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Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L. CLARK  
01-05-2001 09:25 am.  
DEC COV RES 79.00

**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF ENGLISH OAKS**

This Declaration of Covenants and Restrictions of English Oaks (hereinafter the "Declaration"), made as of the 17th day of December 2000, by Deylen Development LLC, an Indiana limited liability company doing business as "English Oaks Development Company" ("Declarant"),

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real estate located in Hamilton County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which Declarant intends to develop a residential subdivision to be known as "English Oaks"; and

WHEREAS, Declarant has or will construct certain improvements and amenities which shall constitute Common Area, as defined hereinbelow; and

WHEREAS, Declarant desires to subdivide and develop the Real Estate subject to the terms of this Declaration, as hereinafter provided; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in English Oaks and for the maintenance of the Real Estate and the improvements thereon, and to this end desires to subject the Real Estate to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Real Estate and the future owners thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in English Oaks, to create the English Oaks Homeowners Association, Inc., to which will be delegated and assigned the powers of owning, maintaining, and administering the Common Area, administering and enforcing the Restrictions described

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herein, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health and safety of the Owners of Lots; and

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a nonprofit corporation known as English Oaks Homeowners Association, Inc. prior to the sale of the first Lot in English Oaks;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate and all of the parts thereof, 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 for the improvement and sale of the Real Estate and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of English Oaks as a whole and of each of Residences, Lots, and lands situated therein. The Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Real Estate or any part or parts thereof subject to such Restrictions.

1. Definitions. The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Applicable Date" means the date upon which the earliest of the following events occurs: (i) the end of the Development Period; (b) recording in the Office of the Recorder of Hamilton County, Indiana by the Declarant of an Affidavit electing to convert the Declarant's membership in the Association to that of a Class A Member; or, (c) 12:01 a.m., January 1, 2007.

(b) "Architectural Review Committee" means that entity established pursuant to Section 13 of this Declaration for the purposes therein stated.

(c) "Articles" mean the Articles of Incorporation of the Association, as amended from time to time.

(d) "Assessments" means all sums lawfully assessed against the Members of the Association, or as declared by this Declaration, as amended from time to time.

(e) "Association" means English Oaks Homeowners Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

(f) "Board of Directors" or "Board" means the governing body of the Association elected by the Members in accordance with the Bylaws.

(g) "Bylaws" means the Code of Bylaws of the Association, as amended from time to time.

(h) "English Oaks" means the name by which the Property shall be known.

(i) "Common Area" means any part of the Real Estate referred to on a Plat as a Common Area, and shall include all of the Lake Control Structures, the Drainage System, the Lakes, the Entry Ways, and all improvements located thereon.

(j) "Declarant" means English Oaks Development Company, its successors and assignees of its interest as "Declarant" in the Property, other than Owners purchasing Lots or Residences by deed from Declarant.

(k) "Development Period" means the period of time commencing with the execution of this Declaration and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property.

(l) "Drainage Board" means the Hamilton County Drainage Board, Hamilton County, Indiana, its successors or assigns or other governmental entities or agencies having the powers of a drainage board over English Oaks.

(m) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes, and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment, and facilities (excluding the Lakes and the Lake Control Structures) located in the Property and designed for the purpose of controlling, retaining, or expediting the drainage of surface and subsurface waters from, over, and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

(n) "Entry Ways" means the structures constructed as an entrance to English Oaks or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Property.

(o) "Landscaping Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Association.

(p) "Lake" means any lake, pond, or body of water as depicted on the Plat and "Lakes" means all of such lakes, ponds, or bodies of water.

(q) "Lake Maintenance Access Easement" means an area designated on the Plat as a means of access, for purposes of maintenance, to a Lake or a Lake Control Structure.

(r) "Lake Control Structures" means the structures, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.

(s) "Lot" means a platted lot as shown on the Plat.

(t) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Committee may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(u) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement, or right-of-way, and any other expense related to the continuous maintenance, operation, or improvement of the facility.

(v) "Member" means a Class A Member or Class B Member of the Association and "Members" means Class A and Class B Members of the Association.

(w) "Mortgagee" means the holder of a first mortgage on a Residence.

(x) "Owner" means a Person, including Declarant, who at the time has or is acquiring the fee simple title to a Lot. "Owner" shall not include such persons as Mortgagees, tenants, optionees, trust beneficiaries, estate beneficiaries, or any other interest in the Lot which, if all parties fulfill their obligations, will not ripen into fee simple title. Following acceptance of possession under a written conditional sales agreement with the record title holder, the purchaser of such Lot shall be deemed to be the Owner thereof unless and until the record title holder lawfully dispossesses such purchaser, at which time the record title holder will again become the Owner.

(y) "Person" means an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(z) "Plat" means the Secondary Plat of the Property when recorded in the Office of the Recorder of Hamilton County, Indiana. If the Plat is amended, the "Plat" means the original Secondary Plat as amended from time to time.

(aa) "Property" means the Real Estate and all improvements now or hereafter placed thereon.

(bb) "Reserve for Replacements" means a fund established and maintained by the Association to meet the cost of periodic maintenance, repairs, renewal and replacement of the Common Area.

(cc) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garages and outbuildings (if permitted) and recreational facilities usual and incidental to the use of a single family residential lot.

(dd) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules, and regulations and all other provisions set forth in this Declaration, as the same may from time to time be amended.

(ee) "Street Trees" means trees which are "english oak" trees and which are planted or intended to be planted along the street rights-of-way of English Oaks in accordance with the Landscaping Plan filed with the Zoning Authority, as amended from time to time. In the event that english oak trees should in the future no longer be available for purchase, no longer permitted to be planted in English Oaks, or subject to devastating illness or disease of the species, then the Association shall choose one or more varieties of trees to be planted along the rights-of-way in lieu of english oak trees, in which event the new variety or variety of trees shall thereafter be defined as "Street Trees" as well.

(ff) "Zoning Authority" with respect to any action means the Director of the Department of Community Development of the City of Carmel, and Clay Township, Indiana or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals or review action or the failure to act.

Other definitions are included in this Declaration as needed to clarify the intentions of the Declarant.

