

COVENANTS

FOR

EAGLES NEST

BOONE COUNTY



CHICAGO TITLE

Requested By: kcd 04/01/2009

(31)
69.00
Benchmark Consulting

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Mary Alice "Sam" Baldwin, Boone County Recorder

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

THIS DECLARATION (hereafter "Declaration"), made this 16th day of JUNE, 2005, by PLATINUM PROPERTIES, LLC (hereafter "Declarant");

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real estate, located in Boone County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (hereafter "Property"), upon which a residential subdivision known as *Eagles Nest* (hereafter "Development") will be developed;

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (hereafter defined) in the Property, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

**ARTICLE I
DEFINITIONS**

The following are the definitions of the terms as they are used in this

Declaration:

Section 1.1 "Association" shall mean the *Eagles Nest Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article X of this Declaration.

Section 1.2 "Board" or "Board of Directors" shall mean the Board of Directors of the *Eagles Nest Homeowners Association, Inc.*

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Section 1.3 "Builder" means a person or entity engaged in and responsible for the original construction of a residence on a Lot.

Section 1.4 "Common Area" shall mean those areas (i) designated on current and future Plats as a "Block", "Common Area", "C.A.", (ii) the Pool, and (iii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Development.

Section 1.5 "Committee" shall mean the *Development Standards and Architectural Control Committee*, as more fully described in Article VII of this Declaration.

Section 1.6 "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 Property.

Section 1.7 "Lake Area" means any Common Area on which a lake now exists or is later constructed by Declarant and "Lake" means a body of water which now exists or is later constructed by Declarant in a Lake Area.

Section 1.8 "Lot" shall mean any parcel of residential real estate designated on a Plat that is recorded in the office of the Recorder of Boone County, Indiana.

Section 1.9 "Owner" shall mean the record owner whether one or more persons or entities, of the fee simple title to any Lot which is apart of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant and a Builder.

Section 1.10 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.11 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Boone County, Indiana.

Section 1.12 "Pool" shall mean the recreational swimming pool and attached bathhouse which Declarant, in its sole and absolute discretion, may construct on the Property.

Section 1.13 "Residence" shall mean any structure intended exclusively for occupancy by single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential lot.

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Section 1.14 "County" shall mean Boone County, Indiana.

Section 1.15 "Trail System" means paths or trails so designated by the Board and located in a Common Area.

ARTICLE II

CHARACTER OF THE DEVELOPMENT

Section 2.1 In General. Notice is hereby given that in connection with the rezoning of the Property, certain commitments were made pertaining to different matters including, but not limited to, the maximum number of Residences. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. All Property located within a plat which has not been designated by numbering shall be used in a manner determined by the Declarant. However, the Declarant reserves unto itself the right to change the character of such designated use at any time in the future by applying to the *Area Plan Commission and County Commissioner* and its staff for modifications of the plan and applicable zoning commitments and, where necessary, to apply to any other necessary governmental body for such reclassification, rezoning or variance of use needed to accommodate the Declarant's planned use.

Section 2.2 Other Restrictions. All Property shall be subject to the easements, restrictions, and limitations of record appearing on a Plat and amendments thereto, on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference.

ARTICLE III

EASEMENTS

Section 3.1 Designate Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a plat:

(A) Designated Drainage, Utility, and Sewer Easements. There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements. No structures, including fences, shall be built on a drainage easement or utility easement which obstructs flow from the area being served, nor shall any changes be made in the finish grade elevations of any Lot, whether in connection

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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 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. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

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

(B) Designated Mounding, Landscaping, and Screening and Sign Easements. Any strips of grounds shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto. Declarant, during the Development Period, and, thereafter, unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall

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be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

(C) Easement Work. Notwithstanding any architectural approval under Article VII below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever planted, to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.1 (A) above.

Section 3.2 General Drainage Utility Sewer and other Development Easements.

The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely afflicts any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(A) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall be in

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addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

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

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

(D) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

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

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(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer, Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Boone County, Indiana.

