boats boat trailers or similar vehicles shall

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be parked on any street or lot, unless the same shall be stored in an enclosed, attached garage. Parking shall not be permitted along both sides of the interior streets known as Bentley Way and Continental Way. Declarant shall post one side of each street with "No Parking" signs designating no parking areas.

Section 4.3. "Exterior Antenna." Unless specifically authorized by the Developer, no television, radio or other antennas may be erected by any Lot owner on the exterior of a house or on a lot. No satellite dishes will be permitted.

Section 4.4. "Garbage and Refuse Disposal." No Lot shall be used or maintained as a dumping ground, for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except at the times when refuse collections are being made. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 4.5. "Animals." No animals, rabbits, livestock, horses or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective lots so much that they will not be a nuisance.

Section 4.6. "Storage Tank." Any propane, or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view. The storage of gasoline or any caustic chemical is prohibited.

Section 4.7. "Temporary Structures and Outbuildings." No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence. No dwelling house constructed on any of the lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the house shall have been substantially completed shall be made by the Developer and such decision shall be binding on all parties. No metal outbuildings shall be permitted on any lot. All outbuildings must be of same color and material as the primary structure and be approved by the Developer.

Section 4.8. "Window Coverings." All window coverings such as curtains or blinds shall not be unsightly from the exterior, including garage windows if visible from street.

Section 4.9. "Signs." No sign of any kind shall be displayed to the public view of any lot except that one sign per builder and one per realtor of not more than six (6) square feet (2'x3') may be displayed at any time for the purpose of advertising the property for sale or for rent. An exception to this rule may be granted by the Declarant during special promotional periods. Also, the Declarant shall be permitted to erect and maintain upon the property

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such signs as it seems appropriate to advertise during the construction and sale periods.

Section 4.10. "Prohibition of Used Structures and Modular Homes." All structures constructed or placed on any Lot shall be constructed with substantially all new materials and no used structures shall be relocated or placed on any such Lot. No modular or prefabricated structure (except trusses) may be placed on any Lot.

Section 4.11. "Building Completion." Unless a delay is caused by strikes, war, court injunction, or acts of God, the exterior of any dwelling or structure built upon an Lot shall be completed within one (1) year after the date of commencement of the building process. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state or more than three (3) months from the time of such destruction or damage. If said structure is not completed or repaired within such time, then the Developer may undertake legal process to re-enter, take possession of said Lot, and sell the same together with improvements, and after payment of liens and expenses, pay the balance of the sale proceeds to the owner of said Lot at the time of sale.

Section 4.12. "Fire" No fire shall be permitted to burn upon any street or roadway in the subdivision.

Section 4.13. "Fences, Walls and Screening." It is the goal of the Developer to keep all fencing or screening as harmonious as possible with the architectural character of the community. No fence or screen will be approved if its installation will obstruct necessary sight lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Developer when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. Front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure. The Developer discourages fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other property owners. Fences may be privately installed but must be constructed to professional levels of quality. Non-professionally installed fences will be inspected by the Developer after completion in order to ensure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review.

A. Height restriction. The developer is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the community is damaged by a proliferation of fences of excessive height. The Developer, therefore, will approve rear perimeter fences up to 4 feet in height which otherwise meet these guidelines. The Developer will give consideration, however, to a variance in this height limit where the rear line of a Lot abuts a major arterial roadway or other clearly

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unique circumstances exist. The use of 6 foot fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio or to enclose an in-ground pool area will be permitted. The specific fence height restrictions are as follows:

- 1) Property fencing and walls above grade shall not exceed 6 feet above grade unless otherwise approved by the Developer.
- 2) The Developer will not ordinarily approve any proposed fence which exceed 4 feet in height unless the rear line of that lot abuts a major arterial roadway or offers some other circumstances clearly unique to that lot.
- 3) Patio screens/privacy fences shall not exceed 6 feet in height, except as provided herein.

**B. Materials and Finish.**

- 1) Wood fencing or screening will be allowed if the design is in conformity with the architectural design of the community.
- 2) The installation of a chain link or other galvanized metal fencing will not be permitted unless it is vinyl coated or covered with similar coated material. Black or dark green are pre-approved all other colors must be approved prior to construction.
- 3) All fencing of screening should preferably have finished material on both sides. If only one side has finished materials, that side must face the public side of adjoining property.
- 4) Walls above grade should be constructed of natural stone, masonry, or attractive timber.