2. **Declaration.** Declarant hereby expressly declares that the Property shall be held, transferred, and occupied subject to the Restrictions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, by (i) acceptance of any deed conveying title thereto, (ii) execution of any contract for the purchase thereof, or (iii) occupancy of any Lot, shall accept such deed, execute such contract, and occupy such Lot subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Association with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owner of each of the Lots affected by these Restrictions to keep, observe, comply with, and act in accordance with such Restrictions and agreements. Each Owner of a Lot in English Oaks by the acceptance of a deed thereto, shall be deemed to have waived such owner's right to remonstrate against annexation of all or any portion of English Oaks by the City of Carmel at any time.

3. **The Lakes.** The Lakes to be constructed on the Property are for purposes of drainage control and visual amenity. As such, it is expected that the Lakes will also become habitats for various wild life and that the Association will assume control over the management of such wild life on an "as needed" basis. Declarant shall convey title to the Common Area to the Association, including the Lakes. The Association shall be responsible for maintaining the Lakes. The Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of Lot which abuts Common Area containing a Lake shall be responsible at all times for maintaining his Lot to the edge of the Common Area and the Association shall be responsible for maintaining the Common Area between the Lot line and the pool of the Lake. No Owner shall pump water out of the Lakes or make any other private use of the Lakes without the prior written consent of the Board of Directors. The Association shall prevent any use of the Lakes by persons who are not residents of the Property or their invited guests. No boats shall be permitted upon any part of a Lake. Fishing of the Lakes will be permitted only with the prior written consent of the Board of Directors and then only in the places and during the times stipulated by the Board. No individual using a Lake shall cross another Lot or trespass upon any shoreline not within the Common Area, subject to the rights of the Declarant, the Association and their employees, agents, and assigns as set forth in the Declaration. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Association, and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over, or across such Owner's Lot. Declarant shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from erosion. By acceptance of a deed to a Lot, each Owner acknowledges the risks inherent to Lakes; each Owner agrees to advise his family

and all invitees concerning such risks; each Owner agrees to indemnify the Declarant and the Association from any and all claims, allegations, costs, expenses, and damages which may result from a personal injury involving the Lakes and the Owner, his family, and/or any invitee of such Owner; and waives any and all claims against the Declarant and/or the Association based on personal injury involving any Lake.

4. The Lake Control Structures. As a part of the Common Area, Declarant shall convey to the Association title to those Lake Control Structures which are not included in Lots. The Association shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment.

5. Drainage System. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 2001, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Association shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board, and each Owner agrees to keep such drainage system in fully operational condition.

6. Recreational Facilities. The Owners may elect to levy upon all Lots subject to assessment a uniform Special Assessment for the construction in a part of the Common Area of certain recreational facilities consisting of a shelter house, pathways, picnic grounds, or other similar facilities. Such election and Special Assessment shall be binding upon all Lots subject to assessment, so long as such election is evidenced by an instrument signed by both (i) the appropriate officers of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of all of the Class A Members eligible to vote (including 100 percent of the Owners of Lots adjacent to or across the street from such proposed Recreational Facilities), which votes shall be cast at a meeting duly called for such purpose and (ii) the Declarant, so long as the Declarant still owns at least one Lot. The General Assessment shall then be increased to provide for the maintenance, repair, and insurance of the Recreational Facilities.

7. Maintenance of Entry Ways, Landscape Easements, Common Area Easements, and Common Areas. The Association shall maintain the Entry Ways and the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs, and other plantings located on an Entry Way or a Landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to English Oaks, or a part thereof, or a planting

area within English Oaks. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision. Prior to the Applicable Date, Declarant shall have the right to enter upon the Entry Ways and Landscaping Easements to maintain, improve, and/or replace such landscaping and signage as Declarant, in its sole discretion, shall deem appropriate for English Oaks. All Street Trees which are located in Common Areas shall be maintained by the Association and, if replacement is required, will be replaced with Street Trees which are of a size which is substantially the same as the Street Trees on either side of the Street Tree being replaced.

8. Streets, Sidewalks, and Street Landscaping.

(a) Maintenance. Declarant shall maintain all streets and curbs in good condition satisfactory for the purpose for which they were constructed until they have been accepted for maintenance by the Hamilton County Highway Department or similar agency of government.

(b) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the appropriate governmental authority. Each Owner shall cut all grass and trim all other landscaping in the rights-of-way adjoining his Lot lines and shall maintain all sidewalks in the rights-of-way nearest his Lot lines. Each Owner shall immediately replace any Street Trees and lighting required by this Declaration, the Plat, the plans submitted to and approved by the Architectural Review Committee, for the Lot, or any other document controlling maintenance of Lots. All Street Trees located on Lots shall be maintained by the Owners of such Lots and, if replacement is required, will be replaced with Street Trees which are of a size which is substantially the same as the Street Trees on either side of the Street Tree being replaced.

9. Construction of Residences.

(a) Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the City of Carmel, Indiana may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in English Oaks than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and 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 outside of English Oaks. No business signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot, including signs advertising a permitted home occupation.



(b) Sizes of Residences. Except as otherwise provided herein, no Residence may be constructed on any Lot unless such Residence, exclusive of enclosed or open porches, attics, garages, finished or unfinished basements which are more than three feet below the surrounding grade, or other unheated areas which are not intended for living area all year, shall contain the following minimum living areas, as determined by the Architectural Review Committee:

- (i) Single-story house: 2,800 square feet
- (ii) One and one-half story house (the master bedroom is on the first floor):
  - First Floor 2,100 square feet
  - Second Floor 900 square feet
  - Total of both Floors 3,300 square feet
- (iii) Two-story house:
  - First Floor 1,600 square feet
  - Second Floor 1,600 square feet
  - Total of both Floors 3,300 square feet

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Driveways. All driveways shall be paved and maintained dust free.

(e) Yard Lights. The Owner of each Lot (other than Declarant) shall install a Yard Light in operable condition on such Lot. The location, height, type, style and manufacturer shall be stipulated by the Declarant prior to the installation thereof. Each such light fixture shall also have a bulb of maximum wattage approved by the Declarant to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The Yard Light thereafter shall be maintained in proper working order by the Lot Owner. All replacements of Yard Lights shall be subject to the prior written approval of the Architectural Review Committee. Corner Lots may be required to have a Yard Light on each street. Declarant reserves the right to require the placement of Yard Lights near the fronts of the Lots so that they also may function as street lights.

