

Benchmark Consulting Inc

**ORIGINAL**

9608754 09/18/1996 03:52P 1 of 24  
Mary "Sam" Baldwin, Boone County Recorder

BRITTANY CHASE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

INDEX

<u>I.</u>	<u>Definitions</u>	<u>Page</u>
	1.01 Declaration	1
	1.02 Developer	1
	1.03 Lot	2
	1.04 Owner	2
	1.05 Driveway	2
	1.06 Private Roadway	2
	1.07 Lot Development Plans	2
	1.08 Property Owners' Association	2
	1.09 Subdivision	3
	1.10 Maintenance Costs	3
<u>II.</u>	<u>Character of Lots</u>	
	2.01 In General	3
	2.02 Improvement and Development of Lots	3
	2.03 Occupancy or Residential Use of Partially Completed Dwelling House Prohibited	3
<u>III.</u>	<u>Developer</u>	
	3.01 Developer	4
	3.02 Powers of Developer	4
	3.03 Liability of Developer	5
	3.04 Inspection	5
	3.05 Assignment of Duties	5
<u>IV.</u>	<u>Association of Property Owners and Assessments</u>	
	4.01 Association of Property Owners	5
	4.02 Rights and Duties of the Property Owners' Association	6
	4.03 Meetings of the Property Owners' Association and Voting Rights	6
	4.04 Assessments	7
	4.05 Creation of a Lien and Personal Obligation of Assessments	7
	4.06 Purpose of Assessment	7

4.07	Basis of Assessment	8
4.08	Annual Meeting, Adoption of Budget and General Assessment	8
4.09	Special Assessments	8
4.10	Subordination of the Lien to Mortgages	9
4.11	Duties of Chairman and Secretary-Treasurer of the Property Owners' Association	9
4.12	Receipt for Payment	9
V.	<u>Lot Development</u>	
5.01	Lot Development	9
5.02	Type, Size and Nature of Construction Permitted	10
5.03	Tree Preservation	11
5.04	Completion of Construction	11
5.05	Storage Tanks	11
5.06	Mailboxes	11
5.07	Driveways	11
5.08	Fences, Walls, Hedges or Shrub Plantings	12
5.09	Sewage Disposal Systems	12
5.10	Ditches and Swales	12
5.11	Ponding and Runoff	12
5.12	Antenna Discs or Other Similar Structures	12
5.13	The Brittany Chase's Legal Drain	13
5.14	Compacted Fill Material on Lots	13
5.15	Permanent Green Space Setback	13
5.16	Private Roadways	14
5.17	Easement for Utilities and Public and Quasi-Public Vehicles	14
5.18	Snow Removal	14
5.19	Playground Equipment	14
5.20	Clotheslines	14
VI.	<u>Use and Maintenance of Lots</u>	
6.01	Vehicle Parking	14
6.02	Home Occupations	14
6.03	Signs	15
6.04	Maintenance of Tracts and Improvements	15
6.05	Animals	15
6.06	Garbage, Trash and Other Refuse	15
6.07	Nuisances	15
6.08	Maintenance of Undeveloped and Unoccupied Lots	15
6.09	Yard Lighting	15

VII. Easements

7.01 Easements 16

VIII. General

8.01 Waiver 17  
8.02 Enforcement 17  
8.03 Severability 17  
8.04 Non-Liability of Developer 17  
8.05 Binding Effect 17  
8.06 Duration 18  
8.07 Amendments to Declaration 19  
8.08 Amendments by Declarant Only

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF BRITTANY CHASE

THIS DECLARATION, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1996, by  
PENDLETON PIKE ASSOCIATES, INC. ("Developer").

RECITALS:

A. Developer is the fee simple title holder of all the lands in Boone County, contained in and fully described on Exhibit "A", attached hereto and made a part hereof (hereinafter the "REAL ESTATE").

B. Developer intends to divide the Real Estate into One Hundred Twenty Seven (127) tracts (each such tract hereinafter referred to individually as a "Lot" and collectively as ("Lots"), more or less, a subdivision to be known as BRITTANY CHASE.

C. Developer desires to sell and convey Lots subject to the imposition of certain mutual and beneficial easements, restrictions, covenants, conditions and charges designed to assure ingress and egress thereto and to protect the value and desirability thereof.

NOW, THEREFORE, Developer hereby declares that each Lot and all Lots shall be held, conveyed, encumbered, leased, rendered, used, occupied and improved subject to the following covenants, conditions and restrictions, which shall run with the Real Estate and be binding on each party having any right, title or interest in any Lot or Lots, and his, her or its heirs, beneficiaries, successors, assigns and personal and legal representatives, and which covenants, conditions and restrictions shall inure to the benefit of the Owners and each and every one of the Owner's successors in title to any Lot or Lots into which the Real Estate is subdivided. Developer specifically reserves unto itself the right and privilege, prior to the recording of the plat by Developer of a particular lot or tract within Brittany Chase to exclude any real estate shown, from the Subdivision, or to include additional real estate.

ARTICLE I

Definitions

**Section 1.01. Declaration:** "Declaration" shall mean this instrument, together with any amendments or changes hereto which are hereafter made and evidenced as herein required.

**Section 1.02. Developer:** "Developer" shall mean PENDLETON PIKE ASSOCIATES, INC., his successors or assigns in the ownership, development and division of the Real Estate, and/or any person, firm, corporation or other legal entity specifically designated as such as set out in Article III of this Declaration.

**Section 1.03. Lot:** "Lot" referred to in the plural thereof as "Lots", shall mean any of the One Hundred Twenty Seven (127) tracts, more or less, into which the Real Estate is subdivided, the legal description being attached as Exhibit "A", which lots are to be numbered in sequence as set out in the plat of BRITTANY CHASE recorded in the Office of the Recorder of Boone County, Indiana, Book Number \_\_\_\_\_, Page \_\_\_\_\_, and any subsequent phases recorded thereto, as any lot(s) may be enlarged or diminished by Developer in connection with a reconfiguration thereof (in which event each lot shall be defined by the outside boundaries thereof).

**Section 1.04. Owner:** "Owner", referred to in plural as "Owners", shall mean and refer to the record owner, whether on or more persons or entities, their respective heirs, beneficiaries, successors, assigns and personal legal representatives, of the legal title to any Lot, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. Developer shall also be considered an Owner for purposes of this Declaration for so long as, and to the extent that, Developer owns a Lot or Lots.

**Section 1.05. Driveway:** "Driveway", referred to in the plural as "Driveways", shall mean that portion of any Lot developed and hard surfaced for the purpose of permitting ingress and egress to and from such Lot from any public road, easement or private roadway.

**Section 1.06. Private Roadway:** "Private Roadway" shall mean and consist of one (1) separate non-dedicated and non-public road which provides access to three (3) Lots in the Subdivision. The Lots 71, 72 and 73 are served exclusively by the private roadways and shall not be allowed driveway cuts onto the dedicated public roadways serving the subdivision:

**Section 1.07. Lot Development Plans:** "Lot Development Plans" shall mean and consist of the following plans: (i) a site plan, prepared by a licensed civil engineer or registered surveyor approved by Developer, showing existing improvements on a Lot, any proposed alteration of the topography, elevation or natural state of the Lot in connection with the improvement thereof or any construction thereon, and locating thereon all proposed improvements and structures showing finished floor elevations and details relating to drainage; (ii) complete house building and/or accessory structure plans, including structural details, exterior elevations and floor plans; (iii) material plans and specifications; (iv) detailed landscaping plans describing the size and name of all plantings as well as location and size of trees which will be removed as part of the construction process; (v) all other data or information which Developer may reasonably request, including, but not limited to, a fully executed original and two (2) copies of the CHECK LIST OF COMPLIANCE FOR BRITTANY CHASE, as well as all accompanying plans, specifications and data requested therein.