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

Section 3.3 Notice of Pipeline Easement. Notice is hereby given that the Property is encumbered by three (3) easements in favor of Indiana Farm Bureau Cooperative Association, Inc., thru which gas and other substances are transported. Per the terms of these easements, fences, structures, trees, landscaping, recreation equipment, and other improvements are prohibited within certain areas.

Section 3.4 Eagles Nest Legal Drain. All Lots within The Eagles Nest Subdivision are included in the Eagles Nest 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 ponds, 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.

ARTICLE IV

ADDITIONAL PROVISIONS RESPECTING
OF SANITARY SEWER UTILITY

Section 4.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies the right of ingress/egress.

Section 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways is at risk of being removed, damaged, or destroyed by the applicable utilities without the obligation of replacement.

Section 4.3 No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed

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within easements or right-of-ways is at risk of being removed by the applicable utilities without the obligation of replacement.

Section 4.4 All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the residence to its connection to the sanitary sewer main.

Section 4.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited.

Section 4.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

ARTICLE V

RESTRICTIONS CONCERNING SIZE, PLACEMENT, MATERIALS AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES

Section 5.1 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 5.2 Association's Right to Perform Certain Maintenance. In the event that the Owner of any lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article X. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 5.3 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

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Section 5.4 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 5.5 Fences. The Committee, prior to any installation, must approve any fencing, walls, mounds, and landscape screening. It is the goal to keep all fencing or screening harmonious with the architectural character of the community. No fence or screen will be approved which obstructs necessary sight lines for vehicular traffic. Undue obstruction of views from adjoining properties and amenity areas will be taken into consideration by the Committee when reviewing fences for approval. No front yard fencing is permitted, except on a Lot on which there is maintained a sales office or model home by Declarant or Builder. If approved by the Committee, fences may be privately installed but must be constructed to professional levels of quality, design, material, composition, and color as determined by the Committee. Non-professionally installed fences may be inspected by the Committee after completion in order to ensure that the fence is of a professional quality, and final approval of such fence shall be deemed withheld until completion of this final review. All fences shall be kept in good repair by the Owner. No fence shall be located any closer to the front Lot line than the front foundation line of the residence, excluding the garage.

(A) Height Restriction.

The Committee shall determine the height of fences and walls; provided, however, that the following maximum heights of walls and fences shall never exceed the following:

- (i) No fence shall exceed six (6) feet in height;
- (ii) Lot fencing and walls shall not exceed six (6) feet above grade;
- (iii) Patio screens/privacy fences adjoining the rear of the Residence shall not exceed six (6) feet in height; and
- (iv) No fence located on a Lot abutting a lake shall exceed forty-two (42) inches in height beyond a point sixteen (16) feet from the rear building line of the Residence. However, this restriction may be waived by the Committee to enclose an in ground pool.

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The Declarant, during the Development Period and thereafter, the Committee may amend or change, any of the above restrictions in Section 5.6 (A).

(B) Materials and Finish.

- (i) Except in certain areas such as those adjacent to common areas or woods where wrought iron or vinyl coated chain link fences may be permitted by the Committee, fences are to be cedar, dog-eared, shadow box style with 1" x 6" vertical boards on both sides of the fence, and are to remain unpainted. The Committee must approve all fencing materials, design, and location.
- (ii) Walls above grade must be constructed of natural stone, masonry, wood or shadow box fencing.
- (iii) The Committee will approve landscape screening materials, design, and location on an individual basis.

(C) Approval.