(f) Fire Place Chase. All fireplaces chases and flues shall be of masonry veneer or material which is equal to or better than masonry veneer in quality and appearance. No fireplace chase shall be constructed of stucco board, wood siding, or similar materials.

(g) Storage Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

(h) Construction and Landscaping; Time Requirements; Divestiture; Penalties.

(i) All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Committee. All landscaping specified on the landscaping plan approved by the Architectural Review Committee shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date.

(ii) Unless a delay is caused by strikes, war, court injunction or acts of God, the Owner of any Lot which on the date of purchase is not improved with a Residence shall commence construction of a Residence upon the Lot within four (4) months following the date the Owner acquired title thereto and shall substantially complete construction of such Residence within one (1) year following the issuance of the building permit for such Residence. The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Committee of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon the Lot within the time periods specified herein. For purposes of this subparagraph, construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, down spouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(iii) If the Owner fails to commence construction of a Residence within the time period specified herein, Declarant may reenter the Lot and divest the Owner of title thereto by tendering to the Owner, or to the Clerk of the Circuit Court of Hamilton County if the Owner is unavailable or refuses such tender, the same net dollar amount as was received by Declarant from such Owner as consideration for the conveyance by Declarant of the Lot. The right of Declarant to divest the Owner of the Lot prior to the commencement of construction may be waived in whole or in part by the Declarant; however, no such waiver shall bind the Association following the the Applicable Date; provided, however, that the right of divestiture, if not exercised, shall expire at the end of the fifth year following the date of conveyance of the Lot to any Owner by the Declarant. All such waivers and extensions described in this

section shall be in writing and in form suitable for recording in the Office of the Recorder of Hamilton County, Indiana.

(iv) If the Owner commences construction but fails to complete construction within one (1) year following the issuance of the original building permit for the Residence, then the Owner shall be liable to the Declarant (prior to the Applicable Date) or to the Association (following The Applicable Date) in the amount of Thirty-five Dollars (\$35) per day for each day after the original due date for completion that the Residence shall not be complete. The right of Declarant and the Association to collect penalties from Owners for failure to complete construction within one (1) year following the issuance of the first building permit may be waived in whole or in part, or the time for completion may be extended, provided that no such extension shall exceed three (3) months for each application for extension by the Owner.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color, and manufacture required by the Declarant. Such mailboxes shall be installed upon posts approved as to type, size, and location by the Declarant and the United States Post Office. The design and placement of any replacement mailboxes shall be subject to the prior written approval of the Architectural Review Committee and shall be as nearly as reasonably possible identical to the original mailboxes and posts required by Declarant.

(j) Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by the Clay Township Regional West District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability, or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain, and use an irrigation water well on his Lot, provided that such well is located entirely at or below the surface of the ground or otherwise not visible to neighbors of the Lot.

(l) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within

English Oaks may be included in a legal drain watershed, as established by the Drainage Board. In such event, each Lot in English Oaks may be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to materially adversely affect the surface water drainage of surrounding Lots. Perimeter foundation drains, sump pump drains, down spouts and water softeners, shall be connected whenever feasible into a subsurface drainage title. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Sheds. Outbuildings and sheds are specifically prohibited except that the Architectural Review Committee may allow them on a case by case basis if they are also permitted by the applicable zoning ordinance. Any Owner requesting permission to erect an outbuilding or shed shall present documentary evidence that the proposal fully conforms to the applicable zoning ordinance.

10. Maintenance of Lots.

(a) Vehicle Parking. No camper, motor home, truck, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of English Oaks and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. A builder shall display a "sold" sign on the Lot when he has sold the property.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Architectural Review Committee and the prime root thereof is within four (4) feet of the Residence. Corner Lots shall be deemed to have two (2) front property lines. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "wall" or "hedge." All fencing shall be wrought iron in appearance, and the Architectural Review Committee may not approve a fence which either is not wrought iron or does not have a wrought iron appearance. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. No fence shall be erected or maintained on or within any Landscaping Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of

such fence. No fence, wall, or hedge may be erected on a Lot without prior approval of the Architectural Review Committee, which shall approve or disapprove the location of all fences, walls, and hedges; provided, however, that all fencing erected on a Lot must be erected either (i) within three (3) inches of the property line of such Lot, or (ii) more than ten (10) feet from the property line of such Lot. Owners of Lots adjoining Lots on which a fence is erected within three (3) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Architectural Review Committee. The Architectural Review Committee may establish further restrictions with respect to fences, walls, and hedges, including the adoption of design standards and the placement of limitations on (or prohibition of) the installation of fences and walls in the rear yard of a Lot abutting a Lake. All fences and walls shall be kept in good repair and all hedges shall be kept trimmed. No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points 25 feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a street, in which case the edge of the driveway pavement shall be substituted for one of the street Lot lines.

(d) Nuisances. No noxious or offensive activity shall be allowed upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Violation of any ordinance governing noise, building or lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance if the barking is unreasonable under the circumstances. In the event of successful enforcement by an Owner, the Declarant, or an Owner of the provisions hereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

(e) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view, except not more than 24 hours prior to its removal thereof, when the containers may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(f) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than two (2) of the same type (dog, cat,

bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Architectural Review Committee and the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Members at any meeting.

(g) **Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot unless the prior written consent of the Board of Directors shall have been obtained. In such events, Owners shall use appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

(h) **Antennae and Receivers.** No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Architectural Review Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from the neighboring Lots, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or Bylaws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

(i) **Exterior Lights.** No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Residence.

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

(k) **Tennis Courts.** No tennis court shall be installed or maintained on any Lot without prior written approval from the Declarant or the Architectural Review Committee.

(l) Swimming. No swimming pool or equipment or building related thereto shall be constructed without the prior approval of the Architectural Review Committee. The Architectural Review Committee may require, as a condition to the location of a swimming pool on a Lot, that the Owner install a mechanical pool cover. If the Board imposes such requirement, then a mechanical pool cover of a type and manufacture approved by the Architectural Review Committee shall be installed by the Owner in compliance with all applicable governmental requirements and all requirements established by the Architectural Review Committee.

(m) Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorneys' fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

11. English Oaks Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and Bylaws. If a Person realizes upon his security and becomes an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on the Owners, including those provisions with respect to the payment of Assessments.

(b) Powers. The Association shall have such powers as are set forth in this Declaration and in the Articles and Bylaws, together with all other powers that belong to it by law.