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**MAINTENANCE OF LOTS AND IMPROVEMENTS**

The owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- A. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- B. Remove all debris or rubbish;
- C. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;

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D. Cut down and remove dead trees;

E. Where applicable, prevent debris and foreign material from entering drainage areas;

F. Keep the exterior of all improvements in such a state of repair of maintenance as to avoid their becoming unsightly;

Section 5.1. "Developer's Right to Perform Certain Maintenance." In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Developer shall have the right, but not the obligation, to enter upon said Lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such Lot and improvement situated thereon if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the lot owner and the Developer may seek collection of costs in any reasonable manner including placing a lien against said Real Estate for the expense thereof. Neither the Declarant, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the completion of the development period, the Association shall succeed to the rights of the Declarant/Developer.

Section 5.2. "Annexation." The owner of any Lot shown herein waives the right to remonstrate against annexation of said Lot to the City of Carmel.

Section 5.3. Snow Removal. Declarant and thereafter the Homeowner's Association shall provide snow removal as required and pay the expense therefore. In the event the weather in any year depletes the budget for snow removal, the Board shall have the authority to transfer funds to provide for adequate snow removal.

Section 5.4. Trash Removal. Annually, the Board, as an expense of the Association, shall contract for trash removal services with a capable refuse company to provide trash removal service to each Lot.

#### ARTICLE VI

#### DRAINAGE, DETENTION, UTILITY, SEWER,

#### WALL AND LANDSCAPE EASEMENTS

Section 6.1. Drainage easements (DE) are created to provide paths and courses for area and local storm drainage, either overland or in underground conduit, to serve the needs of the subdivision and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each land owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement and shall any grading restrict, in any manner,

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the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by Developer. Said easements are for the mutual use and benefit of the owners of all Lots in Bentley Oaks.

**Section 6.2.** Detention Easements are created primarily along the rear yards of most Lots to control storm water run off either overland or in underground conduit to serve the needs of the subdivision and adjoining ground and/or public drainage systems. It shall be the individual responsibility of each land owner to maintain drainage across his own Lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall, any grading restrict, in any manner, the waterflow. Obstructions, such as but not limited to; fences, firewood stacks, grass clippings, gardens, permanent play equipment, and out buildings in the detention easements are strictly prohibited.

Should any homeowner restrict or alter the flow of water through a detention easement, they shall be notified by registered mail by the Developer or via the Homeowners Association of said violation. The homeowner shall be given 10 days to correct the matter and then the Homeowners Association shall have the duty and obligation to enter upon the property and correct the problem or violation.

From time to time the detention easements may require regrading, rework or reconstruction to maintain the proper water flow. By acceptance of a deed, the owner hereby grants to the Developer and the Homeowners Association the right of reasonable ingress and egress to enter upon the property to construct or reconstruct to any extent necessary to obtain adequate drainage. Aesthetic repairs shall be limited to final grading and seeding of the affected areas.

Should the above repairs or reconstruction be a result of the Lot owner's violation of these covenants, the Developer or Homeowners Association may seek full recovery of costs including costs of enforcement as described in Section 8.1 as well as release from liability as described in Section 5.1. The annual Homeowners Association dues shall include a sinking fund allowance for the repair or reconstruction, various storm drains in Bentley Oaks and the detention areas in order to maintain proper water flow that is not caused by any individual Lot owners actions or lack of reasonable care or maintenance.

Under no circumstance shall any obligation for the maintenance of any drainage detention facility be imposed upon, or implied as an obligation of any governmental agency, unless such obligation is specifically and expressly assumed or accepted by any such governmental agency.