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

Section 5.6 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 5.7 Lake and Lake Area(s). Except as otherwise provided, no individual using a Lake, if any, has the right to cross another Lot or trespass upon shoreline not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration. No one shall do or permit any action or activity which could result in pollution of any Lake, diversion of water, elevation of any Lake level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper Lake management except as provided in the Declaration. A Lake may not be used for swimming, ice skating, boating, or for any other purpose, except for drainage of the Property, unless expressly and specifically approved by the Board of Directors in writing and allowed by law. Lakes and Lake Areas may or may not exist on the Property, and the reference throughout this Declaration to Lakes and Lake Areas is made in order to address Lakes and Lake Areas, if any, which now exist or are later constructed upon the Property. The installation on the Property of any Lake or

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Lake Area shall be within the sole discretion of the Declarant, and under no circumstances shall the Declarant be required or obligated to install any Lake or Lake Area. Only the Declarant and the Association shall have the right to store items or develop recreational facilities upon any Common Area owned by the Association adjacent to a Lake.

Section 5.8 Mailboxes. All mailboxes and posts must be approved by the Committee and, within each Section of the Development, shall be standard as to size, location, post, design, height, material, composition and colors. The builder upon the initial Lot closing to the homeowner shall install the initial mailbox for each Lot, which meets the above criteria. The Owner agrees to maintain and paint said mailbox and post in conformance with all other mailboxes.

Section 5.9 Maintenance of Lots and Improvements. Each Owner 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 from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,
- (E) Within sixty (60) days following completion of a Residence, the Owner shall landscape the Lot, weather permitting.

Section 5.10 Miscellaneous. No clotheslines may be erected on any Lot.

Section 5.11 Outbuildings and Animal Quarters. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, animal quarters, and play houses, which are not directly connected to the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property. Animal quarters or kennels which are connected to the Residence must be approved by the Committee.

Section 5.12 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high to the highest point of the structure) and properly painted and maintained by the Owner in good repair and (ii) such equipment

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is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee, and aluminum or metal play equipment is prohibited.

Section 5.13 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.14 Sidewalks. Each Residence shall have a continuous 4-foot wide by a minimum of four (4) inches thick concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalks shall be installed by the Builder and included in the purchase price of the Residence. If an approved asphalt bike/walking path is approved on the Property in place of the sidewalk, no additional concrete sidewalk will be required.

Section 5.15 Subsurface Drains and Sump Pump Discharges. Subsurface drains have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

- (A) The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the home and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.
- (B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.
- (C) Any Owner or builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days notice by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.
- (D) In no case will maintenance and repair of sump pump discharge lines and subsurface drain laterals be the responsibility of the County.

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Section 5.16 Swimming Pools and Hot Tubs. Only permanent, in-ground pools with professional construction, approved by the Committee, shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. Hot Tubs must also be approved by the Committee.

Section 5.17 Tennis Courts, Racquetball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted without approval from the Committee. All submittals to the Committee shall include landscape plans. Basketball goals may be installed on a Lot adjacent to driveway without Committee approval provided that they have white fiberglass or translucent fiberglass or glass backboards. Independent basketball courts may not be constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are prohibited. Temporary or portable basketball courts will not be permitted to be located on streets or in cul-de-sacs.

Section 5.18 Vents. All metal and PVC roof or range vents will be painted to blend with roof color.

Section 5.19 Windows-Doors. If storm doors are installed, they must be painted to match exterior of the Residence. No unfinished aluminum doors or windows will be allowed.

Section 5.20 Coach Lights. The Builder of each Residence shall supply and install two exterior lights in operable condition on each side of the garage door at a location, having a height and of a type, style and manufacture approved by the Committee. Each such light fixture shall have a bulb of sufficient wattage to insure uniform illumination on each Lot and shall be equipped with a photoelectric cell or similar device to insure automatic illumination from dusk to dawn each day. The exterior lights shall thereafter be maintained in proper working order by the Owner. No yard lights shall be permitted unless approved by the Committee.