(c) Classes of Membership and Voting Rights. The Association shall have the following two (2) classes of voting membership:

Class A. Class A Members shall be all of the Owners except the Declarant. Prior to the Applicable Date, Class A Members shall have no voting rights other than as specifically provided in this Declaration to exist prior to the Applicable Date. Following The Applicable Date, 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 each Lot shall be exercised as the Members holding an interest in such Lot determine among themselves, but in no event shall more than one individual vote be cast with respect to any Lot.

**Class B.** The Class B Member shall be the Declarant. Prior to the Applicable Date, the Declarant shall be entitled to one (1) vote 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 the earliest of the following events: (a) the Applicable Date; (b) written election by the Declarant to convert its membership to that of a Class A Member; or (c) January 1, 2007.

(d) **Reserve for Replacements.** The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve funds of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal, and replacement of the Common Area. In determining the amount, the Board shall take into consideration the expected useful life of the Common Area, projected increases in the cost of materials and labor, interest to be earned by such fund, and the advice of the Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The Reserve for Replacements shall initially be funded through the collection from each Owner of the sum of \$500.00 ("Initial Assessment"). The Initial Assessment shall be due and payable upon (i) the transfer of a Lot by Declarant to an Owner who is not a builder, but who acquires title for the purpose of constructing a Residence thereon for his own occupancy, or (ii) the transfer of a Lot by a builder to an Owner. The Reserve for Replacements may not be used for any purpose other than replacement of parts of the Common Area which either (i) cannot be repaired or (ii) with respect to which the repairs constitute a large and unanticipated expense which was not included in the operating budget of the Association. The Reserve for Replacements may not be used except upon approval by the Board of Directors. In such event, the Board of Directors shall also consider the imposition of a Special Assessment or the increasing of the General Assessment by an amount sufficient to replenish the Reserve for Replacements within a reasonable period of time.

(e) **Limitations on Action by the Association.** From this date forward, unless the Class B Member, if any, and (i) at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A Members, have given their prior written approval, the Association, the Board of Directors, and the Owners may not: (i) except as authorized by subsection 14(a), by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer for purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount equal to at least one hundred percent (100%) of the insurable



value thereof (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of the damaged Common Area; (iv) change the method of determining the obligations, assessments, dues, or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Common Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(f) Mergers. Upon a merger or consolidation of another corporation with the Association, its properties, rights, and obligations may, as provided in the Articles, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights, and obligations of another corporation may by operation of law be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

(g) Termination of Class B Membership. Wherever in this Declaration the consent, approval, or vote of the Class B Member is required, such requirement shall cease at such time as the Class B Membership terminates, but no such termination shall affect the rights and powers of the Declarant set forth in subsections 15(b), 15(f), section 16, or subsection 20(b).

(h) Board of Directors. Prior to the Applicable Date, the Declarant shall appoint all Directors, shall fill all vacancies in the Board of Directors, and shall have the right to remove any Director at any time, with or without cause. After the Applicable Date, the Owners shall elect a Board of Directors for the Association as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be Members of the Association prior to the Applicable Date; however, after the Applicable Date all Directors elected to the Board of Directors by the Members must be Members.

## 12. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any 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 Association the following: (1) General Assessments, (2) the Initial Assessment, and (3) Special Assessments. All such Assessments shall be established and collected as

hereinafter provided. All Assessments, together with interest thereon and 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 and attorneys' fees, shall also be the personal obligation of the Person(s) who are the Owner of the Lot at the time when the Assessment became due.

(b) Basis for Assessment.

(i) Lots Generally. Prior to the Applicable Date, and thereafter unless changed in accordance with the terms hereof, all Lots shall be assessed at the same rate without regard to whether a Residence has been constructed upon the Lot or its location within English Oaks.

(ii) Change in Basis. After the Applicable Date, the basis for assessment may be changed with the assent of ninety percent (90%) of the Class A Members who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in this subsection, fix the General Assessment for each assessment year of the Association at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Except as otherwise expressly provided herein, the General Assessment shall be allocated equally among the Owners of all Lots and shall be uniformly assessed.

(c) General Assessment. The General Assessments levied by the Association shall be used exclusively to replenish the Reserve for Replacements; the improvement, replacement, maintenance, and operation of the Common Area and all Landscape Easements; the payment of all expenses of operation, insurance, and real estate taxes allocable to the Common Areas, which expenses shall be paid by the Association from the date hereof, notwithstanding that the Declarant may retain title to all or part of the Common Area; and, the expenses of operating the Association, including management fees, professional fees, dues, and office expenses. The General Assessments shall not be used to benefit any Member or group of Members, to support political candidates, to lobby any governmental officials, to support social, religious, educational, charitable, literary, or scientific purposes, or for any other purpose which is unlawful, would cause the tax status of the Association to be changed or challenged, or

which is outside the scope of purposes generally recognized as appropriate for associations of neighborhood homeowners.

(d) Special Assessments.

(i) Prior to the Applicable Date, there shall be no Special Assessments and the Declarant shall fund any shortage of Assessments which may be required to maintain the Common Area in accordance with the terms of this Declaration.

(ii) After the Applicable Date, by unanimous assent of the Board of Directors, the Association may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Common Area, including fixtures and personal property relating thereto; provided, however, if the amount of the Special Assessment payable in a year shall exceed Twenty Percent (20%) of the General Assessment payable in the same year, then such Special Assessment must be approved by a majority of the votes of the Class A Members voting in person or by proxy at an annual meeting or at a special meeting of such Members duly called for such purpose.

(iii) In the event of a petition from more than one Owner requesting the Association to repair or construct an improvement in the Common Area or a Landscape Easement which would significantly benefit a few Owners and would not benefit the majority of Members, with the assent of ninety percent (90%) of the benefitted Members and a majority of the other Members voting in person or by proxy at an annual meeting or a special meeting called for the purpose of considering such petition, the Association may adopt a Special Assessment to be paid only by the benefitted Owners, the funds from which will be used for the purpose described in the petition. The Association shall not be obliged to commence construction or repair of the improvement in the Common Area unless and until the special assessments shall have been collected from all Owners liable therefor, and the Association shall take such actions as shall protect it from liability for costs or expenses in excess of the Special Assessment thus collected.