**Section 1.08. Property Owners' Association:** "Property Owners' Association" shall mean the Brittany Chase Homeowners Association, Inc., a nonprofit corporation, the membership and powers of which are more fully described in Article IV of this Declaration, or such other legal entity as may be formed as a successor thereto.

**Section 1.09. Subdivision:** "Subdivision" shall mean the Real Estate as divided into Lots, all as evidenced by a plat thereof recorded herewith in the Office of the Recorder of Boone County, Indiana, Book Number \_\_\_\_\_, Page \_\_\_\_\_, identified as the Plat of Brittany Chase, and any subsequent plat amendment recorded thereto.

**Section 1.10. Maintenance Costs:** "Maintenance Costs" shall mean all of the costs necessary to keep the facility or improvements which the Property Owners' Association has determined is for the common good, operational and in good condition, including but not limited to (i) the costs for all upkeep, maintenance, repair or replacement of all or any part thereof, (ii) payment of all insurance premiums and taxes imposed thereon and on the underlying easement or right-of-way, and any other expense related to the continuous operation thereof and (iii) costs associated with the operation of the Property Owners' Association or incurred in connection with the enforcement of the terms and provisions of this Declaration. All Lots in the Subdivision shall be assessed and become a part of Brittany Chase Legal Drain to be established by Developer and approved by the Boone County Drainage Board. Drainage easements run with each Lot and will be payable in May and/or November along with real property taxes.

**Section 1.11 Common Areas:** "Common Areas" Shall mean those areas described as Common Areas on a Plat and set aside for conveyance to the Property Owners Association.

## ARTICLE II

### Character of Lots

**Section 2.01. In General:** Every Lot or group of Lots referred to in these covenants shall be used exclusively for single family residential purposes. Two family dwelling or doubles are specifically prohibited in this subdivision.

**Section 2.02. Improvement and Development of Lots:** No Lot shall be further divided to create any additional tract upon which a single family residence and improvements otherwise permitted hereunder may be constructed, nor shall any improvements be made thereto or construction commence, proceed or continue thereon, except in strict accordance with the terms and provisions of this Declaration. Not more than one (1) single family dwelling house, together with attached garage and such related accessory structures and recreational facilities as may be permitted by this Declaration shall be constructed, altered, placed or permitted to remain on any Lot. In the event of multiple Lot ownership, no single family dwelling house shall be constructed on or across a portion of more than one (1) Lot without the express written consent of Developer.

**Section 2.03. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited:** No dwelling house constructed on a Lot shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the dwelling house has been "substantially completed" shall be made by Developer and the Boone County Building Inspector, and such decision shall be binding on all parties affected thereby.

ARTICLE IIIDeveloper

**Section 3.01. Developer:** The powers and authorities contained in this Article shall be vested in Developer and the covenants, conditions and restrictions in Article V of this Declaration shall be administered and enforced by Developer, or their designated successors and/or assigns. Developer's administration and enforcement of such covenants, conditions and restrictions shall include, but not be limited to, approval of Lot Development Plans prior to the improvement of any Lot. Neither the exercise of such administration and enforcement duties by Developer, nor the approval of any Lot Development Plans by Developer, shall relieve any Owner of any duty and obligation imposed by this Declaration or compliance with the covenants, conditions or restrictions as the same are recorded in the Office of the Boone County Recorder. In the event that a written approval is not received from Developer within thirty (30) days from the date submittals are made, the failure to issue such written approval shall mean the disapproval thereof. In the event of a disapproval, Developer shall give a short statement of the reason or reasons for such disapproval within ten (10) days following receipt of a written request to do so. The Developer shall not unreasonably withhold approval and shall act in a manner which is neither arbitrary or capricious. However, Developer reserves the right to unilaterally deny approval of Lot Development Plans if the single family dwelling is inconsistent as to design, color, building materials, size or costs with adjacent lots.

**Section 3.02. Powers of Developer:** No Lot shall be developed and no single family dwelling house, accessory building, driveway or other structure or improvement of any type, kind or character shall be constructed, placed, altered or permitted to remain on any Lot in the Subdivision without the prior written approval of Developer. Any required approval shall be requested by an Owner by written application to Developer. Such written application shall be made in the manner and form prescribed by two (2) complete set of Lot Development Plans as defined in Section 1.07 of these covenants, and such other information as may be reasonably required by Developer. The authority given to Developer is for the purpose of determining whether the proposed improvement and development of a Lot is consistent with the terms and provisions of this Declaration, is consistent with and meets Developer's overall plans for improvement and development of the Real Estate and is compatible and consistent with the development of other Lots. In furtherance of the foregoing purposes, Developer is hereby given discretion as to matters related to location, building orientation, layout, design, architecture, color schemes and appearance in approving Lot Development Plans. Any house building or other accessory structure plans included as a part of any application to Developer for required approvals shall set forth the color and composition of all exterior materials proposed to be used and any site plan submitted shall describe and detail all proposed landscaping and include any other material or information which Developer may reasonably required to be submitted to Developer shall be drawn to a scale of 1" = 10', or to such other scale as Developer may require.



**Section 3.03. Liability of Developer:** Neither Developer, nor any agents, successors or assigns, shall be responsible in any way for any defects in any plans, specifications or other materials submitted for review, whether or not approved by Developer, nor for any defects in any work done in accordance therewith. Developer shall not be liable to any person, firm, corporation or other legal entity aggrieved by Developers' exercise of (or failure to exercise) any of his powers as specified in Section 3.02 hereof, and shall have no liability whatsoever which is claimed or alleged to result, in whole or in part, upon refusal by Developer to approve Lot Development Plans submitted to Developer.

**Section 3.04. Inspection:** Developer, the Property Owners' Association or their assigns and the Boone County Plan Commission shall have the right to go upon any Lot, without being a trespasser, to inspect any work being performed thereon, in order to assure compliance with this Declaration and conformity with Lot Development Plans and with any other plans or submittals made to him and upon which any approvals required by this Declaration are based.

**Section 3.05. Assignment of Duties:** All of the duties, responsibilities and rights held by Developer under this Declaration shall be exercised and administered by Developer in good faith until such time, if any, as they may be assigned by Developer to another of one or more owners referenced by these covenants or any other legal entity formed as a successor thereto. Any such assignment shall be at the option and sole discretion of Developer and may be made at any time or stage of development.

#### ARTICLE IV

##### Association of Property Owners and Assessments

**Section 4.01. Association of Property Owners:** In order to provide for the continuing maintenance and administration of the Subdivision, there is hereby established an unincorporated association of Owners of Lots in Brittany Chase ("Property Owners' Association"). The Property Owners' Association shall be comprised of and limited in members to the Owners from time to time of the several Lots within the Subdivision. Membership in the Property Owners' Association shall commence immediately upon becoming an Owner and continue for so long as ownership of a Lot or Lots continues. At such time as an Owner conveys title and ceases to be an Owner, membership in the Association shall terminate. A new Owner of a Lot shall automatically become a member. Although an Owner need not participate in the administration of the Subdivision, all Owners and the ownership of any Lot or Lots shall be subject to any and all rules and regulations duly established by the Property Owners' Association (as well as being subject to the rights of Developer and the terms and provisions of this Declaration) and shall be liable for the payment of all assessments levied by the Property Owners' Association. The Property Owners' Association may assign or otherwise transfer its rights, responsibilities and duties under this Declaration to any legal entity which may be formed as a successor thereof. Any such assignment or transfer shall be in writing and shall be effective when written evidence thereof is duly recorded with reference to this Declaration in the office of the Recorder of Boone County, Indiana.