Section 5.21 Signs. Permitted Signs shall include only those professionally constructed signs which advertise a Residence on a Lot for sale by a licensed and registered real estate broker/company, and which are non-illuminated and less than or equal to six (6) square feet in size ("Permitted Signs"). With the exception of Permitted Signs, all signs including, but not limited to those advertising a garage sale or a Lot "For Lease", must be approved by the Architectural Review Board before being placed upon any Lot or Common Area or displayed from a Dwelling Unit. No more than one Permitted Sign may be displayed on a Lot or from a Dwelling Unit at one time. In addition, no more than one Permitted Sign may be displayed in the Community by an entity owning multiple Lots. All Permitted Signs advertising a Lot for sale shall be

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removed within three (3) business days of the conveyance of the Lot. Signs advertising a Lot for "Rent to Own", or something similar, are prohibited and may not be placed on any Lot or displayed from a Dwelling Unit constructed thereon. The Declarant and/or Designated Builder(s) are expressly exempt from the requirements of this Section 5.8 and may post signs on Common Areas and Lots owned by Declarant and/or Designated Builder(s), as they deem necessary.

ARTICLE VI

GENERAL PROHIBITIONS

Section 6.1 Animals. No animals shall be kept or maintained on any Lot except the usual household pets and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking of a dog(s) or vicious animal(s) shall constitute a nuisance and may be ordered removed from the Property by the Association.

Section 6.2 Electric Bug Killers. Electric bug killer, "zappers" and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall only be operated only when outside activities require the use thereof and not continuously.

Section 6.3 Exterior Antenna/Dishes. No television, radio or other antennas, nor any obtrusive object may be erected by any Lot Owner on the exterior of a Residence or on a Lot. Satellite dishes of 1 meter (3.281 feet) in diameter or smaller may be permitted following review of the installation location by the Committee, but in no event will the installation location be permitted to be higher than the roof ridge. Whenever possible, satellite dishes should not be visible from the street.

Section 6.4 Fuel Tanks. External or buried propane or gas tanks, except portable tanks (less than five (5) gallons) for gas grills, shall not be permitted.

Section 6.5 Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost on his or her Lot.

Section 6.6 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, 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 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 Residence 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 Residence is being utilized in whole or in part for any purpose other than that of a

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dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Residence; and d) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted Home Occupation: child day care, barber shop, styling salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales trailers, model homes, and sales offices.

Section 6.7 Nuisances. No noxious or offensive activities shall be permitted on any Lot, nor shall anything be done on any of said Lots that may be or may become an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

Section 6.8 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

(A) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant. Property Owners must maintain these swales as grass ways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.

(B) Any Owner or builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XI of this Declaration.

Section 6.9 Roofing Materials. The roofing materials on all Residences within each Section of the Development shall be similar in color, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee.

Section 6.10 Signs. No signs or advertisements shall be displayed or placed on any Lot or other structures in the Property, except entry signs, Residence or Lot sales signs and directional sales signs, except with the approval of the Committee.

Section 6.11 Solar Panels. No solar panels shall be permitted on any Residence.

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Section 6.12 Temporary Structures. No temporary house, trailer, garage or other outbuilding shall be placed or erected on any Lot, except by Declarant or a Builder.

Section 6.13 Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

Section 6.14 Vehicles Parking. No trucks one (1) ton or larger in size, campers, trailer, motor homes, boats, snowmobiles, jet ski or similar vehicles shall be parked on any street in the Property. Any recreational vehicle or trailer, camper, snowmobile, jet ski, or boat shall not be permitted to remain on any driveway or Lot except within a closed garage and shall not be regularly parked upon unpaved areas. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or fuel tanks.

Section 6.15 Visual Obstructions. No fence, wall, gate, hedge, tree or shrub planting which obstructs sight lines and elevations between three (3) and twelve (12) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and line connecting points twenty-five (25) feet from the intersection of said street lines or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended. The same sight-line limitations shall apply to any Lot within ten (10) feet from the intersection of a street line with the edge of a driveway pavement or alley line.

Section 6.16 Wells and Septic Tanks. Water wells shall not be drilled on any of the Lots except as required to irrigate common areas, nor shall any septic tanks be installed on any of the Lots.