(e) Date of Commencement of Assessments. The General Assessment shall commence with respect to all Lots on the first day of the month following conveyance of the first Lot to an Owner who is not the Declarant, and shall be prorated based on the number of whole months remaining in the year. Special Assessments shall be due and

payable upon receipt of demand for payment from the Association or at such later time as shall be described in the resolution of the Association adopting the Special Assessment.

(f) Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate not greater than the current statutory maximum annual interest rate for consumer loans, to be set by the Board of Directors for each assessment year. The Association shall be entitled to institute in any court of competent jurisdiction any lawful action to collect delinquent Assessments plus any expenses or costs, including attorneys' fees, incurred by the Association in collecting such Assessment. 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 otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

(g) 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 encumbering such Lot and to any valid ad valorem tax or ad valorem assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot other than pursuant to mortgage foreclosure or tax sale shall not affect the Assessment lien. No sale or transfer of the Lot shall relieve the Owner of liability for Assessments incurred during the term of his ownership. No sale or transfer of the Lot shall relieve any transferee of such Lot from liability for any Assessments thereafter becoming due or release the Lot from the lien for Assessments. Notwithstanding the above, in the event any creditor shall take possession of the Lot, including a bankruptcy trustee, receiver, representative of the Owner or any creditor or class of creditors, or judgment creditor, the lien for Assessments shall remain and the liability for payment of past and future such Assessments shall become that of the possessor of the Lot or any other person or representative claiming a right of possession of or ownership interest in the Lot, without limitation.

(h) Certificates. The Association shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Association that the Assessments on a Lot have been paid or that the Owner owes a certain amount to the Association for unpaid Assessments and accrued interest, as the case may be.

(h) Annual Budget. Prior to the annual meeting of the Members of the Association, the Board of Directors shall adopt a proposed annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met. Such proposed annual budget shall be presented to the Members at the annual meeting and shall be ratified or amended.

as the case may be, and then adopted, by a majority of the Members voting in person or by proxy at such meeting. If the Members are unable to adopt a budget at the annual meeting, for whatever reason, then the Board of Directors shall adopt a final budget, which shall be binding on the Members for the ensuing fiscal year. The annual budget, as adopted, shall stipulate the amount and manner of payment of the General Assessments.

13. Architectural Control.

(a) The Architectural Review Committee. Until the completion of a house on every Lot, an Architectural Review Committee consisting of two (2) Persons shall be appointed by the Declarant. After the completion of a Residence on every Lot, the Architectural Review Committee shall be appointed by the Board of Directors. The Declarant may appoint one or more Owners to the Architectural Review Committee prior to the completion of a Residence on every Lot and may increase the number of members of such Committee at any time. After the Board of Directors assumes control of the Architectural Review Committee, the Board of Directors may increase the number of members thereof to as many as five, but may not reduce the number below two.

(b) Purposes. The Architectural Review Committee shall regulate the external design, appearance, use, location, and maintenance of the Property and of improvements thereon in such manner as to preserve values and to maintain a harmonious relationship among structures, improvements, and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, structures, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Committee of a Lot Development Plan therefor. Prior to the commencement by an Owner of (i) construction, erection or alteration of any Residence, driveway, sidewalk, building, fence, wall, swimming pool, tennis court, patio, deck, recreational equipment, or other improvements to a Lot, or (ii) installation of any plantings or other landscaping on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Committee. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over English Oaks, and no Owner shall undertake any construction activity within English Oaks unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Committee. As used in this subsection, "plantings" does not include flowers, bushes, shrubs or other plants having a maintained height of less than 18 inches.

(d) Procedures. Until the completion of a Residence on every Lot, in the event the Architectural Review Committee fails to approve, modify, or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Committee in accordance with procedures established by Declarant, the Lot Development Plan will be deemed to be denied. After a Residence has been completed on every Lot, in the event the Architectural Review Committee fails to approve, modify, or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Committee in accordance with procedures established by such Committee, the Lot Development Plan will be deemed to be granted. A decision of the Architectural Review Committee may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) majority of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Committee shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in section (b) hereof to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration or the Plat. If Declarant is no longer a Class B member, any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) majority of the Directors then serving.

(f) Architectural Appeals Committee. There is hereby created an Architectural Appeals Committee ("AAC"), which shall have the power to reject certain modifications of the design standards of English Oaks which are described herein and in the Plat, even if such modifications are first approved by the Architectural Review Committee. The AAC shall consist of three (3) members appointed by the Board of Directors, but shall not include more than two members of the Architectural Review Committee. Unanimous consent of all members of the AAC shall be required to ratify and approve any decision of the Architectural Review Committee within the jurisdiction of the AAC; otherwise, the decision will be vacated. Prior to the Applicable Date, one member of the AAC shall be Bruce A. Cordingley, or his nominee, representing the interests of the owners of property adjoining the Property. The jurisdiction of the AAC is as follows:

(i) Square Foot Maximums: The Architectural Review Committee normally intends to reject plans for homes which contain too many square feet both for architectural reasons (the house will appear too large for the lot, crowd the side lot lines, and be out of character with its neighbors) and for marketing reasons (too wide a range of housing values inhibits the construction of homes in the upper half of the range). However, if a home exceeds the following square foot areas and the Architectural Review Committee approves it, or if there is a dispute concerning whether or not a particular part of the Residence should be included in the square footage

calculations, the matter will be automatically referred to the AAC for approval.

Single-story house:	3,800 square feet
One and one-half story house:	4,300 square feet
Two story house:	4,300 square feet

(ii) **Exterior Construction:** In many cases, both the design of the house and the materials used on the exterior will be dictated by the style of the house, if it is truly a "period" house. Thus, where a builder or Owner intends to build a "period" style of house, the following areas of deviation will be permitted only with the unanimous approval of the AAC:

First floor masonry less than 100% of the exterior walls below the second floor.

Size of eaves and flyrafters less than 12 inches of overhang.

Roof pitches lower than eight inches of rise for each 12 inches of horizontal distance from the front to the back of the roof, or lower than 10 inches of rise for each 12 inches of horizontal distance across the front of the house.

Shingles which are not laminated or which do not have at least a 25-year warranty.

(iii) **Fencing:** The requirement of wrought-iron fencing, or fencing which appears to be made of wrought-iron, and the requirement that such fences not exceed five feet in height may be varied with the assent of the AAC.

