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COVENANTS  
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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HIGHLAND SPRINGS**

THIS DECLARATION (hereinafter called "the Declaration" or "this Declaration"), is made this 27th day of November, 2000, by Estridge Development Company, Inc. (hereinafter called "Declarant"). Capitalized terms not otherwise defined in this Declaration shall have the meanings ascribed to them under Article I of this Declaration.

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real estate in Hendricks County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate"); and

WHEREAS, Declarant is in the process of creating on the Real Estate a residential community to be commonly known as Highland Springs; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in the Development, including, without limitation, the technological infrastructure and devices, and Communication Services and Utility Services available to and within the Development; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of owning, maintaining and administering the common facilities located on the Property, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, performing certain maintenance, and repairs as hereinafter provided, and promoting the health, safety and welfare of the owners of the Property, and all parts thereof, and

WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the State of Indiana a non-profit corporation under the name "Highland Springs Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions; and

WHEREAS, Declarant desires to subject the Development to certain easements and access restrictions to facilitate the obtaining and availability of enhanced technological capabilities, including, without limitation, those easement and access restrictions set forth on the Common Services Easements and Restrictions and Non-Exclusive License Agreement recorded prior hereto.

THH

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of the Lots situated therein, and which shall run with the Property and be binding upon all parties having any right, title or interest in the Property, their heirs, successors and assigns.

ARTICLE I  
DEFINITIONS

Section 1. The following words, when used in this Declaration or any supplemental declaration (unless the context shall prohibit), shall have the following meanings:

- A. "Access Entity" shall mean and refer to Highland Springs Access Properties, LLC, an Indiana limited liability company formed by Declarant.
- B. "Applicable Date" shall mean the "Applicable Date" as defined and determined in accordance with Section 3B of Article III hereof.
- C. "Association" shall mean Highland Springs Homeowners Association, Inc., an Indiana non profit corporation which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns.
- D. "Board" or "Board of Directors" shall mean the board of directors of the Association.
- E. "Cable Television Services" shall mean and refer to the one-way transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.
- F. "Common Area" shall mean (i) those portions, if any, of the Property shown upon any recorded subdivision plat of the Property, or any part thereof (including the initial Plat, which are not Lots (reserving, however, unto Declarant the right to re-plot any of such areas as part of one (1) or more Lots, or otherwise convey or encumber such Property to or in favor of a third party provider of E-commerce Transaction Services), other than portions thereof (such as streets) which are dedicated to the public, whether such plat is heretofore or hereafter recorded, including all improvements and structures constructed or to be constructed thereon, and (ii) such portions of the Property (if any) as are hereafter declared to be "Common Area" by an instrument executed and recorded by Declarant, whether or not such areas comprise part or all of a lot or lots shown upon any

recorded subdivision plat of the Property; provided, however, that all parts of the Property, including, without limitation, the Common Area, shall be subject to the Common Services Easements and Restrictions and the Non-Exclusive License Agreement recorded prior hereto.

G. "Common Area Uses" shall include recreational uses including, without limitation jogging, walking, team sports, swimming, tennis, basketball, of the common areas and shall also include Facilities installed or directed to be installed and maintained by the Declarant and for its successors, assigns or devisees; provided, however, recreational uses shall not interfere with the Facilities or impair the use of the Facilities.

H. "Common Services" shall mean and refer to any Communication Services and Utility Services.

I. "Common Services Easements and Restrictions" shall mean and refer to the Common Services Easements and Restrictions made and entered into by and between the Developer and the Access Entity, and recorded in the Office of the Recorder of Hendricks County as Instrument Number ~~2000-27753~~, a copy of which is attached as Exhibit B, hereby specifically made a part hereof and incorporated herein.

J. "Communication Services" shall mean and refer to Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication, utility or common functional services together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

K. "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public internet, but that is primarily for use within the Development.