**Section 6.3.** Landscape and wall maintenance easement (L.S and W.M.E.). Easements for the installation and maintenance of the brick

entry wall, brick wall along 135th Street, signage, fencing and landscaping have been created in widths of 20' along the north boundary of Bentley Oaks (adjoining 136th Street). The Developer and thereafter the Bentley Oaks Homeowners Association shall have the right to enter on to these easements to construct or maintain walls, fences and to install landscaping. Once installed it shall be the Homeowners Association responsibility to cut, trim, water, fertilize, spray, and otherwise maintain the landscaping installed by the Developer in the Easements. The individual Homeowners may not alter or remove said landscape without written approval from the Declarant during the development period and the Homeowners Association thereafter. The Homeowners Association shall have the obligation to maintain or replace landscape or plantings. This right shall also be reserved to the Developer/Declarant during the development period along with the rights under Section 5.1 to seek full restitution of expenses.

Maintenance of the wall and fencing shall remain the sole responsibility and obligation of the Homeowners Association after construction.

The Hamilton County Highway Department shall have the right to approve all plantings installed in the dedicated street rights of way and the Homeowners Association shall maintain all plantings in the island located at the east entrance of Bentley Way.

Section 6.4. Sewer Easements (SE) are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal systems designed to serve Bentley Oaks and adjacent areas for purpose of installation and maintenance of sewers that are a part of said system.

Section 6.5. Utility Easements (UE) are created for the use of all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easement.

Section 6.6. All such easements mentioned herein include the right of reasonable ingress and egress for the purpose of maintenance, construction, or reconstruction for the mutual benefit of Homeowners in Bentley Oaks. No structure, including fences, shall be built on any drainage, detention, sewer, or utility easement.

#### ARTICLE VII

##### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 7.1. "Membership". Every Owner of a Lot shall be a member of the Association. Apart from the Initial Members, membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 7.2. "Classes of Membership and Voting Rights." The Association shall have two (2) classes of voting membership:

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

Class B. The Class B member shall be Bentley Oaks Development Company, Inc. the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. The Class B membership per Lot shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) the sale of any Lot to a homeowner;
- (b) the end of the Development Period; or,
- (c) January 1, 1996.

Section 7.3. "Board of Directors." After the end of the Development Period, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association and until the end of the Development Period shall consist of three (3) persons designated by Declarant.

Section 7.4. "Professional Management." No contract or agreement for professional management of the Association, nor any other contract between Declarant and the Association, shall be for a term in excess of three (3) years.

## CHICAGO TITLE

### ARTICLE VIII COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot by acceptance of a deed therefor, from Declarant, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Regular Assessments (for maintenance, repairs, and ordinary operating expenses);
- (2) Special Assessments for
  - (a) capital improvements and operating deficits, as provided for herein; and
  - (b) for special maintenance or repairs as provided for herein; and
- (3) Any Insurance as provided for herein.

Such assessments shall be established, shall commence upon such dates and shall be collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner. Past due assessments shall run with the land and encumber title until paid and satisfied.

Section 3.2. "Purpose of Regular Annual Assessments." The Regular Annual Assessments levied the Association shall be used exclusively, in the reasonable discretion of the Board of Directors of the Association, for the promotion of the health, safety and welfare of the residents in the Property, for the improvement, maintenance, and repair of the landscape and wall easement, drainage/detention easements for the performance of the obligations and duties of the Association and for other purposes only as specifically provided herein. A portion of the regular Annual Assessments shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the landscape, wall, and drainage/detention easements and other capital improvements which the Association is required to maintain. The Association Board of Directors is empowered to expend reasonable and necessary sums for all professional services to discharge its responsibility.

Section 3.3. "Maximum Regular Annual Assessments."

A. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum Regular Annual Assessment on any Lot conveyed by Declarant shall be Three Hundred Seventy-Five Dollars (\$375.00).

B. From and after January 1 of such year, the maximum Regular Annual Assessment may not be increased each calendar year by more than 10% above the maximum Regular Annual Assessment for the previous year, except with the approval of two-thirds (2/3) of those members of each class of members who cast votes in person or by proxy at a meeting duly called for this purpose. The 10% maximum annual increase shall be at the discretion of the Board based upon the Association annual budget.

C. The Board of Directors from time to time may fix the Regular Annual Assessment, without a vote of the membership, at any amount not in excess of the maximum.