Section 6.17 Occupancy or Residential Use of Partially Completed Residence Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

ARTICLE VII

ARCHITECTURAL CONTROLS

Section 7.1 Approvals. Approvals, determination, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by the President or a Vice President thereof, and with respect to the Committee, by one (1) member thereof.

Section 7.2 Committee: Development Standards and Architectural Control Committee. A Development Standards and Architectural Control Committee, composed of at least three (3) members, shall exist and shall be appointed by the Declarant. Such members shall be subject to removal by the Declarant at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to

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the Association the power to appoint and remove one or more members of the Committee.

Section 7.3 Continuation of Committee. When the Declarant provides written notification to the Association of discontinuance of this Committee, then the Directors of the Association, or their designees, shall continue the actions of the Committee with like powers and duties.

Section 7.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 7.5 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

Section 7.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 7.7 Liability of Committee, Declarant, Developer. Neither the Committee nor any agent thereof, nor the Declarant, or Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Association and/or Declarant make no 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. All parties should seek professional construction advise, engineering, and inspections on each Lot prior to proposing construction.

Section 7.8 Common Areas, Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the Committee: (i) any and all landscaping, fences, structures, lighting,

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walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 7.9 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping) shall be constructed or placed on any Lot without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of $\frac{1}{4}'' = 1'$ and all plot plans shall be drawn by a professional to a scale of $1'' = 20'$, or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent homeowner or in a Common Area. If Owner has encroached on an adjacent Owner's property or in a common area, the encroaching Owner will, at his or her own expense, move any fence or other improvements so as to eliminate the encroachment. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute discretion, the Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Committee.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing Applications for approval.

Section 7.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

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(A) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Declaration; and

(B) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.

Section 7.11 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development.

Section 7.12 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

ARTICLE VIII

CONTIGUOUS LOTS

Section 8.1 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one single-dwelling house. In addition, the Owner must obtain from Boone County all requisite and necessary permits and approvals.

ARTICLE IX



USE AND OWNERSHIP OF COMMON AREA

Section 9.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successor, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. Every Owner shall have a

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nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot. The Common Areas shall be conveyed by quitclaim deed to the Association. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Association.

Section 9.2 Pool. Until such time as there are two hundred fifty (250) Owners other than Declarant or Builders, the Declarant may offer to residents of other subdivisions memberships to use the pool. Such memberships for residents of other subdivisions shall be for a charge, a period of time, and on other terms and conditions as determined by the Declarant in the Declarant's sole and absolute discretion.

Section 9.3 Use. Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end of the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Association. Any Common Area depicted on the recorded plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchaser who reside on the Lot(s). Neither the Declarant's execution or recording of the plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

ARTICLE X

EAGLES NEST HOMEOWNERS ASSOCIATION, INC.

Section 10.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the property, (ii) the maintenance and repair of the Common Area including, but not limited to, any and all lighting, landscaping, pools, amenity areas, the Trail System, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrances monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement, (v) the performance of any other obligations and duties of the Association specified herein.

Section 10.2 Board of Directors. 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. Directors need not be members of the Association.

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Section 10.3 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

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

(B) Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier (hereafter "Applicable Date"):

- (i) December 31, 2020; or
- (ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership.

Section 10.4 Membership. Initially, the person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 10.5 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. Any such agreement or contract shall provide for termination by either party with or without cause and without payment of any termination fee upon written notice of ninety (90) days or less.

Section 10.6 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources nor take a public position in opposition to future phases of *Eagles Nest* proposed by the Declarant or changes to current phases of *Eagles Nest* proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with

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other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name, or on the behalf of the Association.

ARTICLE XI

ASSESSMENTS

Section 11.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

- (a) Annual Assessments (hereafter defined);
- (b) One-Time Assessment (hereafter defined);
- (c) Special Assessments (hereafter defined) for costs of enforcement of the Declaration, capital improvements and operation deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (d) Violation Assessments (hereafter defined) levied for a violation of this Declaration.