L. "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

M. "Cable Television Services" shall mean and refer to the one-way transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

N. "**Declarant**" shall mean Estridge Development Company, Inc., and Indiana corporation, and any successors and assigns of Declarant who it designates in one or more written recorded instruments to have the rights of Declarant hereunder; including, without limitation, (i) any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of (or by acceptance of a deed in lieu of foreclosure of), a mortgage executed by Declarant; provided, however, that any such mortgagee so acquiring title by virtue of foreclosure against (or acceptance of a deed in lieu of foreclosure from) the Declarant shall not be deemed to have assumed any prior obligations or liabilities of the Declarant hereunder, or (ii) the Access Entity to the extent applicable under the Common Services Easements and Restrictions.

O. "**Development**" shall mean the improvement to the Property as designated on the Initial Plat.

P. "**Development Period**" shall mean the period of time beginning with the date of execution of this Declaration and ending with the date the Declarant is no longer the owner of any part of the Property.

Q. "**E-commerce Transaction Services**" shall mean and refer to transactions conducted over the internet or through internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information, whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

R. "**Excluded Devices**" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, or Utility Services device, which satisfies both of the following described characteristics:

- (a) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (b) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices. A satellite dish or other means of receiving the transfer of wireless technology shall constitute an Excluded Device if, and only if, installed, operated and maintained in full compliance with the standards and rules promulgated by the Architectural Review Board. Wireless signals, of any nature, which are not received by any Owners, or on behalf of any Owners

or at the request of any Owner(s), within the In Gross Easement Area, shall constitute Excluded Devices.

S. **"Facility" or "Facilities"** shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Common Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manhole, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Common Services, including, without limitation, communication, video, data, e-commerce, internet, intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used, and further including, without limitation, electricity, water, waste water, gas and any other Utility Services for which such services may be used.

T. **"In Gross Easement"** shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

U. **"Internet Bandwidth Access Services"** shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

V. **"Intranet Network"** shall mean and refer to, but shall not be limited to, the system of communication and technological devices, hardware, programs, wiring and connections which link, or are available for linking, any or all of the Owners(s), one to the other, and providing for community information, access to goods and services, and other general information over the internet within the Development.

W. **"Home"** shall mean a residential housing unit designed or intended for use as living quarters for one family or housekeeping unit.

X. **"Initial Plat"** shall mean the subdivision plat(s) and plans of the Real Estate.

Y. **"Lot"** shall mean and refer to any and each plot of land included in the Property (with the exception of Common Area) designed and intended for use as a building site for a Home, and identified as a lot on any recorded subdivision plat of the Property or any part thereof (including the initial Plat)

Z. "Members" shall mean any person or entity holding membership in the Association as provided in Article III hereof

AA. "Mortgage", shall mean any mortgage or other security instrument by which a Lot or any part thereof or any structure thereon is encumbered

BB. "Mortgagee" shall mean any person or entity named as the Mortgagee under any such Mortgage or any successors or assigns to the interest of such person or entity under such Mortgage prior to acquisition of the fee simple title to the property encumbered by such Mortgage

CC. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

DD. "Person" whether appearing in upper case or lower case form, shall mean an individual, firm, corporation, partnership, limited liability company, limited partnership, limited liability partnership, association, trust, governmental or municipal body or other legal entity, or any combination thereof.

EE. "Property" shall mean and refer to the Real Estate.

FF. "Real Estate" shall mean the parcel or parcels of real estate in Hendricks County, Indiana, described in Exhibit "A" attached to and incorporated in this Declaration.

GG. "Security Monitoring Services" shall mean and refer to the provision of systems, hardwares, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Common Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.

HH. "Security Systems" shall refer to the systems, hardware devices and wiring within the residences and Development which enable the monitoring for security purposes of such residences of the Development.

II. "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

JJ. "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

KK. "Video On Demand Services" shall mean and refer to the service of providing video programming to users over networks on an on demand, or interactive, point to point basis and any Facilities related to such services; provided, however the term or phrase "Video On Demand Services" shall not include services providing video programming prescheduled by the programming provider, such as Cable Television Services.

LL. "Utility Services" shall mean any utility or functional service including without limitation, electricity, gas, sewer, telephone, television, and Computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology.