**Section 4.02. Rights and Duties of the Property Owners' Association:** The Property Owners' Association shall be responsible for the following:

- (a) Protection, surveillance and replacement of the common areas including, but not limited to, landscaping, maintenance and upkeep of the common areas as shown on the plat.
- (b) Provided the operation, management and maintenance of facilities, including a swimming pool located or to be located within the Common Areas.
- (c) Procuring of utilities used in connection with the Lots, single family residences and common areas to the extent the same are not provided and billed directly to Owners of Lots by utility companies. Further, it shall be the responsibility of the Property Owners' Association, if they choose to exercise that responsibility, to provide for common snow removal throughout the Subdivision, including the private roadways, and bill the members accordingly.
- (d) Payment of insurance (if any may be required under other sections to this declaration).
- (e) Determination of general and special assessments levied against the Owners.
- (f) Promulgation and enforcement of the rules and regulations in this Declaration or as otherwise duly promulgated by the Owners.
- (g) Arrange for the common pick up and removal of garbage and waste so as to assure that one waste hauler will be utilized to serve the Subdivision.
- (h) Exercise of the powers vested in the Property Owners' Association by this Declaration or by Articles of Incorporation and Bylaws of any successor corporation thereto.

**Section 4.03. Meetings of the Property Owners' Association and Voting Rights:** Business of the Property Owners' Association shall be conducted at meetings of this Association. Meetings of the Association may be called by the then current Chairman or Secretary-Treasurer of the Property Owners' Association or upon request of the Owner(s) of at least ten (10) Lots. Written notice of any meeting of the Lot Owners shall be personally delivered or mailed by first class United States mail by the Secretary-Treasurer to all Owners at least twenty (20) days prior to any proposed meeting. The Corporation shall have the following classes of membership with the following voting rights:

- (a) Class A. Class A members shall be all Owners of Lots in the Subdivision. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members

upon which the Class A members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

- (b) Class B. The Class B members shall be Developer and all successors and assigns of Developer designated by Developer as Class B members in a written notice mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled to five (5) votes for each Lot of which it is the Owner on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate on the date upon which the written resignation of the Class B members as such is delivered to the Association or successor thereto or the date Developer no longer owns any Lots in the Subdivision, whichever occurs first. After the above, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class membership for each Lot owned in the Subdivision.

**Section 4.04. Assessments:** The Property Owners' Association shall have the power to levy uniform, general and special assessments against each other and each Lot, without regard to the size thereof relative to any other Lot in the Subdivision.

**Section 4.05. Creation of a Lien and Personal Obligation of Assessments:** Developer hereby covenants and each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Property Owners' Association general and special assessments, such assessments to be established and collected as provided in this Article. Until paid in full, an assessment not paid when due, together with interest thereon (at a percentage rate per annum equal to the then current Indiana statutory maximum annual interest rate) and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest and costs of collection shall also become and remain, until paid in full, the personal obligation of the Owner at the time when the assessment first became due and payable. The Property Owners' Association may, at its option, bring a suit against the Owner (and if more than one, either jointly or severally) to recover a money judgment for any unpaid assessment without foreclosing the lien for such assessment or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Property Owners' Association shall be entitled to recover interest and the costs and expenses of such action, including, but not limited to, reasonable attorneys' fees and court costs.

**Section 4.06. Purpose of Assessment:** General or special assessments levied by the Property Owners' Association shall be used exclusively to exercise those powers and advance those purposes for which the Property Owners' Association has been formed by this Declaration.

**Section 4.07. Basis for Assessment:** Except as provided in Section 4.09 hereof, general or special assessments levied by the Property Owners' Association shall be assessed uniformly against each Lot (and the Owner(s) thereof), regardless of whether any such Lot is improved or unimproved and without regard to the type of improvements constructed on any Lot, or the extent of use of the facilities and improvements for which any assessment, general or specified, is made.

**Section 4.08. Annual Meeting, Adoption of Budget and General Assessment:** Between May 1st and July 10th of each year, the Association shall hold an annual meeting with notice to all Owners in the manner required by 4.03 of this Declaration. At the annual meeting, the Owners shall elect a Chairman and a Secretary-Treasurer to coordinate and handle the day to day affairs of the Property Owners' Association and shall adopt a proposed annual budget. The budget, adopted by the Property Owners' Association, shall provide for allocation of anticipated expenses in such a manner that the obligations imposed by this Declaration will be met and shall further outline all anticipated expenses and obligations for the period covered thereby. Following approval of the budget, the Chairman and Secretary-Treasurer shall fix a uniform general assessment against each Lot (and the Owner(s) thereof) in an amount necessary to defray the expenses and obligations budgeted, together with an amount, if any, approved by the Owners to permit establishment of and/or contribution into a reserve account in order to defray anticipated future capital expenditures. Notice of the uniform general assessment shall be sent by the Secretary-Treasurer to each Lot Owner as soon as practicable following the annual meeting. Unless otherwise determined by majority vote of the Owners, the general assessment established shall be paid in full to the Secretary-Treasurer of the Property Owners' Association in one (1) installment on or before August 31 next succeeding. Upon receipt of payment, the Secretary-Treasurer shall deposit the amount involved in an account opened and maintained in the name of the Property Owners' Association at a state or national bank having its principal banking offices in either Lebanon, Zionsville or Indianapolis, Indiana. Withdrawals from such account shall be made only upon the approval of both the Chairman and Secretary-Treasurer signing jointly and only for a purpose or purposes set forth in this Declaration.

**Section 4.09. Special Assessments:** In addition to the general assessment, the Property Owners' Association may levy in any calendar year one (1) or more uniform special assessments against each Lot (and the Owners(s) thereof) for the purpose of defraying, in whole or in part, any unanticipated expenses or obligations or the costs of any construction major reconstructions, repair, replacement or maintenance of any capital improvement required, PROVIDED THAT the levy of any such special assessment must be approved by the Owner(s) of at least two-thirds (2/3's) of the Lots who are voting in person or by written proxy at a special meeting of Owners duly called for such purpose, subject to written notice delivered in person or sent by first class United States mail at least fifteen (15) days in advance to each Owner of the time, place and purpose of such meeting. Following approval of the levy of any such special assessment, the vote of the Owner(s) of at least a majority of the Lots shall establish the date or dates any such special assessment shall become due, and the manner in which it shall be paid to the Secretary-Treasurer for deposit in the Property Owners' Association account established and maintained in accordance with Section 4.09 hereof, for use consistent with the purpose or purposes for which such special assessment was levied.