Section 11.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations can effectively be met.

Section 11.3 Annual Assessment.

(A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a Builder, the maximum Annual Assessment shall be Five Hundred Dollars (\$500.00) per Lot per year. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for annual assessments shall be January 1st, and such assessment shall be subject to collection and late charges beginning on January 31st.

(B) Purpose of Assessments. The annual assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration.

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(C) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 11.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board during any calendar year shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

Section 11.4 One-time Assessment. Upon (i) the closing of the initial conveyance of each Lot by Declarant to an Owner other than a Builder, or (ii) the sale of each Lot by a Builder (either by deed or by installment sale, conditional sale or land-contract sale), the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Two Hundred Fifty Dollars (\$250.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 11.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for 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 and/or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 11.6 Violation Assessment. In addition to all other assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against this Declaration or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

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Section 11.7 Basis for Assessment.

(A) Lots Generally. Each Lot owned by a person other than Declarant or a Builder shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(B) Lots Owned by Declarant or Builder. Declarant and any Builder shall not pay the Annual Assessment and Special Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 11.8 Deficit. The Class A Members shall be indebted to Declarant in an amount, measured and existing on the Applicable Date, equal to the difference between (i) all amounts expended by Declarant as of the Applicable Date in the performance of the Association's duties specified in this Declaration and (ii) the sum of all assessments paid by the Declarant as of the Applicable Date. Such difference shall hereafter be referred to as the "Indebtedness". Prior to the Applicable Date the Association, by and thru the Class B Member, shall execute and deliver to the Declarant a promissory note in the amount of the Indebtedness, which shall be paid in 60 equal, monthly payments, commencing thirty (30) days after the Applicable Date, together with interest at the rate of eight percent (8%) per annum.

Section 11.9 Notice and Due Date. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Section 11.10 Collection. All Assessments, together with interest thereon, attorneys fees, and other costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 11.11 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at twelve percent (12%) per annum plus a late charge not exceeding Fifty Dollars (\$50.00). The Association shall be entitled to initiate any lawful action to collect delinquent assessments plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such assessment(s). If the Association has provided for collection of any assessment in installments, upon default in the payment of any one or more installments, the Association may accelerate payment and declare the entire balance of said assessment due and payable in full. No Owner may waive or

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otherwise avoid liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 11.12 Suspension of Privileges of Membership. Notwithstanding any other provision contained herein, the Board of Directors shall have the right to suspend the voting rights, if any, and the services to be provided by the Association, together with the right to use the Common Areas of any member:

- (A) for any period during which any of the assessments or any fines/fees assessed under this Declaration owed by such member remains unpaid;
- (B) during the period of any continuing violation of this Declaration; and
- (C) during the period of any violation of the Articles of Incorporation, By-Laws, or regulations of the Association.

Section 11.13 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of assessments on a Lot showing the balance due the Association, if any.

Section 11.14 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of assessments levied under this Article XI. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such assessments which became due or are attributable to the period of time prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE XII

REMEDIES

Section 12.1 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

Section 12.2 Enforcement by the County or the County's Area Plan Commission. These Restrictions may be enforced by the County, the County's Area Plan Commission,

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or its successors or assigns, pursuant to whatever powers or procedures are statutorily available to it for such purposes.

Section 12.3 In General. The Association or any party to whose benefit this Declaration inures, including the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these Restrictions and Covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration.

ARTICLE XIII

EFFECT ON BECOMING AN OWNER

The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restrictions contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

ARTICLE XIV

TITLES

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

ARTICLE XV

SEVERABILITY

Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other

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provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

ARTICLE XVI

AMENDMENT TO THIS DECLARATION

This Declaration and the covenants, conditions and restrictions set forth in this Declaration, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Property and all parties closing under them. This Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Boone County, Indiana, approved and signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Owners of Lots (excluding Declarant or Builder):

- a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area owned by the Association by the Dwelling Unit Owners is not a transfer in the meaning of this clause;
- b. Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);
- c. Use hazard insurance proceeds for losses to any Common Area owned by the Association for other than the repair, replacement or reconstruction of the Common Area owned by the Association.
- d. Notwithstanding the following language, Sections 3.1, 3.4 and 6.8(a) may not be amended without the approval of the Boone County Area Plan Commission and/or the Boone County Board of Zoning Appeals after a public hearing in accordance with their rules and regulations.