Section 2. Other terms and words defined elsewhere in this Declaration shall have the meanings ascribed to them in such provision.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Declaration. Declarant hereby expressly declares that the Property shall be held, transferred, sold, conveyed and occupied subject to, any other liens and encumbrances which may exist, all the terms, covenants, conditions, restrictions and provisions of, by way of example and not limitation, this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement. As of the date of execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot at any time subject to this Declaration, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed, execute such contract and undertake such occupancy subject to all of the terms, covenants, conditions, restrictions and provisions of this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement. By acceptance of such deed, execution of such contract or undertaking such occupancy, each Owner acknowledges the rights and powers of Declarant, the Access Entity and of the Association with respect to or under this Declaration, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement and, for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Access Entity, the Association, and the Owners and subsequent Owners of each of the Lots affected by this Declaration, to keep, observe, perform and comply with the terms and provisions of this Declaration.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Membership. Every Owner of a Lot, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to, and there shall be required, one membership for each such lot. Each such membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. Except as herein otherwise expressly provided, no person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to a Lot.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such Lot, the Association may issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two (2) classes of voting membership, as follows:

A. Class A. Class A members shall be all Owners of Lots, with the exception of the Declarant prior to termination of Class B membership, and shall be entitled to one (1) vote for each lot owned with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one Vote be cast with respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other person has filed a general voting authority with the Secretary applicable to all votes until rescinded.

B. Class B. Class B members shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as Class B members in a written notice



mailed or delivered to the resident agent of the Association. Each Class B member shall be entitled, on all matters requiring a vote of the membership of the Association, to five (5) votes for each Lot owned by them or it and five (5) votes for each single numbered parcel of land shown upon and identified as a Lot on any recorded plat of the Real Estate. The Class B membership shall cease and terminate upon the first to occur of (a) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association; (b) one hundred twenty (120) days after ninety five percent (95%) of the Lots in the Property have been conveyed to Owners other than Declarant; (c) six (6) years after the date of recording of the first conveyance of a Lot to an Owner other than Declarant; (the applicable date being herein referred to as the "Applicable Date"). Declarant shall each be entitled to one (1) Class A membership for each Lot of which it is the Owner on or after the termination of the Class B membership.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amount due under any of the provisions of this Declaration for a period of thirty (30) days, or shall be in default in the performance of any of the terms of this Declaration for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

Section 5. Board of Directors. Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Until the Applicable Date, the Board shall consist of three (3) persons designated by Declarant pursuant to the Articles of Incorporation, as long as it shall own one or more lots.

#### ARTICLE IV PROPERTY RIGHTS

##### Section 1. General Provisions.

A. All easements described in this Declaration are permanent easements appurtenant, running with the land. They shall at all times inure to the benefit of and be binding on the Owner and the Mortgagee from time to time of any Lots and the Owner and mortgagee, if any, from time to time of the Common Area, and their respective heirs, successors, personal representatives or assigns.

B. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, their respective personal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded and ending January 1, 2018, after which time the covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each, as the same may be amended or modified as herein permitted and provided.

Section 2. Right of Enjoyment. Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Area limited, however, to and for the Common Area Uses. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Association to pass reasonable rules, with respect to the Common Area, for the health, comfort, safety and welfare of persons using the same which rules shall not exclude or limit the activities allowed in the Common Areas as provided for herein;
- B. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations;
- C. The right of the Association to levy assessments as provided in this Declaration;
- D. The Declarant's General Easement set forth in Article XVI;
- E. The rights of the Association and Declarant reserved under this Article IV or elsewhere in this Declaration; and
- F. Any of the other rights of the Declarant and any and all of its designees, successors or assigns under the Declarant's Reserved Easements (as described in Article IV, Section 3 hereof) or this Declaration.

This Section 2 may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

Section 3. Declarant's Reserved Easement. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to any property in the Development, including, without limitation, utilities and technology infrastructure and Facilities, for the benefit of Declarant and its designees, successors and assigns over, under, in, and on the Development, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment and otherwise dealing with the Development and any other property now owned or which may in the future be owned by Declarant (collectively, "Declarant's Reserved Easements"). The Declarant's Reserved Easements shall constitute a burden on the title to all or any portion of the Development and specifically includes, without limitation:

- (vii) the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, and in all or any portion of the Development; and, the right to tie into any portion of the Development with driveways, parking areas, Streets, the

Drainage System and walkways; and, the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Development;

(viii) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction and sale by Declarant of residences in all or any portion of the Development or in any portion of the Additional Land;

(ix) the right to maintain a sales and marketing office for the Development within the Common Area without cost to Declarant until Declarant no longer owns any Lots in the Development; and,

(x) the Declarant's General Easement as described in Article XVI, Section 2.A hereof.