(iv) **Sheds and Outbuildings:** Some outbuildings may be architecturally appropriate for a "period" home, or may be required by governmental regulation in connection with a swimming pool, etc. In such instances where the Architectural Review Committee approves of a shed or outbuilding, the AAC must also consent and approve such improvement.

14. **Common Area.**

(a) **Ownership.** The Common Area shall remain private, and neither Declarant's execution or recording of any instrument conveying the Common Area to the Association,

nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Common Area. Declarant or the Association may, however, dedicate or transfer parts of the Common Area to any public agency, authority, or utility for use as roads and/or utilities in keeping with the Plat and development plan for English Oaks.

(b) **Density of Use or Adequacy.** Declarant expressly disclaims any warranties or representations regarding the density of use of the Common Area or any facilities located thereon or the adequacy thereof for the purpose intended.

(c) **Obligations of the Association.** The Association, subject to the rights of Declarant and the Owners which are set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements and lighting thereon (including furnishings and equipment related thereto), and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair.

(d) **Easements of Enjoyment.** No person shall have any right or easement of enjoyment in or to the Common Area except to the extent granted by, and subject to the terms and provisions of, this Declaration and/or any resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. Each Owner shall have the right to use parts of the Common Area as may be authorized by the Board of Directors from time to time.

(e) **Extent of Easements.** The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Association to establish reasonable rules for the use of the Common Area;

(ii) the right of the Association to mortgage any or all of the Common Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Common Area or facilities constructed thereon, pursuant to approval of the Class B member, if any, and (i) two-thirds (2/3) of the votes of the Class A Members and (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Association or a special meeting duly called for this purpose; and

(iii) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member, if any, and (i) the appropriate officers of the Association



acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A Members and (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Common Area and facilities may use the Common Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Association.

(g) Damage or Destruction by Owner. In the event all or part of the Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, the Association shall repair said damaged area in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association in the discretion of the Association. The cost of such repairs shall be a Special Assessment upon the Lot of said Owner, due and payable upon demand by the Board of Directors. Each Owner shall purchase and maintain liability insurance for the risk of damage or destruction of Common Area by the Owner or his guests, tenants, licenses, agents, or family.

(h) Conveyance of Title. Declarant may retain legal title to the Common Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Common Area to the Association, free and clear of all liens and financial encumbrances. Owners shall have all rights and obligations imposed by this Declaration with respect to such Common Area prior to conveyance and the Association shall be liable for payment of all operating expenses, taxes, and insurance for such Common Area during and after the Applicable Date.

#### 15. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, Lots and the Common Area are subject to Drainage Easements, Sewer Easements, Utility Easements, Entry Way Easements, Landscaping Easements, and Lake Maintenance Access Easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utility companies, and governmental agencies as follows:

(i) Drainage Easements. Drainage Easements ("DE") 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 English Oaks and adjoining ground and/or public drainage systems; and it shall be the

individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Association, but neither Declarant nor the Association shall have any duty to undertake any such construction or reconstruction. In the event the Declarant or the Association undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to re-grading and re-seeding. Under no circumstances shall the Declarant be liable for any damage or destruction to any fences, structures, or other improvements which are damaged, destroyed, or remodeled by Declarant, or its agents or employees, as a result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners. Owners shall be permitted to place driveways, plantings, and miscellaneous landscaping features in Drainage Easements, but shall not be permitted to place fences, buildings, retaining walls, or any other improvement which would impede the flow of storm water or interfere with the inspection of such easement by the Association or governmental authorities.

(ii) Sewer Easements. Sewer Easements ("SE") are created for the use of the local government agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve English Oaks for the purpose of installation, repair, replacement, and maintenance of sewers that are a part of said system. No buildings shall be erected in Sewer Easements and any other improvements or landscaping placed in a Sewer Easement shall be at the sole risk of the Owner.

(iii) Utility Easements. Utility Easements ("UE") are created for the use of Declarant, the Association, and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines, and wires, as well as for all uses specified in the case of sewer easements. No buildings shall be erected in Utility Easements and any other improvements or landscaping placed in a Utility Easement shall be at the sole risk of the Owner.

(iv) Entry Way Easements. Entry Way Easements ("EWE") are hereby created in the Common Area for the use of Declarant and the Association for installation, operation, and maintenance of the entry way treatment and signage for English Oaks. Such easements represent areas into which the Owners are not allowed to trespass except to provide necessary

maintenance of the landscaping and then only when authorized by the Board of Directors. The Association shall be primarily liable for the continued maintenance, repair, and good condition of the landscaping, contouring, English Oaks signage, and other improvements placed by the Declarant in the Entry Way Easements. Prior to the Applicable Date, the Declarant shall have the right to place as much advertising signage in the Entry Way Easements as shall be permissible from time to time by local governmental authority, for the purposes of advertising the Property and Lots for sale and advertising the various builders who shall at that time be active in building Residences in English Oaks. All such advertising signage shall be tasteful, shall not detract from the beauty and character of the English Oaks, and shall be removed promptly upon the sale of all of the Lots.

(v) Landscaping Easements. As indicated on the Plat, some Lots and all of the Common Area, except for those areas covered with water or included in the Entry Way Easements, shall be subject to a Landscaping Easement ("LE") whereby the Declarant, prior to the Applicable Date, and the Association, at all times, may enter for the purposes of planting and maintaining trees, shrubs, and other plantings and landscaping features.

(vi) Lake Maintenance Access Easements. Lake Maintenance Access Easements ("LMAE") are created for the use of Declarant, the Association, and the Drainage Board for the purpose of gaining access to the Lakes and the Drainage System in the course of maintenance, repair, or replacement of any thereof.

(vii) Common Area Access. All Owners and their invited guests shall have reasonable access to the Common Areas for purposes of walking, miscellaneous recreation, fishing the Lakes, and observing birds and wildlife. No structures or shelters, including tents, shall be erected upon any of the Common Area without the prior written consent of the Board of Directors. No activities shall be conducted in the Common Area which would constitute a nuisance to any other Owner. No motorized or wheeled vehicles (including bicycles and tricycles), no remote control apparatus, and no weapons of any kind (including bows and arrows) shall be permitted on or to be used within the Common Area. All uses of the Common Area shall be subject to the reasonable control of the Board of Directors.