9608754 09/18/1996 03:52P 13 of 24  
 Mary \*Sam\* Baldwin, Boone County Recorder

**Section 4.10. Subordination of the Lien to Mortgages:** The lien of the assessments provided for herein against a Lot shall be a subordinate to the lien of a recorded bona fide first mortgage covering such Lot and subordinate to any tax or special assessment lien of such Lot in favor of any governmental taxing or assessing authority. The sale or transfer of a Lot shall not affect the assessment lien. The sale or transfer of a Lot pursuant to bona fide mortgage foreclosure proceedings or any other bona fide proceeding in lieu thereof shall, however, extinguish the lien of such assessment as to any payment which became due prior to such sale or transfer. No such sale or transfer shall release a Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 4.11 Duties of Chairman and Secretary-Treasurer of the Property Owners' Association:** The Chairman and Secretary-Treasurer of the Property Owners' Association, or their designee, shall have the duties set forth in this Declaration, shall attend to and handle the day to day affairs of the Property Owners' Association and shall attend to handle such other duties delegated to them by the Owners. All acts taken and things done shall be measured by a standard of reasonableness and neither the Chairman nor the Secretary-Treasurer shall have any liability to an Owner, Owners or the Property Owners' Association unless acting in bad faith in a manner inconsistent with the terms and provisions of this Declaration. Notwithstanding the foregoing, in no event (except in the case of a bona fide emergency involving a total expenditure not exceeding One Thousand Dollars (\$1,000.00) or such other amount from time to time established by the Owners), shall either the Chairman or Secretary-Treasurer have any right, privilege or authority to contract for, solicit, hire or otherwise obtain services or materials which are not included within and covered by the budget then applicable or which are otherwise funded by a special assessment levied in accordance with Section 4.09 hereof.

**Section 4.12. Receipt For Payment:** The Property Owners' Association shall, within twenty (20) days after demand made at any time, furnish a receipt in writing signed by the Secretary-Treasurer of the Property Owners' Association, specifying that the assessment respecting a Lot has been paid or that certain assessments remain unpaid, as the case may be. Such receipts shall be conclusive evidence of payment of any assessment therein stated to have been paid.

## ARTICLE V

### Lot Development

**Section 5.01. Lot Development:** Prior to the development, improvement or alteration of, or the construction on or addition to, a Lot or Lots, the Owner(s) thereof shall first obtain written approval from Developer of the Lot Development Plans as required by Article III of this Declaration. Any improvement, development or alteration of a Lot or Lots, and any construction thereon or addition thereto, shall strictly comply with this Article V. In the event of a conflict between a set of duly approved Lot Development Plans and the terms and provisions of this Article V, the terms and provisions of Article V shall control.

**Section 5.02. Type, Size and Nature of Construction Permitted:** No single family dwelling house, garage, driveway, accessory building, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed or altered on any Lot or in the common areas without the prior written approval of Developer or Property Owners Association, respectfully, as required by this Declaration. Such approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

- (a) No structure or building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling not exceeding two and one-half (2 1/2) stories in height, one private attached garage for a minimum of two (2) vehicles, maximum of four, and such other accessory buildings or structures related to swimming pools, tennis courts and other recreational facilities, including conservatories which are usual and incidental to the use of the Lot for a single family residential purposes.
- (b) The minimum finished floor area of a one story dwelling house constructed on a Lot, exclusive of open or screened porches, attached garages and basements or below grade levels, shall be 1,800 square feet in the case of a one story residence and 2,200 square feet in the case of a two story residence. In the case of a dwelling house having more than one story, a minimum finished floor area shall be located on the first floor of 1200 square feet for multi story residences.
- (c) No single family dwelling house, garage or accessory structure of any kind shall be moved onto any Lot and all materials incorporated into the construction thereof shall be new, except that used brick, weathered barn siding or the like, or interior design features utilizing other than new materials, may be approved by Developer. No tent, basement, garage, barn or other structure shall be placed or constructed on any Lot at any time for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a single family dwelling on a Lot.
- (d) Any accessory buildings constructed on a Lot shall have a fiberglass or asphalt shingle, slate, tile or wood shake roof and shall be made out of the same materials, or combination thereof, out of which the single family dwelling house on the same Lot is constructed, provided that, structures such as polebarns shall be specifically prohibited. Further, greenhouses or indoor pools with track roofs or canvas dome covers are also specifically prohibited in this Subdivision.
- (e) The concrete or block foundation of any single family dwelling house or accessory structure constructed on a Lot shall be covered on the exterior with wood, brick or stone veneer so that no portion of the exterior thereof is left exposed above ground.

- (f) One story dwelling houses shall be constructed of all brick exterior. No house or other structure shall contain aluminum or vinyl siding. Further, no plywood or other sheets of wood with dimensions of four (4) foot by eight (8) foot may be used for exterior siding.
- (g) No open loop geothermal heat pumps shall be allowed.

**Section 5.03. Tree Preservation:** Existing mature trees (having a trunk in excess of six (6) inches in diameter measured at a point three (3) feet from undisturbed ground) shall be preserved to the extent the removal thereof is not mandatory in connection with the construction of an approved single family dwelling house or accessory building unless the removal thereof is otherwise specifically approved by Developer or any such tree is dead or decayed and dangerous.

**Section 5.04. Completion of Construction:** All construction upon a Lot shall be completed in strict accordance with the Lot Development Plans approved by Developer. The exterior of any dwelling house built upon a Lot or combination of Lots shall be completed within six (6) months after the date of commencement of the foundation and the site graded and any areas to be covered with grass shall be seeded or sodded. Each Lot shall be kept and maintained in a sightly and orderly manner during the period of construction. All builders will be required to utilize and pay for a thirty (30) cubic yard trash receptacle for each home during period of construction in order to properly dispose of debris. Every builder or owner shall be required to furnish a Port-O-Let for their workers during construction. However, multiple builders or owners may combine to provide Port-O-Lets to their workers. During construction, Owner is responsible for any damage to curbs previously installed in the Subdivision by Developer. In the event of damage to a curb by Owner, or Owners' builders, which requires said curb to be repaired or replaced, then, and in that event, the Developer shall cause said curb to be replaced and the costs of repair shall be paid by the Owner causing said damage. Landscaping must be completed at the time of construction.

**Section 5.05. Storage Tanks:** No storage tanks, of any nature, for any use, shall be allowed on or be buried on any Lot.

**Section 5.06. Mailboxes:** Mailboxes shall be the cost of the Owner. All mailboxes installed throughout the Subdivision will be uniform and will be constructed and installed in a material suitable to Developer at his sole discretion. To the extent that mailboxes are constructed of brick or stone, the Developer and Owners hereby release the County of Boone from any and all liability due to mailbox damage caused by snowplows or other vehicles owned or operated under control of the County. Mailboxes shall be maintained by Owner and in good working order at all times.

**Section 5.07. Driveways and Sidewalks:** No Lot shall be permitted to contain more than one driveway and each Lot shall be allowed only one cut onto a public road or private roadway adjoining the property. A driveway constructed on any Lot to and from the Public Road or private roadway shall be constructed and maintained so as to provide the sole means of ingress and egress to such Lots for vehicular traffic. Circular drives which provide more than one cut onto a public road or private roadway may be allowed upon approval of the Developer and the Boone County Highway Department.

The driveway on each Lot shall be cut and stone or gravel placed thereon prior to development or improvement of the Lot to the extent necessary to avoid the transmittal of mud from construction traffic to the Public Roads. Upon substantial completion of construction, each driveway shall be constructed of either hard mixed aggregate, concrete, asphalt, paving, brick or other material acceptable to Developer.

Under no conditions shall driveways be constructed over curb inlets of the storm sewer system within the right-of-way of the public road or private roadway. No asphalt or concrete driveway shall be placed behind a curb containing these inlet grates.

Sidewalks shall be required and shall be constructed at the cost of Owner at the time of construction of the dwelling house.