Section 3.4. "Special Assessments for Capital Improvements and Operating Deficits." In addition to the Regular Annual Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain, or to recover any operating deficits which the Association may from time to time incur, provided that such assessment shall have the assent of two-thirds (2/3) of those members who cast votes in person or by

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proxy at a meeting duly called for this purpose. The foregoing notwithstanding, the Declarant, with respect to any Lots owned by it, shall not be required to pay any special Assessments levied for construction, reconstruction repair or replacement of any capital improvements which the Association is required to maintain and any Regular Annual Assessment.

Section 8.5. "Notice and Quorum for Any Action Authorized Under Section 8.3 and 8.4." Written notice of any meeting called for the purpose of taking any action authorized under Section 8.3 or 8.4 shall be sent to a members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the vote of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the require quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.6. "Uniform Rate Assessment." Regular Annual Assessments and Special Assessments for capital improvements and to recover operating deficits must be fixed at a uniform rate for all Lots.

Section 8.7. "Date of Commencement of Assessments; Due Dates." The Regular Assessment provided for herein shall commence as to each Lot on the date of conveyance of such Lot by Declarant. The provisions of this Section 8.7 notwithstanding, the owner shall pay on the day of conveyance in advance his or her prorata share of the regular Annual Assessment for the balance of the calendar year in which the conveyance takes place.

The Regular Annual Assessment against each Lot shall be paid in advance on the first day of January of each calendar year. Payment of the Regular Annual Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

The Board of Directors shall fix an increase in the amount of such assessments at least thirty (30) days in advance of the effective date of such increase. Written notice of any increase in the Regular Assessment, and written notice of any Special Assessment and such other assessment notices as the Board of Directors shall deem appropriate, shall be sent to every Owner subject thereto. The due dates for all assessments, and the assessment and collection period for any Special Assessments, shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any lot shall be binding upon the Association as of the date of its issuance.

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**Section 8.8. "Effect of Nonpayment of Assessments; Remedies of the Association."** If any assessment (or periodic installment of such assessment, if applicable) is not paid on the due date established thereof pursuant to Section 8.7 hereof, then the entire unpaid assessment (together with interest thereon, costs and attorneys' fees as hereinafter provided and as provided in Section, 8.1 shall become delinquent and shall constitute a continuing lien on the lot to which such assessments relate, binding upon the then Owner, his or heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall not pass to such Owner's successors in title unless expressly assumed by them; however, the lien on such lot shall not be affected by any conveyance. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. In such event, there shall be added to the amount of such assessment the costs of reasonable attorneys' fees; and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided, costs of the action and reasonable attorneys' fees to be fixed by the court. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 8.9. "Subordination of the lien to Mortgages, Sale or Transfer."** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 8.7, as to whether or not such assessments have been paid.

#### ARTICLE IX

#### INSURANCE

**Section 9.1. "Liability Insurance."** The Association shall purchase 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 policy shall cover the Association, all persons acting or who may come to act as agents or employees, of any of the foregoing with respect to the Association, all Owners and all other person entitled to occupy a Lot.

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Section 9.2. "Miscellaneous Insurance Provisions." The Association shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, its Board of Directors and any managing agent acting on behalf of the Association. Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Association.

Section 9.3. "Payment of Insurance." The premiums for the insurance described above shall be paid by the Association.

Section 9.4. "Additional Insurance." Each Owner shall be solely responsible for and obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his real and personal property. The Board of Directors may acquire additional insurance as in its discretion is reasonably necessary to protect the Association, Owners or Board.

#### ARTICLE X

##### GENERAL PROVISIONS

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

Section 10.2. "Severability." Invalidity of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 11.1. "Amendment." During the first twenty (20) years following its recordation, this Declaration may be amended or modified any time, by an instrument recorded in the Office of the Recorder of Deeds in County Indiana, approved and signed by at least seventy five percent (75%) of the then Owners and thereafter by an instrument signed by at least two thirds (2/3) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. This Declaration may also be

amended by Declarant at any time prior to the end of the Development Period; if it then has an ownership interest in the Property.