No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property within the Development, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed or other assignment of rights from or by Declarant releasing such right, privilege, or easement by express reference thereto with respect to all or any portion of the Development. Declarant may grant to a builder of Lots within the Development similar rights as granted to Declarant under (ii) and (iii) above.

This Section 3 may not be amended without the advance written consent of Declarant as long as Declarant owns one or more Lots.

Section 4. Association's Rights and Obligations

A. The Association shall have the obligation to manage, repair, maintain, improve and operate the Common Area and to perform all additional obligations described in this Declaration; provided, however, the Association shall be under no obligation and shall not manage, repair, maintain, improve and operate any Facilities situated in the Common Area..

B. The Association shall have the right to mortgage all or any portion of the Common Area, excluding any Facilities on, over or under the Common Area, for the purpose of securing a loan of money to be used for any of the purposes specified in subsection 3 A. herein above, provided that the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners

under this Declaration, and provided, further, that the mortgagee shall have received the prior written approval specified herein below.

C. The Association shall not have the right to dedicate or transfer all or any part of the Common Area to any governmental subdivision or public agency or utility, or to grant permits, licenses, or easements over the Common Area except for granting the Town or municipality the Street right-of-way (R/W) shown on the plats and plans and demarcated as being 50' across; provided, however, that any such dedication be fully consistent with Article XVI, Section 2.B(iii). The Access Entity may enter into agreements on behalf of the Members for the providing of services and utilities to the property and/or the members including without limitation security monitoring and services, intranet services, internet services, phone (local and long distance), cable television and other services as may be available within Highland Springs from time to time; provided, however, if the Access Entity fails to provide any of the services provided in this Section 4.C, the Association may enter into agreements on behalf of the Members for the provision of said services and utilities.

D. The Property shall be subject to easements of record on the date the various portions thereof become subject to this Declaration, and to any easements in the Common Area which may be granted by Declarant prior to the Applicable Date.

E. Anything herein apparently to the contrary notwithstanding, except as otherwise expressly herein provided, no abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Area or other common property or any part thereof shall be effective unless it shall have received the prior written approval specified herein below. However, the Common Area may not be developed in any manner with housing or otherwise. The only improvements which may be erected on any Common Area may only be those facilities which benefit the use of the Common Area by the Owners or which are necessary for the operation of the utilities and technological infrastructure and devices installed by Declarant or directed to be installed by Declarant.

Section 5. Declarant's Rights. Declarant shall have the same rights as any other Owner as to Lots owned by it from time to time, except as otherwise specified herein. In addition, until the last single numbered parcel of land shown upon, and identified as a Lot on any recorded plat(s) of the Real Estate (whether heretofore or hereafter recorded), including, without limitation, the Initial Plat is conveyed to an Owner other than Declarant, or until the Applicable Date (whichever event shall first occur), Declarant shall have the right and easement over the Common Area for the completion of improvements and making repairs to improvements (whether on the Common Area, or upon unsold Lots, or upon other portions of the Real Estate, and the right to maintain signs upon the Common Area and any other portions of the Property other than Lots owned by an Owner other than Declarant) for the purpose of marketing homes, and to invite and escort the public thereon for such purpose.

Section 6. Non-Dedication to Public Uses. Nothing contained in this Declaration or in any subdivision plat of any part of the Property shall be construed or be deemed to constitute a

dedication, express or implied, of any part of the Common Area to the public or to or for any public use or purpose whatsoever, all of such Common Area being reserved to the Owners and the Association as provided in this Declaration, but subject, however, to the rights of the Association and the Declarant to thereafter dedicate portions of such Common Area to the public or to or for public uses or purposes but only to the extent, and upon all of the conditions, set forth in this Declaration.