**Section 5.08. Fences, Walls, Hedges or Shrub Plantings:** No fence, wall, hedge or other screening shall be erected, placed, altered or permitted to remain on any Lot other than as approved (as to location, type, materials, design and height) by Developer under Article III of this Declaration. In no such situation shall these structures or plantings be placed within platted drainage and utility easements or within the right-of-way of a public street.

**Section 5.09. Sewage Disposal Systems:** Private sewage disposal systems (septic systems) are prohibited on all Lots in the Subdivision as the Subdivision will be served by the Clay Township Regional Waste District.

**Section 5.10. Ditches and Swales:** The Owner of any Lot on which any part of a drainage ditch or swale is situated shall keep such portion thereof as may be situated upon his Lot or Lots continuously unobstructed and in good repair, and shall provide for the installation of such culverts upon said Lots as may be reasonably necessary to accomplish the purposes of this subsection, all at each Owner's own cost and expense.

**Section 5.11. Ponding and Runoff:** No owner shall cause or permit any pond to be created on any Lot, including without implied limitation, from any swale, ditch, stream or creek located on the Real Estate. Further, each owner shall prevent water run-off and the depositing of soil and mud from the Lot onto the street through the use of silt fences installed during the home building process. To the extent that an Owner permits, causes or allows mud to enter onto the streets or private roadways in the Subdivision, during construction or otherwise, the Developer reserves the right to clean the streets and bill or assess the Owner for said costs. The Owner



shall pay or reimburse to Developer the reasonable charge for street cleaning and maintenance within thirty (30) days after being billed or assessed thereto.

**Section 5.12. Antenna Discs or Other Similar Structures:** No exposed radio, cable or television antenna and/or dish larger than 18 inch in diameter shall be permitted within the Subdivision.

**Section 5.13. Brittany Chase's Legal Drain:** All Lots within Brittany Chase are included in Brittany Chase's Legal Drain. This legal drain has been established by the Boone County Drainage Board and the Boone County Surveyor to provide a method for future maintenance of the retention pond, storm sewers and the subsurface tile drains located in the Subdivision. Easements have been provided on certain Lots as shown on the recorded plats in order that contractors employed by the Boone County Surveyor may gain access across Lots in the Subdivision to maintain said drainage improvements. Each Lot will be assessed a yearly drainage fee not to exceed \$100.00 per lot. This fee is billed by the Boone County Treasurer and is payable at the time of property taxes in May and November. Failure to pay said assessment could result in a property being involved in a Tax Sale for failure to pay delinquent taxes.

**Section 5.14. Compacted Fill Material On Lots:** Lots may contain compacted fill material. This soil, although it has been properly compacted, may not contain similar engineering properties of undisturbed soil for the purpose of foundation construction. Owners shall be solely responsible for soil compaction, or lack thereof, and each Owner shall hereby relieve the Developer of any and all responsibility or liability for disturbed or undisturbed soil as it relates to the Owner's construction process, or any other. Developer makes no promises, representations or warranties, either express or implied, as to the nature, quality or compaction of the soil on any individual Lot as each Owner is responsible for testing and determining the quality and characteristics of soil on their respective Lot.

**Section 5.15. Permanent Green Space Setback:** "Permanent Green Space Setback" is an area designated and described on the plat as "landscape easement" along U.S. 421 and Willow Road and other areas of the subdivision. Landscape easement (L.E.) is described in Section 7.01.

**Section 5.16. Private Roadways:** As previously set out in Section 1.06 of these Declaration of Covenants, Conditions and Restrictions, certain non-dedicated private roadways will be constructed to serve certain Lots in the Subdivision. These private roadways by definition and the fact that they do not meet county road width standards will remain private, in perpetuity, and will not be accepted into the County roadway system for ownership, maintenance or control. Accordingly, the Owners of each of the Lots, as hereinafter set out, shall own, as tenants in common, a certain undivided interest in the private roadways lying appurtenant to their respective Lots. Upon transfer of the ownership of any one of the Lots as hereinafter set out, the aforesaid undivided portion and share of said ownership shall be automatically transferred and conveyed as a part thereof, whether or not such transfer and conveyance is made by specific reference in the deed to the Lot so conveyed. As a tenant in common with an undivided interest in the private roadway serving and lying appurtenant to their respective Lot, each Owner shall be fully

9608754 09/18/1996 03:52P 18 of 24  
Mary "Sam" Baldwin, Boone County Recorder

responsible, to the extent of his undivided interest, in the future maintenance of said private roadway. The private roadways and their respective undivided interests are as follows: Lots 71, 72 and 73 each own a one-third (1/3rd) undivided interest in said private roadway.

**Section 5.17. Easement for Utilities and Public and Quasi-Public Vehicles:** All public and quasi-public vehicles, including but not limited to, police, fire, ambulance and other emergency vehicles, trash and garbage collection, post office vehicles, postal employees, utility company vehicles making deliveries to a Lot, as well as pedestrian traffic and members of the Property Owners' Association, are hereby granted the right to enter upon and use the private roadway located in the Subdivision in the performance of their duties, for deliveries, for ingress and egress, and for installation, replacement, repair and maintenance of the common areas as well as any and all public utilities, including, but not limited to, water, sewer, gas, telephone, electric and cable T.V.

**Section 5.18. Snow Removal:** Neither Boone County, nor any agency or department thereof, shall have any responsibility, duty or obligation to remove snow from the private roadways or the driveways located in the Subdivision or provide for any maintenance or reconstruction of said private roadway located or driveways, such responsibilities, duties and obligations belong solely to the Owners of said private roadways or driveways.

**Section 5.19. Playground Equipment:** Any and all playground equipment shall be made of wood as its primary building material. In no event shall any playground equipment be allowed that uses metal or plastic as its primary building material. The location and installation of any playground equipment shall be done only with the express written approval of Developer.

**Section 5.20. Clotheslines:** There shall be no outside clotheslines.

## ARTICLE VI

### Use and Maintenance of Lots

**Section 6.01. Vehicle Parking:** No camper, motor home, truck, trailer, or boat may be parked or stored overnight or longer on any Lot in open public view.

**Section 6.02. Home Occupations:** No home occupation shall be conducted or maintained on any Lot other than one which is incidental to a business, profession or occupation of the Owner or occupant of such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed or permitted to remain on any Lot advertising a permitted home occupation.

**Section 6.03. Signs:** No signs of any kind shall be displayed to public view on any Lot except that one two-sided sign (not exceeding six (6) square feet per side) may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise during construction, provided that, said sign is submitted and approved in writing by Developer.

**Section 6.04. Maintenance of Tracts 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, each such Owner shall:

- (i) Mow such portion of the Lot or Lots upon which grass has been planted at such times as may be reasonably required;
- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance;
- (iv) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly.

**Section 6.05. Animals:** Only dogs, cats and similar animals generally and customarily recognized as household pets, not exceeding in the aggregate three (3) in number may be kept or maintained on any Lot as household pets. All animals kept or maintained on any Lot in this Subdivision shall be kept reasonably confined by means of leash, invisible fencing, or other product similar thereto, so as not to become an annoyance or nuisance. No animal shall be kept or maintained on a Lot for commercial purposes or primarily for breeding purposes.

**Section 6.06. Garbage, Trash and Other Refuse:** The outside burning of garbage or other refuse shall not be permitted on any Lot, nor shall any outside accumulation of refuse or trash be permitted on any Lot. Each single family dwelling house build shall be equipped with a garbage disposal unit of a type, kind and capacity approved by Developer, and once installed, each such unit shall be kept and maintained in good working order so as to be and remain environmentally acceptable. Trash and recycling receptacles will be supplied by the Property Owners' Association under a contract with a waste removal company and be paid for by each individual Owner so to have common trash receptacles and collection throughout the neighborhood. In no event shall any Owner allow a trash or recycling receptacle to remain outside for longer than a twenty-four (24) hour period of time.