All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any drainage, sewer, or utility easement, but a paved driveway necessary to provide access to a Lot from a public street shall not be deemed a "structure" for purposes of this Restriction.

(b) General Easement. There is hereby created a blanket easement over, across, through, and under the Property for ingress, egress, installation, replacement, repair, and maintenance of underground utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television, cable, and communication lines and systems, to the extent that any such line, main, or system shall be located outside of the easement in which it was intended to be constructed. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area to its condition as it existed prior to the disturbance. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant, prior to the conveyance of the first Lot, or as approved by the Association, after the conveyance of the first Lot. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, Declarant, prior to the first conveyance of a Lot, or the Association, after the conveyance of the first Lot, shall have the right to grant such easement on the Property without the permission of any affected Owner. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed and the repair, maintenance, and replacement thereof, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery, and similar Persons to enter upon the Common Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System which is included within any legal drain.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways, and Lake Maintenance Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, decks, or other pavings, other than crossings, driveways, walkways or Lake Maintenance Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers, or other improvements of the Owner located on the land covered by said easements.

(f) Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Property, Declarant reserves a blanket easement and right, but not the duty, on, over, and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. If such grading or cutting of trees, bushes, or shrubbery is in an area designated on the Plat as a Drainage Easement, then Declarant's obligation to restore the affected real estate shall be limited to re-grading and re-seeding, and neither the Declarant nor its agents, employees or assigns shall be liable for any damage or destruction to any improvements, structures, or fencing located on or in such existing Drainage Easement. If such grading or cutting of trees, bushes or shrubbery is not in an area already designated on the Plat as a Drainage Easement, Declarant will restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice. This easement shall be deemed to have been assigned to the Association as of the Applicable Date and thereafter the Association shall have the duty, as well as the right, to correct drainage problems within the Property. If a drainage problem is the fault of an Owner, then the Association shall have the right and duty to impose a Special Assessment on such Owner for recovery of all of the cost and expense of correcting such drainage problem, which Special Assessment shall be due and payable on demand by the Association, together with interest as provided for herein and attorneys' fees, court costs, and all other expenses of litigation and collection.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the Drainage Easements (DE) on such Owner's Lot.

16. Declarant's Use During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Property, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences, and sales offices.

17. Enforcement and Limitation of Actions.

(a) The Association, any Owner, and/or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, but neither

Declarant nor the Association shall be liable for damage of any kind to any Person for failure either to abide by, enforce, or carry out any of the Restrictions. 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 an 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. In any action by Declarant, the Association, or an Owner to enforce this Declaration, or to defend any inaction or action taken under this Declaration, such party shall be entitled to recover all costs of enforcement, including attorneys' fees, litigation expenses, court costs, and costs of collection, together with interest at the highest rate then chargeable to consumers in the State of Indiana, if it substantially prevails in such action.

(b) There is hereby established a three-year period following any action or inaction of the Declarant or the Association within which any claims based on such action or inaction must be brought, and the failure to do so shall terminate such claim, regardless of when the existence of the claim may have been discovered. This paragraph shall not alter the statutes of limitation which may apply to any action by the Declarant or the Association against any other party, including Owners.

(c) In any claim against the Declarant or the Association, damages assessable against such party shall be limited to the net asset value of such entity at the time the claim is brought. Any person alleging a claim under this Declaration, the Bylaws, the Plat, or any other document executed by the Declarant or the Association in their respective entity capacities, shall be deemed to have waived any and all claims against the Managers, Members, Directors, and officers of such parties.

(d) Any person who, by virtue of recovery on a claim against the Declarant, shall acquire substantially all of the assets of the Declarant, shall become the "Declarant" for purposes of this Declaration, the Bylaws, the Plat, and all other documents executed by the Declarant in connection with the development of English Oaks, and shall thereafter have the rights of the Declarant and be responsible for performing all of the functions of the Declarant.

(e) Any person who, by virtue of recovery on a claim against the Association, shall acquire substantially all of the assets of the Association, shall immediately offer to the Owners, or a nonprofit corporation then formed by the Owners, the opportunity to purchase the Common Area from such person for the sum of Ten Dollars and no cents (\$10.00), which offer shall remain open for a period of ten (10) years. Unless and until such offer shall have been accepted, the person in control of the Common Area shall manage such Common Area in accordance with this Declaration and the Bylaws and Plat for the best interests of the Owners but shall not be entitled to collect any of the Assessments from any

of the Owners. The Owners shall have the right to enforce this subsection by specific performance and any other remedy available at law or in equity.

18. Approvals by Declarant. As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: the dedication or transfer of the Common Area; the merger or consolidation of the Property with other real estate; mortgaging of the Common Area; amendment of this Declaration; and, changes in the basis for any Assessment or the amount, use, and time of payment of any Assessment.

19. Mortgages.

(a) Notices to Association. Any Owner who places a first mortgage lien upon his Residence or the Mortgagee thereof shall notify the Secretary of the Association of such mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, the Articles, or the Bylaws (the "Organizational Documents") shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of such mortgage and the name and address of the Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to such Mortgagee as may otherwise be required by the Organizational Documents shall be required, such Mortgagee shall not be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage, and the vote of such Mortgagee shall be deemed to be in the affirmative on any matter requiring the consent of Mortgagees.

(b) Notices to Mortgagees. The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under subsection (a) above notice of any of the following:

- (i) Any condemnation or casualty loss that affects a material portion of the Common Area;
- (ii) Any delinquency in the payment of any Assessment owed by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;
- (iii) Any lapse, cancellation by the insurer, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; and.

(v) Any proposed amendment of the Organizational Documents effecting a change in (A) the interest in the Common Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto, (B) the vote appertaining to a Residence, or (C) the purposes for which any Residence or the Common Area are restricted.

(c) Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the residence shall not be liable for, nor shall the Residence conveyed by subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement. If no notice is requested, or if the amount described in the notice is not paid, then the purchaser shall become jointly and severally liable with the Owner/seller for all amounts due the Association by the Owner as of the date of transfer of the Lot to the purchaser, and, the Mortgagee's lien shall be subject and subordinate to the lien for Assessments in the amount of the unpaid Assessments existing as of the date of execution of the mortgage.

(d) Financial Statements. Upon the request of any Mortgagee, the Association shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association.