Section 7. Easement for Unintentional Encroachment. Notwithstanding any other provisions contained herein, in the event that any Home or any improvement to any Home encroaches upon any part of the Common Area, as a result of construction, reconstruction, repair, shifting, settlement or movement of any part of the Property, then a perpetual easement appurtenant to such encroaching Home shall exist for the continuance of any such encroachment on the Common Area.

Section 8. Title to Common Area. Declarant hereby covenants that it shall convey and transfer the Common Area included in and constituting a part of the Real Estate to the Association prior to Declarant's resignation as a Class B member. The Common Area so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and restrictions then of record, including, without limitation, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement, but shall be free and clear of all liens and financial encumbrances other than the lien of the then current non-delinquent installment of real estate taxes and assessments and subsequent installments thereof which shall thereafter be paid when due by the Association.

#### ARTICLE V ASSESSMENTS

Section 1. Personal Obligations. Each Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed therein, shall be and is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, which shall be payable in regular installments, for the payment or provision of all expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and all other expenses incurred or to be incurred by the Association for or in connection with the performance by the Association of its duties, obligations and responsibilities under this Declaration, which expenses may include, but shall not be limited to, the expenses and costs of liability insurance for the Common Area and any other common property; snow removal, and trash removal (if provided by the Association); street lighting (if provided by the Association); and an adequate reserve fund for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area and any other property that must be maintained, repaired or replaced on a periodic basis and which the Association may be obligated to maintain, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any assessments authorized herein, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien from the first day of January (for annual assessments) and

from the date the first installment is payable (for special assessments) against the Lot assessed. Such annual assessments shall be due and payable in a lump sum in advance of such twelve month periods or if the Association so allows, in twelve (12) equal monthly installments on the first day of each and every month or, if so determined by the Association, in such other periodic installments as may be specified by the Association. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot on the date said assessment became due and payable. Said personal obligation of an Owner shall not pass to his successors in title or interest unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the office of the Recorder of Hendricks County, Indiana. No Owner shall escape liability for the assessments which fell due while he was the Owner by reason of non-use of the Common Area or non-use, transfer or abandonment of his Lot or Home.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property, to construct, manage, improve, maintain, repair and administer the Common Area and Amenities contracting for services for the benefit of the Owners, and for payment of any other costs and expenses incurred by the Association in connection with the performance of its duties, obligations and responsibilities hereunder. An adequate reserve fund shall be maintained for working capital and for the periodic maintenance, repair and replacement of those improvements and elements of the Common Area, Amenities and any other property that must be replaced on a periodic basis. Such reserve fund shall be maintained out of the regular annual assessments.

Section 3. Intranet and Security Monitoring Assessments. In order to promote the communication welfare and safety within the community, Declarant is installing or causing to be installed an Intranet Network and a security system within the community. The Association shall contract for these services and shall collect from each member and or Owner at the same time regular assessments are collected an amount which is attributable to the operation of the community intranet and security monitoring for the members.

Section 4. Annual Assessments. Until December 31, 2000, the maximum annual assessment shall be at the annual rate of Seven Hundred and Sixty Dollars (\$760) per Lot.

A. From and after December 31, 2000, the maximum annual assessments may be increased each year not more than ten percent (10%) above the maximum assessments permitted for the previous year, on a cumulative basis, without a vote of membership.

B. From and after December 31, 2000, the maximum annual assessments may be increased by more than ten percent (10%) above the maximum assessments permitted for the previous year by a vote of two thirds (2/3) of the total votes of the Members who are voting in person or by proxy, at a meeting called for this purpose.

C. The Board of Directors may fix the annual assessments at any amount not in excess of the maximum permitted hereby.

Section 5. Special Assessments In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, or maintenance of the Common Area. Amenities or other such property/improvements for which the Association is responsible, provided that any such assessment shall have the assent of not less than two thirds (2/3) of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum. Written notice of any meeting of Members called for the purpose of taking any action authorized under Article V, Sections 3 or 4, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the opening of such meeting, the presence in person or by proxy of Members entitled to cast sixty percent (60%) of the total votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at any subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots. Annual assessments shall be collected in a lump sum or, if the Association so chooses, on a monthly basis (or other periodic basis, if and as determined by the Board) and special assessments shall be collected as the Board determines. The provisions of this Article V are subject to the provisions of Section 13 of this Article V.