**Section 6.07. Nuisances:** No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or another Owner.

**Section 6.08. Maintenance of Undeveloped and Unoccupied Lots:** Owners of undeveloped or unoccupied Lots shall at all times keep and maintain such Lots in an orderly manner, causing weeds and other growths to be reasonably cut and shall prevent the accumulation of rubbish and debris thereon.

**Section 6.09. Yard Lighting:** The Owner shall install yard lighting having a minimum height of at least five (5) feet above finishing grade in the front yard of the home between the platted building setback line and the street right-of-way. The type, style and location of said yard light shall be subject to the approval of Developer.

## ARTICLE VII

### Easements

**Section 7.01. Easements:** The strips of ground shown on the survey of Lots attached hereto and designated Drainage and Utility Easements ("DE" or "UE") either separately or together, are hereby created for the use (including required ingress and egress necessary as a part thereof) of public utility companies, governmental agencies, police, fire, ambulance and other emergency vehicles, and the Owners of the Lots herein as follows:

"**Drainage Easements**" (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of this and adjoining ground and/or the public drainage system. No structures, including fences, shall be build on a Drainage Easement which obstruct flow from the area being served, nor shall any changes be made in the finished grade elevations of any Lot, whether in connection with the construction of improvements thereon or otherwise, so as to modify, alter or change the location or depth of any drainage swales, ditches or creeks located within any such Drainage Easement without the approval of all Federal, State, County or Municipal authorities from whom approvals are required by law, or which would in any way prohibit, impede, restrict or alter the natural flow of surface water drainage.

"**Utility Easements**" (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation, operation and maintenance of mains, ducts, poles, lines and wires necessary to provide utility service to a Lot or Lots, subject to the condition that following any installation or maintenance, the affected area within such Utility Easement shall be returned to the condition existing prior thereto at the cost and expense of the party responsible for having such work performed. **The area designated as a private roadway shall be utilized and treated as a Utility Easement to the limited extent that specific permission is hereby granted to the governmental and quasi-public agencies of police, fire, ambulance and other emergency vehicles to access those Lots serviced by the private roadway throughout the Subdivision.**

"Landscape Easements" (L.E.) are designated and described on the plat and created for the specific purpose to allow the Developer to install signage at the entrances to development, as well as natural vegetative plantings and screening. The entrance signs shall be maintained by the Property Owners' Association. No sheds, barns, tennis courts, swimming pools, fences, improvements or structures of any type are allowed within the Landscape Easement. Further, no vegetation, trees or plant life shall be removed or cut in the Landscape Easement unless otherwise approved by the Developer or Property Owners' Association or unless such plant life is dead or decayed and dangerous.

The Owners shall take title to the Lots subject to the foregoing easements rights in, along and through the strips of ground properly designated as hereinabove set forth on the recorded survey of the Lots for the purposes herein stated.

## ARTICLE VIII

### General

**Section 8.01. Waiver of Damages:** Neither the Developer, their nominees, representatives or designees, shall be liable for any claim for damages whatsoever arising out of or by reason of any acts taken (or not taken) or things done or performed (or not done or performed) pursuant to any authorities reserved, granted or delegated pursuant to this Declaration.

**Section 8.02. Enforcement:** The right to enforce the restrictions contained in this Declaration and all covenants and restrictions contained herein including, but not limited to, the right of injunctive relief, or the right to seek the removal by due process of law of structures erected or maintained in violation of this Declaration, is hereby given and reserved to Developer, Property Owners' Association and the Owners from time to time of Lots and all parties claiming under them, the Boone County Area Plan Commission, all of whom shall have the right, individually, jointly or severally, to pursue any and all remedies, in law and equity available under applicable Indiana law, without being required to show actual damage of any kind whatsoever, and shall be entitled to recover, in addition to appropriate monetary damages, if any, reasonable attorneys' fees and other legal costs and expenses incurred as a result thereof.

**Section 8.03. Severability:** The provisions of this Declaration shall be severable and no provision shall be affected by the invalidity of any other provision to the extent that such invalidity does not also render such other provision invalid. In the event of the invalidity of any provision, this Declaration shall be interpreted and enforced as if all invalid provisions were not contained herein.

**Section 8.04. Non-Liability of Developer:** Developer shall not have any liability to an Owner or to any person or entity with respect to drainage on, over, under or through a Lot. Upon the improvement and development of a Lot, the proper handling of storm and surface water drainage shall be the responsibility of the Owner of such Lot, and each Owner by the acceptance of a deed to a Lot, shall be deemed to and does thereby release and forever discharge Developer

9608754 09/18/1996 03:52P 22 of 24  
Mary "Sam" Baldwin, Boone County Recorder

from, and shall indemnify and hold harmless Developer against, any and all liability arising out of or in connection with the handling, discharge, transmission, accumulation or control of storm or surface water drainage to, from, over, under or through the Lot described in such deed.

**Section 8.05. Binding Effect:** This Declaration, and the covenants, conditions and restrictions herein contained shall be binding upon Developer, each Owner and any person, firm, corporation or other legal entity nor or hereafter claiming an interest in any Lot and their or its respective successors or assigns.

**Section 8.06. Duration:** This Declaration and the restrictions imposed hereby shall run with the Real Estate and shall be binding on all Owners and all persons claiming under them for an initial period of twenty-five (25) years from the date of recordation, and shall automatically extend for successive periods of ten (10) years each, unless prior to the expiration of the initial period of any ten (10) year period they are amended or changed.

**Section 8.07. Amendments to Declaration:** This Declaration may be amended or changed at any time with written approval by seventy-five percent (75%) of all Owners herein and shall not become binding and effective until the date of recordation in the Office of the Recorder of Boone County, Indiana.

**Section 8.08. Amendment by Declarant only:** Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have an hereby reserves the right and power acting alone and without the consent or approval of the Owners or any other party to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots, (b) to bring this Declaration into compliance with statutory requirements, (c) or to correct clerical or typographical errors.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Covenants, Conditions and Restrictions to be executed on the day and in the year first above written.

PENDLETON PIKE ASSOCIATES, INC.

By   
Mark E. Sanders

9608754 09/18/1996 03:52P 23 of 24  
Mary "Sam" Baldwin, Boone County Recorder

STATE OF INDIANA )  
 )SS:  
COUNTY OF BOONE )

Subscribed and sworn to before me, a Notary Public, in and for said County and State,  
this 23<sup>RD</sup> day of AUGUST, 1996.