(e) Payments by Mortgagees. Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Common Area or any part thereof and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Association.

(f) Development Loans. In the event the Declarant shall encumber the Common Area with a mortgage or other encumbrance for the purpose of providing funds to develop the Property as English Oaks, then such mortgage or other encumbrance shall be deemed to be released as to the Common Area, but only the Common Area, when (i) the development of English Oaks is substantially complete, as evidenced by the acceptance of all public improvements in English Oaks for maintenance by public authorities, (ii) the Declarant conveys the first Lot to an Owner, and (iii) the Declarant conveys the Common Area to the Association. In the event the development loan shall encumber the Common Area at the time of conveyance thereof to the Association, the Declarant shall by this Declaration be deemed to have indemnified the Association from any liability for repayment of the development loan and any loss of use or title of the Common Area arising as a result of the existence of such development loan mortgage or other encumbrance at the time of such conveyance to the Association. Upon satisfaction of the above three criteria and



upon written request by Declarant, each development loan lender will execute appropriate releases of the Common Area from their respective mortgages and other encumbrances, in recordable form, and will deliver them to the Declarant for recording and filing. In lieu of the above provisions, each development loan may contain provisions for the release of the liens and encumbrances thereof upon other terms and provisions which are satisfactory to such lender and the Declarant, provided that the terms and provisions shall be in compliance with law and not inhibit the use of the Common Area by the Association following the conveyance of the Common Area to the Association by the Declarant.

20. Amendments.

(a) Generally. Except in those instances when a larger majority is required pursuant to this Declaration or in those instances when Mortgagees must also approve an amendment, this Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Association acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of all of the Class A Members eligible to vote, which votes shall be cast at a meeting duly called for the purpose of amending this Declaration and, (ii) the Declarant, so long as the Declarant still owns at least one (1) Lot.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants, and restrictions contained in this Declaration during the period prior to December 31, 2006. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall directly restrict or diminish the rights or materially increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment, or materially adversely affect the rights of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in subsection 15(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across, or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the office of the Recorder of Hamilton County, Indiana. ®

21. Interpretation. The underlined titles preceding the various sections, subsections, 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 provision 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.

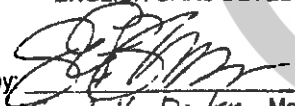
21. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners, the Association, and Declarant, and shall run with the land and be binding on all parties and all Persons claiming under them until January 1, 2021, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Property.


22. Severability. Each of the Restrictions is hereby declared to be independent of, and severable from, every other Restriction and of and from every combination of the Restrictions. Therefore, if any Restriction shall be held to be invalid or to be unenforceable, or to not be appurtenant to the land, that holding shall be without effect upon the validity, enforceability, or appurtenancy of any other Restriction.

23. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over, or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

IN TESTIMONY WHEREOF, the Declarant has caused this Declaration of Covenants and Restrictions of English Oaks to be executed by its duly authorized Managers as of the first date above written.

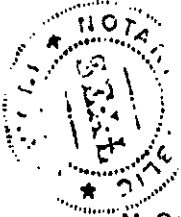
DECLARANT: DEYLEN DEVELOPMENT LLC, an Indiana  
limited liability company, doing business as  
ENGLISH OAKS DEVELOPMENT COMPANY

by:   
Craig Van Deylen, Manager

by:   
Philip C. Theander, Manager

STATE OF INDIANA )  
 ):-SS  
COUNTY OF Madison )

Before me, a Notary Public in and for said County and State, personally appeared CRAIG E. VON DEYLEN and Philip C. Thrasher, known to me to be the Managers of Deylen Development LLC, an Indiana limited liability company d/b/a English Oaks Development Company, who acknowledged the execution of the above and foregoing Declaration of Covenants and Restrictions of English Oaks as of the date first above written.



Witness my hand and Notarial Seal this 4<sup>th</sup> day of January, 2006

Signature: Donald L. Dunk  
Notary Public

Printed: DONALD L. DUNK

My Commission Expires:

Aug. 31, 2006

My County of Residence is:

Hamilton

Exhibits: A: Legal Description of the Real Estate

This instrument prepared by Philip C. Thrasher, Thrasher Buschmann Griffith & Voelkel, P.C., 151 N. Delaware St., Suite 1900, Indianapolis, IN 46204-2505

990580/cec/cov.res

CHICAGO TITLE

**EXHIBIT A**

**to**

**Declaration of Covenants and Restrictions of**

**English Oaks**

Part of the South Half of the Southwest Quarter of Section 5, Township 17 North, Range 3 East, Hamilton County, Indiana and being more particularly described as follows:

Beginning at the Southwest corner of said Half-Quarter Section; thence North 00 degrees 00 minutes 00 seconds East (assumed bearing) along the West line of said Half-Quarter Section 1331.81 feet to the Northwest corner thereof; thence North 88 degrees 47 minutes 09 seconds East along the North line of said Half-Quarter Section 1352.88 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 1336.92 feet to the South line of said Half-Quarter Section; thence South 89 degrees 00 minutes 09 seconds West along said South line 1352.78 feet to the Point of Beginning.

EXCEPT THEREFROM, the following tract of land:

Part of the South Half of the Southwest Quarter of Section 5, Township 17 North, Range 3 East of the Second Principal Meridian in Hamilton County, Indiana being described as follows:

Beginning at a Railroad spike (0.1 feet down) (this and all subsequent references to monuments are as of August 6, 1998) marking the southwest corner of said Southwest Quarter; thence bearing North 00 degrees 00 minutes 00 seconds East (basis of bearings is from a deed to Bridlebourne Trust recorded as Instrument Number 9609638497, Office of the Hamilton County Recorder) along the west line thereof a distance of 645.63 feet to a railroad spike (flush with the pavement); thence North 89 degrees 00 minutes 09 seconds East parallel with the South line of said Southwest quarter a distance of 1352.78 feet to a 5/8 inch rebar with plastic cap marked "Schneider Eng. Firm #0001" (flush) on the east line of the aforesaid Bridlebourne Trust tract; thence South 00 degrees 00 minutes 00 seconds West parallel with the west line of said Southwest Quarter a distance of 645.63 feet to a boat spike (flush with the pavement) at the southeast corner of said tract; thence South 89 degrees 00 minutes 09 seconds West along said south line a distance of 1352.78 feet to the Point of Beginning.