Section 8. Commencement of Initial Annual Assessments. The annual assessments provided for herein shall commence as to each Lot subjected to this Declaration on the first day of the month following the month of recording of the instrument by which such Lot is conveyed to an Owner who will occupy the single family home constructed upon such lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year for which such assessment is imposed.

Section 9. Commencement of Annual Assessments By November 1st of each year the Board shall fix the amount of annual assessments against each Lot for the following calendar year and shall send written notice thereof to each Owner. The due date for payment of annual assessments shall be as set by the Board. At the time the Board fixes the amount of annual assessments it shall adopt a budget for the following calendar year and cause a copy of such budget in reasonable detail to be furnished to each Owner.

Section 10. Proof of Payment Upon written demand of an Owner or Mortgagee, at any time and for a reasonable charge, the Association shall furnish a written certificate signed by an officer

of the Association setting forth whether there are any then unpaid annual or special assessments levied against such Owner's or Mortgagee's Lot. Such certificate shall be conclusive evidence of payment of any annual or special assessments not stated therein as unpaid.

Section 11. Non-Payment of Assessments. Any assessments which are not paid when due shall be deemed delinquent. If an assessment is not paid within thirty (30) days after the delinquency date, it shall bear interest from the delinquency date at the rate of eighteen percent (18%) per annum and shall become a continuing lien in favor of the Association on the Lot against which assessed and the improvements thereon, and the Association may bring an action at law or in equity against the person personally obligated to pay the same, including interest, costs and reasonable attorneys' fees for any such action, which shall be added to the amount of such assessment and included in any judgment rendered in such action, and the Association may also enforce and foreclose any lien it has or which may exist for its benefit.

Section 12. Recording and Enforcement of Liens. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, the name of the person personally obligated to pay the same and a description of the Lot. Such a notice shall be signed by an officer of the Association and it or a notice of lien or adverse claim thereof may be recorded in the office of the Recorder of Hendricks County, Indiana. No notice of lien shall be recorded until there is a delinquency in payment of the assessment for thirty (30) days. Upon such a delinquency for thirty (30) days, the Association shall proceed promptly to enforce the lien or, in its discretion, to sue the person personally liable to pay the lien for the delinquency. Such lien shall be enforced by action in the same manner in which mortgages on real property may be foreclosed in Indiana. In any such foreclosure, the person personally obligated to pay the lien shall be required to pay all costs of foreclosure including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The person personally obligated to pay the lien shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the foreclosed interest in the Lot as the Owner thereof. The Association shall, upon written request, report to any Mortgagee of a Lot any assessments remaining unpaid for longer than thirty (30) days after the same shall have become due; provided, however, that such Mortgagee first shall have furnished to the Association written notice of the Mortgage under which it claims and its notice address.

Section 13. Assignment. The Association may assign the lien rights provided herein to any provider of Intranet or Security Monitoring Services, so long as the services are provided for the benefit of the Owners.

Section 14. Subordination of Lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage ("First Mortgage") and to tax liens and liens for special assessments in favor of any taxing and assessing unit of government. The sale or transfer of any Lot



shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or remedies provided in a First Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to charges which were payable prior to such sale or transfer. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming payable or from the lien thereof or shall relieve the person personally obligated to pay the same or from personal liability for assessments payable prior to such sale or transfer or acquisition. Any delinquent assessments, the lien for which is extinguished by reason of this provision, may be reallocated and assessed to all Lots as a common expense.

Section 15. Limitations on Assessments Owed by Declarant. Notwithstanding anything to the contrary contained herein, neither Declarant nor Estridge Custom Homes shall be obligated to pay, as to any and all Lots owned by them from time to time, any assessments (whether regular annual assessments or special assessments) payable hereunder by Owners.

#### ARTICLE VI ARCHITECTURAL CONTROLS

Section 1. The Architectural Review Board. An Architectural Review Board ("Architectural Review Board") consisting of two (2) or more persons shall be appointed by the Declarant. Following the end of the Development Period, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2 Purpose. The Architectural Review Board shall regulate the external design, appearance, use, location, and maintenance of the Property and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements, and the natural vegetation and topography.