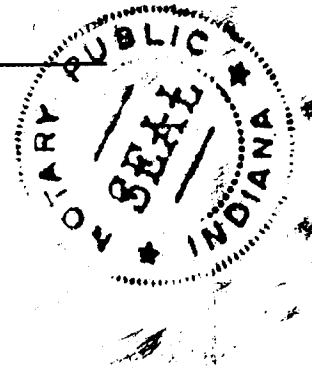
Jane A Henderson  
Notary Public

My Commission Expires:

6/04/99

County of Residence:

MARION



This instrument prepared by Jayne F. Brackemyre, Attorney At Law, 6051 S. Indianapolis Road,  
Whitestown, IN 46075  
G:\WPDOCS\VP\BRITTANY.C&R

A part of the North half of Section 25, Township 18 North, Range 2 East in Eagle Township, Boone County, Indiana, more particularly described as follows:

Commencing on the West line of the Southeast Quarter of Section 24, Township 18 North, Range 2 East 1981.06 feet South 00 degrees 14 minutes 35 seconds East (assumed bearing) from the Northwest corner of said Southeast Quarter; thence South 00 degrees 14 minutes 35 seconds East on said West line 625.90 feet to the Northeast corner of the Northwest Quarter of Section 25, Township 18 North, Range 2 East; thence South 87 degrees 44 minutes 27 seconds West on the North line of said Northwest Quarter 30.42 feet to the POINT OF BEGINNING of this description; thence continuing along said North line South 87 degrees 44 minutes 27 seconds West 1297.97 feet to the West line of the East Half of said Northwest Quarter; thence South 00 degrees 10 minutes 14 seconds East on said West line 1333.97 feet to the North line of the South Half of said Northwest Quarter; thence South 88 degrees 01 minutes 47 seconds West on said North line 210.92 feet to the centerline of U.S. Highway No. 421 (Michigan Road); thence South 20 degrees 21 minutes 32 seconds East on said centerline 1418.82 feet to its centerline intersection with a County Road known as Willow Avenue; thence North 69 degrees 38 minutes 28 seconds East on and along said centerline North 69 degrees 14 minutes 03 seconds East 434.57 feet; thence North 10 degrees 30 minutes 30 seconds East 234.00 feet; thence North 08 degrees 29 minutes 30 seconds West 407.00 feet; thence North 31 degrees 29 minutes 30 seconds West 200.00 feet; thence North 64 degrees 59 minutes 30 seconds West 140.00 feet; thence North 07 degrees 29 minutes 30 seconds West 140.00 feet; thence North 51 degrees 30 minutes 30 seconds East 160.00 feet; thence North 59 degrees 00 minutes 00 seconds East 115.00 feet; thence North 41 degrees 00 minutes 00 seconds East 180.00 feet; thence North 00 degrees 00 minutes 00 seconds East 90.00 feet; thence North 20 degrees 00 minutes 00 seconds East 110.00 feet; thence North 9 degrees 30 minutes 00 seconds East 120.00 feet; thence North 28 degrees 47 minutes 56 seconds West 220.00 feet; thence North 25 degrees 00 minutes 00 seconds East 235.00 feet; thence North 36 degrees 00 minutes 00 seconds East 65.00 feet; thence North 81 degrees 00 minutes 30 seconds East 50.00 feet; thence South 90 degrees 00 minutes 00 seconds East 180.00 feet; thence North 00 degrees 00 minutes 00 seconds East 200.00 feet; thence South 90 degrees 00 minutes 00 seconds West 74.00 feet; thence North 02 degrees 15 minutes 33 seconds West 186.59 feet to the POINT OF BEGINNING of this description; containing 60.587 acres more or less, subject to all legal Highways, Rights-of-Way and Easements Record.

9608754 09/18/1996 03:52P 24 of 24  
Mary "Sam" Baldwin, Boone County Recorder



**BRITTANY CHASE HOMEOWNERS ASSOCIATION, INC.**  
**PROXY FOR PROPOSED SPECIAL ASSESSMENT**  
**SPECIAL MEETING – JULY 17, 2006**

The undersigned, being the designated voting representative of all persons or organizations with an ownership interest in the Lot commonly known as 421 FIELDMASTER DR.,  
(Street Address)

Zionsville, Indiana, hereby designates SCOTT ALEXANDER, SECRETARY (a person of your choice), or if no person is heretofore designated then the current President or Secretary of Brittany Chase Homeowners Association, Inc. (hereafter, "Association"), as the duly authorized voting representative ("Proxy Holder") of such owners at the July 17, 2006 Special Meeting of the members of the Association, and any other reconvened meeting thereof, pursuant to the Association's By-Laws. I understand that the Board of Directors recommends approval of the Special Assessment and that the proposed Special Assessment might be modified by the owners at the special meeting or any reconvened meeting.  
**PLEASE BE SURE TO SIGN BELOW.**

I hereby direct my proxy holder to cast the vote applicable to my/our Lot as follows:

- To **VOTE FOR** the Special Assessment in the amount of \$75 per Lot to implement and
- To **VOTE AGAINST** the Special Assessment

Date: July 10, 2006.

  
Signature of Homeowner

Peter J. Huber  
Printed Name of Homeowner

Signature of Proxy Holder

When signed by the Proxy Holder, this Proxy shall constitute a vote by the Proxy holder on behalf of the above-name Homeowner in accordance with the above-indicated directions.

For this proxy to be effective, it must be submitted to our community's property manager as agent for the Association's Secretary. If you are unable to attend the meeting, please sign, date, and return this Proxy in the self-addressed, stamped envelope which is enclosed to the Association c/o Meridian Management Corporation, P.O. Box 44127, Indianapolis, IN 46244, so that they receive it no later than 12:00 noon on July 17, 2006, OR deliver it to our Association's Secretary, Scott Alexander, prior to the beginning of the July 17 meeting at 6:30 p.m.  
363332v1

2. Section 4.05 is hereby amended to read as follows:

Section 4.05. Creation of a Lien and Personal Obligation of Assessments. Developer hereby covenants and each Owner of each Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Property Owners' Association general and special assessments, such assessments to be established and collected as provided in this Article. The Property Owners' Association may assess a late charge as it determines from time to time on an assessment not paid when due. Until paid in full, an assessment not paid when due, together with interest thereon (at a percentage rate per annum equal to the then current Indiana statutory maximum annual interest rate), any late charges and costs of collection (including reasonable attorneys' fees and court costs) shall be a continuing lien upon the Lot against which such assessment is made. Each assessment, together with interest, late charges and costs of collection shall also become and remain, until paid in full, the personal obligation of the Owner at the time when the assessment first became due and payable. The Property Owners' Association may, at its option, bring a suit against the Owner (and if more than one, either jointly or severally) to recover a money judgment for any unpaid assessment without foreclosing the lien for such assessment or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Property Owners' Association shall be entitled to recover interest, late charges and the costs and expenses of such action, including, but not limited to, reasonable attorneys' fees, costs of collection and court costs.

3. Section 4.08 is hereby amended to read as follows:

Section 4.08. Annual Meeting, Adoption of Budget and General Assessment: The Association shall hold an annual meeting between October 1 and December 23 of each year with notice in the manner set forth in the By-Laws of the Property Owners' Association. A proposed annual budget for the next year shall be prepared and approved by a majority of the Board of Directors of the Property Owners' Association and delivered to each Owner along with the notice of the annual meeting. To the extent that the proposed budget increases by more than fifteen percent (15%) over the budget for the prior year, the proposed budget shall be approved by a majority of the Owners present, in person or by proxy, at the annual meeting at which a quorum is present. The proposed budget shall provide for all anticipated expenses, including any reserve fund and working capital fund requirements, in such a manner that the obligations imposed by this Declaration will be met and shall further outline all anticipated expenses and obligations for the period covered thereby. The budget for the next year shall be the basis for the uniform general assessment against each Lot (and the Owner(s) thereof). Notice of the uniform general assessment shall be sent to each Lot Owner as soon as practicable following the annual meeting. The general assessment established shall be paid to the Property Owners' Association in annual, semi-annual, quarterly or monthly installments as determined by the Board of Directors. The payments of the general assessment shall be deposited in an account opened and maintained in the name of the Property Owners' Association at a state or national bank having its principal banking offices in either Lebanon, Zionsville or Indianapolis, Indiana, provided,

however, that the amounts of the general assessment allocated to any reserve fund shall be deposited in a separate, interest bearing account at such banks.