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ARTICLE XVII

RIGHT OF FIRST REFUSAL

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

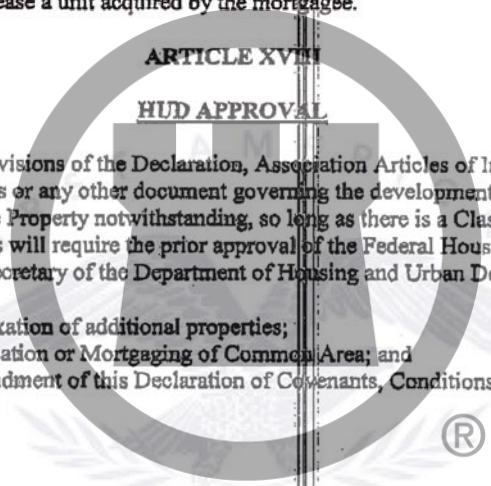
- a. Foreclose or take title to a Residence and the Lot upon which the Residence is situated, pursuant to the remedies in the mortgage;
- b. Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- c. Sell or lease a unit acquired by the mortgagee.

ARTICLE XVIII

HUD APPROVAL

All other provisions of the Declaration, Association Articles of Incorporation, Association By-Laws or any other document governing the development and administration of the Property notwithstanding, so long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

- (a) Annexation of additional properties;
- (b) Dedication or Mortgaging of Common Area; and
- (c) Amendment of this Declaration of Covenants, Conditions and Restrictions.



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IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first above written.

DECLARANT:

PLATINUM PROPERTIES, LLC

By: *Steven R. Edwards*
Steven R. Edwards, Vice President -
Chief Financial Officer

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Steven R. Edwards, Vice President - Chief Financial Officer of Platinum Properties, LLC, as the Declarant herein, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions, and Restrictions of Eagles Nest this 16th day of JUNE, 2005.

My Commission Expires:



Eric W. Simons
NOTARY PUBLIC
ERIC W SIMONS
NOTARY PUBLIC STATE OF INDIANA
HAMILTON COUNTY
MY COMMISSION EXPIRES MAR. 21, 2008

Resident of _____ County, Indiana

Printed: _____

This Instrument Prepared by: Michael J. Andreoli,
DONALDSON, ANDREOLI & TRUITT, P.C.
1393 West Oak Street, Zionsville, Indiana 46077 (317) 873-6266

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EXHIBIT A < 1 of 2 >

SCHEDULE I

LEGAL DESCRIPTION

File No.: 2033693

TRACT I (Platinum Properties, LLC-MODERNIZED DESCRIPTION)

Part of the Southwest and Southeast Quarters of Section 7, Township 17 North, Range 2 East in Eagle Township, Boone County, Indiana, being more particularly described as follows:

Beginning at a Railroad Spike marking the northwest corner of said Southwest Quarter Section; thence South 89 degrees 53 minutes 11 seconds East along the north line thereof a distance of 2219.50 feet to the northwest corner of property to Bernhardt, as recorded in Deed Record 249, page 407 in the Office of the Recorder of Boone County, Indiana; thence South 00 degrees 23 minutes 21 seconds East along the west line thereof a distance of 384.99 feet; thence South 89 degrees 53 minutes 11 seconds East along the south line thereof a distance of 699.13 feet to the southwest corner of property to Halsey, as recorded in Deed Record 200, page 490; thence North 89 degrees 58 minutes 25 seconds East along the south line thereof a distance of 538.50 feet to the west line of property to Halsey, as recorded in Deed Record 200, page 489; thence South 00 degrees 29 minutes 25 seconds East along the west line thereof a distance of 104.99 feet to the north line of property to Platinum Properties, LLC as recorded as Instrument No. 2000-9954; thence North 89 degrees 58 minutes 10 seconds East along the north line thereof and the north line of property to Eagles Nest Partners, as recorded as Instrument No. 2000-9952, a distance of 687.77 feet; thence South 41 degrees 52 minutes 50 seconds East along the East line thereof a distance of 405.93 feet to the west line of property to Platinum Properties, LLC as recorded as Instrument No. 2001-100201, the next 7 courses are along said Instrument No. 2001-100201; (1) North 22 degrees 17 minutes 25 seconds West a distance of 63.03 feet; (2) thence South 42 degrees 39 minutes 44 seconds East a distance of 363.85 feet to a curve concave southwesterly having a radius of 3239.50 feet and a radius point which bears South 47 degrees 20 minutes 16 seconds West; (3) thence southeasterly along said curve an arc distance of 410.93 feet to a point which bears North 54 degrees 36 minutes 21 seconds East from the radius point; (4) thence South 33 degrees 21 minutes 30 seconds East a distance of 20.33 feet; (5) thence South 57 degrees 24 minutes 31 seconds West a distance of 124.86 feet; (6) thence South 67 degrees 42 minutes 35 seconds West a distance of 122.50 feet; (7) thence North 22 degrees 17 minutes 25 seconds West a distance of 142.80 feet to the north line of the Southwest Quarter of said Southeast Quarter Section; thence North 89 degrees 45 minutes 35 seconds West along the north line thereof a

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distance of 29.25 feet to the east line of property to Platinum Properties, LLC as recorded as Instrument No. 2000-9956, the next 8 courses are along said Instrument No. 2000-9956; (1) South 23 degrees 36 minutes 27 seconds East a distance of 32.80 feet; (2) North 89 degrees 45 minutes 35 seconds West a distance of 361.39 feet to the east line of the Southwest Quarter of said Southeast Quarter Section; (3) thence South 00 degrees 39 minutes 52 seconds East along the west line a distance of 1287.31 feet to the south line of said Southeast Quarter Section; (4) thence South 89 degrees 59 minutes 10 seconds West along the south line thereof a distance of 1319.06 feet to the southeast corner of said Southwest Quarter section; (5) thence North 89 degrees 47 minutes 09 seconds West along the south line thereof 1942.16 feet; (6) thence North 00 degrees 54 minutes 45 seconds West a distance of 828.12 feet; (7) thence North 89 degrees 45 minutes 58 seconds West a distance of 4.35 feet; (8) thence North 00 degrees 27 minutes 02 seconds West a distance of 489.96 feet to the south line of the North Half of said Southwest Quarter Section; thence North 89 degrees 56 minutes 16 seconds West along the south line thereof a distance of 957.36 feet to the west line of said Southwest Quarter Section; thence North 00 degrees 54 minutes 45 seconds West along the west line thereof a distance of 1306.96 feet to the Point of Beginning. EXCEPT: Beginning at the southeast corner of the Northeast Quarter of the Southeast Quarter of Section 7, Township 17 North, Range 2 East, Eagle Township, Boone County, Indiana; thence west 945 feet along the south side of said quarter quarter section to a point; thence north 165.3 feet to a point; thence east 75 feet to the point of beginning of this tract; thence South 58 degrees 30 minutes West, 32.1 feet to a point; thence North 42 degrees 12 minutes West 67.9 feet to a point; thence North 30 degrees 56 minutes West 151.2 feet to a point; thence South 42 degrees 44 minutes East, 222 feet to the place of beginning. ALSO EXCEPT: The property as described in Corporate Warranty Deed to Eagles Nest Partners, LLC and recorded as Instrument No. 2000-9952.

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