Section 3. Conditions. Except as otherwise expressly provided in this Declaration, no improvements, 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 Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Home, building, fence, wall, swimming pool, tennis court, patio or other structure on a Lot, or (ii) any planings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Home or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any person other than Declarant without the prior written approval of the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. 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 Highland Springs, and no Owner shall undertake any construction activity within Highland Springs 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 Board. As used in this Section (3), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than eighteen (18) inches.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within sixty (60) days after notice of such Plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant, or, if Declarant is no longer a Class B member, the Board of Directors, approval will be deemed denied. A decision of the Architectural Review Board (including a denial resulting from the failure of the Architectural Review Board to act on the Plan within the specified period) may be appealed to the Board of Directors, which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the Architectural Review Board to act on such Plan within the specified period) by a two thirds vote of the Directors then serving.

Section 5. Guidelines and Standards. The Architectural Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in Section 2 to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guidelines or standards may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

Section 6. Application of Guidelines and Standards. The Architectural Review Board shall apply the guidelines and standards established pursuant to Section 5 in a fair, uniform and reasonable manner consistent with the discretion inherent in the design review process. In--disapproving any Lot Development Plan, the Architectural Review Board shall furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable to the Architectural Review Board if resubmitted.

Section 7. Exercise of Discretion. Declarant intends that the members of the Architectural Review Board exercise discretion in the performance of their duties consistent with the provisions of Section 6, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceedings challenging a determination by the Architectural Review Board and in any action initiated to enforce this Declaration in which an abuse of discretion by the Architectural Review Board is raised as defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Architectural Review Board, could only conclude that such determination constituted an abuse of discretion.

#### ARTICLE VII OTHER RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Area. The Association, subject to the rights and obligations of the Owners as set forth in this Declaration, shall be responsible for, and be vested with, the exclusive management and control of the Common Area, Streets (except as otherwise provided for by virtue of the dedication of the Streets in accordance with Article XVI, Section 2.B(iii)), Amenities and all improvements (if any) thereon (including equipment related thereto), and shall keep the same in good order and repair. Such responsibility (to the extent the same is not otherwise herein declared or stated to be the obligation or responsibility of Owners of Lots) shall include, but not be limited to, the maintenance and repair of the Common Area, Streets (except as otherwise provided for by virtue of the dedication of the Streets in accordance with Article XVI, Section 2.B(iii)), Amenities, and all other improvements or material located within or used in connection with the Common Area, except for the maintenance of the Intranet Network and any other Utility Services installed in the Common Area and dedicated rights-of-way by Declarant or provided by Declarant. The Association shall maintain the fences installed by the Declarant fronting State Route 267 and Highland Springs Drive, as well as the landscaping fronting State Route 267 and Highland Springs Drive, which shall include walls and signage installed by the Declarant in either the Common Area or the Landscape Easement.

Section 2. Services. The Association may obtain and pay for the services of any persons or entities, to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, the enforcement of this Declaration or any proceedings or controversy in which the Board determines it is necessary or advisable to have professional advice. The Association may arrange with others to furnish trash collection and other common services to each Lot. Any agreement for professional management of the Property, must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice and by either party for cause upon thirty (30) days or less written notice and shall have a maximum contract term of one (1) year, but may be renewable by agreement of the parties for successive one-year terms.

Section 3. Personal Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Lot, provided that an Owner may delegate his right of enjoyment of such personal property (if any) to any resident of his Lot. A transfer of title to a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Lot.

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Section 4. Hazard and Liability Insurance for Common Property. The Association shall procure extended coverage insurance on the Common Area, reconstruction of such insurable Common Areas and other common property, including insured improvements. The cost of such insurance shall be assessed as provided in Article V above. Holders of First Mortgages ("First Mortgagees") on Homes, jointly or singly, may pay overdue premiums on hazard insurance policies, or may secure new hazard insurance coverage on the lapse of a policy, for the Common Area and other common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. The Association is authorized to enter into an agreement in favor of all First Mortgagees of Homes establishing entitlement to such reimbursement.

ARTICLE VIII  
OWNERS' MAINTENANCE

Section 1. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Home and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association.