4. Section 4.09 is hereby amended to read as follows:

Section 4.09. Special Assessments: In addition to the general assessment, the Property Owners' Association may levy in any calendar year one (1) or more uniform special assessments against each Lot (and the Owners(s) thereof) for the purpose of defraying, in whole or in part, any unanticipated expenses or obligations or the costs of any construction, major reconstructions, repair, replacement or maintenance of any capital improvement required, PROVIDED THAT, the levy of any such special assessment must be approved by the Owner(s) of at least two-thirds (2/3's) of the Owners of Lots present in person or by written proxy at a special meeting of Owners duly called for such purpose and at which a quorum is present. Following approval of the levy of any such special assessment, the vote of the Owner(s) of at least a majority of the Lots present at such meeting in person or by written proxy shall establish the date or dates any such special assessment shall become due, and the manner in which it shall be paid, for use consistent with the purpose or purposes for which such special assessment was levied.

5. Section 4.11 is hereby amended to read as follows:

Section 4.11. Duties of Directors of the Property Owners Association: The Board of Directors of the Property Owners' Association, or their designee, shall have the duties set forth in this Declaration, shall attend to and handle the day to day affairs of the Property Owners' Association and shall attend to handle such other duties delegated to them by the Owners. All acts taken and things done shall be measured by a standard of reasonableness and Directors shall have no liability to an Owner, Owners or the Property Owners' Association unless acting in bad faith in a manner inconsistent with the terms and provisions of this Declaration. Notwithstanding the foregoing, in no event (except in the case of expenses involving a total expenditure not exceeding One Thousand Dollars (\$1,000.00) or such other amount from time to time established by the Owners), shall either the Directors or Officers have any right, privilege or authority to contract for, solicit, hire or otherwise obtain services or materials which are not included within and covered by the budget then applicable or which are otherwise funded by a special assessment levied in accordance with Section 4.09 hereof.

6. Section 5.02, and sub-paragraphs (a) and (d) therein are hereby amended to read as follows:

Section 5.02. Type, Size and Nature of Construction Permitted: No single family dwelling house, garage, driveway, accessory building, fence, swimming pool, tennis court or other recreational facility permitted by this Declaration shall be erected, placed or altered on any Lot or in the common areas without the prior written approval of the Property Owners

Association. Such approval shall be obtained prior to the commencement of construction and shall be subject to the following minimum standards:

(a) No structure or building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling not exceeding two and one-half (2 1/2) stories in height, one private attached garage for a minimum of two (2) vehicles, maximum of four, and such other accessory buildings or structures permitted by this Declaration.

\* \* \* \*

(d) Any permitted accessory buildings constructed on a Lot shall have a fiberglass or asphalt shingle, slate, tile or wood shake roof and shall be made out of the same materials, or combination thereof, out of which the single family dwelling house on the same Lot is constructed, provided that, structures such as pole barns, mini barns and sheds shall be specifically prohibited. Further, greenhouses or indoor pools with track roofs or canvas dome covers are also specifically prohibited in this Subdivision.

7. Section 5.08 is hereby amended to read as follows:

Section 5.08. Fences, Walls, Hedges or Shrub Plantings: No fence, wall, hedge or other screening shall be erected, placed, altered or permitted to remain on any Lot other than as approved (as to location, type, materials, design and height) by the Property Owners' Association under Article III of this Declaration. In no such situation shall these structures or plantings be placed within platted drainage and utility easements or within the right-of-way of a public street. No fences shall be allowed in front of the rear corners of the house; fences must be connected only to the rear corners or other rear surface of the house and be totally located in the back yard. In addition the following types of fences are prohibited: chain link, vinyl coated, stockade wood and shiny white PVC. Shadowbox wood fencing and iron fencing no taller than six feet (6') are acceptable. Any wood fencing must be painted or stained with a waterproof sealant.

8. Section 6.09 is hereby deleted in its entirety.

9. A new Section 6.09 is hereby added as follows:

Section 6.09. No Boats or Trailers: No boat or other water craft or any trailers shall be parked or stored on or near any Lot for more than three (3) days, but not more than fourteen (14) days in any one year, except to the extent they can be parked or stored inside a closed garage out of public view.

10. A new Section 6.10 is hereby added as follows:

**Section 6.10. No Motor homes or Rvs:** No motor homes, camper trailers or any form of recreational vehicles, self propelled or otherwise, shall be parked or stored on or near a Lot for more than seven (7) days at a time, but not for more than a total of fourteen (14) days in any one year, except as otherwise approved by the Board of Directors. Any temporary storage containers (such as PODs) shall not be parked or stored on or near any Lot for more than ten (10) days in any one year, except as otherwise approved by the Board of Directors.

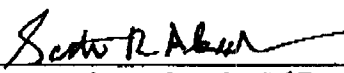
11. All other provisions of the Declarations shall remain unchanged.


12. The foregoing amendments shall run with the land and shall be binding upon all Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in Brittany Chase.

13. The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedent to the Amendments to the Declarations have been fulfilled and satisfied, and that the foregoing amendments have been approved in writing by 75% or more of the Owners.

Brittany Chase Homeowners Association, Inc.

ATTEST:

  
\_\_\_\_\_  
SCOTT R. ALEXANDER, Secretary

By  \_\_\_\_\_, President

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.

  
\_\_\_\_\_  
Scott R. Alexander

10. A new Section 6.10 is hereby added as follows:

Section 6.10. No Motor homes or Rvs: No motor homes, camper trailers or any form of recreational vehicles, self propelled or otherwise, shall be parked or stored on or near a Lot for more than seven (7) days at a time, but not for more than a total of fourteen (14) days in any one year, except as otherwise approved by the Board of Directors. Any temporary storage containers (such as PODs) shall not be parked or stored on or near any Lot for more than ten (10) days in any one year, except as otherwise approved by the Board of Directors.


11. All other provisions of the Declarations shall remain unchanged.

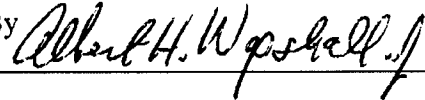
12. The foregoing amendments shall run with the land and shall be binding upon all Owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of all successors in title to any real estate in Brittany Chase.

13. The undersigned officers of the Association hereby represent and certify that all requirements for and conditions precedent to the Amendments to the Declarations have been fulfilled and satisfied, and that the foregoing amendments have been approved in writing by 75% or more of the Owners.

Brittany Chase Homeowners Association, Inc.

ATTEST:

  
\_\_\_\_\_  
SCOTT R. ALEXANDER, Secretary

By  \_\_\_\_\_, President

ACKNOWLEDGMENT

STATE OF INDIANA )  
 ) SS:  
COUNTY OF BOONE )

Before me, a Notary Public in and for said County and State, personally appeared AL WOPSHALL and SCOTT ALEXANDER the President and Secretary, respectively, of Brittany Chase Homeowners Association, Inc., who acknowledged execution of the foregoing Amendments to the Declarations on behalf of said corporation, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 18th day of August, 2006.

My Commission Expires 5-26-2013  
Residing in Hendricks County, Indiana

Sue Anne Moreland  
Signature  
Sue Anne Moreland  
Printed  
Notary Public

386303

This document prepared by Scott R. Alexander, Esq., Sommer Barnard PC, One Indiana Square, Suite 3500, Indianapolis, IN 46204.