The covenants restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon all persons claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten years each unless prior to the expiration of any such ten (10) year period this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 10.4. "Mortgages Rights." In addition to any other rights provided elsewhere in this Declaration to mortgagees, any lender or lenders holding a first mortgage or first mortgages upon any lot or lots, jointly or singly, may pay any real estate taxes or other taxes or charges or lien against any Common or Limited Common Area or any property owned by the Association; and may pay any overdue premiums on any hazard, casualty, liability or other insurance policies or secure new insurance coverage on the lapse of any policies for any such property owned by the Association or covering any property for which the Association has an obligation to maintain insurance coverage. Any such lender or lenders making payments in accordance with this section shall be entitled to immediate reimbursement therefor from the Association along with any costs incurred, including reasonable attorneys fees.

Section 10.5. "Notice of Mortgagees." The Association, upon request, shall provide to any lender holding a first mortgage upon any lot, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of such lot, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided for herein.

#### ARTICLE XI

##### DEDICATION OF ROADS

Section 11.1. All roads shown on the Plat not heretofore dedicated are hereby dedicated to the public.

IN WITNESS WHEREOF, BENTLEY OAKS DEVELOPMENT COMPANY, INC., an Indiana Corporation, has caused this Declaration to be executed as of the date first written above.

BENTLEY OAKS DEVELOPMENT COMPANY, INC.  
an Indiana Corporation

By: 

Rex A. Weiper

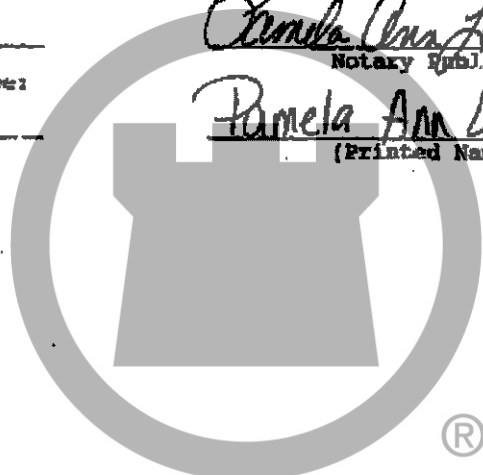
STATE OF INDIANA }  
COUNTY OF HAMILTON } SS:

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for  
said County and State this 19<sup>th</sup> day of June, 1991.

My Commission Expires: 12-14-91  
My County of Residence: Hamilton

Pamela Ann Lawler  
Notary Public

Pamela Ann Lawler  
(Printed Name)



CHICAGO TITLE

This instrument was prepared by R. Davis Coote, COOTS, HENKE &  
WHEELER, 255 East Carmel Drive, Carmel, Indiana 46032.

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LAND DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 18 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN IN CLAY TOWNSHIP, HAMILTON COUNTY, INDIANA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE NORTH 08°25'27" EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER 1611.43; THENCE SOUTH 01°21'27" EAST, PERPENDICULAR TO THE LAST DESCRIBED COURSE 430.00 FEET; THENCE SOUTH 88°25'22" WEST PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER 522.28 FEET; THENCE NORTH 14°47'01" WEST 91.22 FEET; THENCE SOUTH 78°34'04" WEST 304.23 FEET TO A TANGENT CURVE HAVING A CENTRAL ANGLE OF 11°06'04" AND A RADIUS OF 2826.83 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 622.63 (SAID ARC BEING SUBTENDED BY A CHORD HAVING A BEARING OF SOUTH 04°25'54" WEST AND A LENGTH OF 621.46); THENCE NORTH 89°18'24" WEST 772.16 FEET TO THE POINT OF BEGINNING, CONTAINING 10.63 ACRES MORE OR LESS, SUBJECT TO ALL HIGHWAYS, RIGHTS-OF-WAY, AND EASEMENTS OF RECORD.

THIS SUBDIVISION CONSISTS OF 49 LOTS NUMBERED 1 THROUGH 49, BOTH INCLUSIVE, AND STREETS AS SHOWN HEREON. THE SIZE OF LOTS AND WIDTHS OF STREETS ARE SHOWN ON THIS PLAT BY FIGURES DENOTING FEET AND DECIMAL PARTS THEREOF.

CHICAGO TITLE

EXHIBIT A

The Instrument Recorded 6-25-04  
By Sharon K. Cherry, Recorder, Hamilton County, IN

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