ARTICLE IX  
COMMUNITY INTRANET SERVICES AND UTILITIES

Section 1. Community Intranet Services. Declarant may provide or cause to be provided Community Intranet Services and Security Monitoring Services within the Development for the use and benefit of the Owners and Members thereof. Declarant or Declarant's designee, successor or assign shall be the provider of Community Intranet Services and Security Monitoring Services within the Development in accordance with such terms and conditions as may be agreed upon by the Declarant and the provider.

Section 2. Security Monitoring Services. The Security Monitoring Services shall include both the systems within the residences along with the Common Areas and other areas of the Development. Declarant or Declarant's designee, successor or assign shall be the provider of such Security Monitoring Services and monitoring thereof within the Development in accordance with such terms and conditions as may be agreed upon by the Declarant and the provider.

Section 3. Maintenance. Declarant or Declarant's designee, successor or assign will maintain the Facilities necessary to provide the Community Intranet Services and Security Monitoring Services within the Development which may include maintenance to all hardware, software, wiring, connections, devices and other components necessary for the operation of the Intranet and Security Monitoring Services in accordance with such terms and conditions as may be agreed upon by the Declarant and the provider.

Section 4. Easement. Declarant or Declarant's designee, successor or assign will gain access and subject the Development to restrictions pursuant to the Declarant's Reserved Easements as described in Article IV, Section 3 over all of the lots, common areas, other easements, rights-of-way and the Development for maintenance and upkeep of the Community Intranet Services and Security Monitoring Services and the Facilities necessary for such services. Such easements shall run with the land and be binding upon the Association and the heirs, successors and assigns of the individual Owners and Members.

Section 5. Assessments. The Association may assess the Owners and Members as previously in Article V, Section 3 provided for Community Intranet Services and Security Monitoring Services.

Section 6. Other Communication and Utility Services. Declarant, or Declarant's designee, successor or assigns, may provide other Communication Services and Utility Services to the residences and the Development including, without limitation, local and long distance telephone service, cable television, gas, electric and water.

ARTICLE X  
GENERAL RESTRICTIONS, OBLIGATIONS AND  
RIGHTS APPLICABLE TO PROPERTY

Section 1. Home and Lot Restrictions. No more than one Home shall be erected or maintained on each Lot. No Home shall be used for purposes other than as a single-family residence, nor shall any trade or business of any kind be carried on within a Home or upon a Lot, nor shall any Lot or any part thereof be leased, sublet, assigned or suffered to be used for transient occupancy, provided that none of the following activities shall be considered a violation of this covenant:

- A. The maintenance of model Homes and business and sales offices by Declarant or their designated Builders during the construction and sale periods.
- B. The maintenance of offices by the Association or its designated manager for purposes of managing of the Property.
- C. Lease, rental or use of a Home for purposes consistent with this Section.
- D. The use of a Home by an Owner for incidental office purposes to the extent permitted by applicable zoning ordinances.

Section 2. Building Set-back Lines and Easements. Building set-back lines and easements are established on the Plat. No building or structure shall be erected or maintained between said set-back lines and the front, rear or side lot line (as the case may be) of said Lot. No building or structures may be placed inside of Easements.

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Section 3. Garages. No garage shall be erected on any Lot which is not permanently attached to the Home, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected on any Lot which is not permanently attached to the Home.

Section 4. Outbuildings. No trailers, shacks, mini barns, play houses/forts, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any Lot, except that used by a builder during the construction of a Home, which temporary construction structures shall be promptly removed upon completion of construction of the Home.

Section 5. Driveways. Each driveway on a Lot shall be of concrete or asphalt material.

Section 6. Swimming Pools. No above-ground swimming pools shall be permitted. In-ground pools require the prior approval of the Committee.

Section 7. Solar Heat Panels. No solar heat panels shall be permitted in the Property.

Section 8. Access. All Lots shall be accessed from the interior streets of the Property.

Section 9. Fences, Yard Ornaments, & Exterior Painting. All fences, yard ornaments and exterior painting require the prior approval of the Committee. No chain link or metal fences with the exception of wrought iron are allowed, except around the swimming pool, athletic facilities and other amenity areas.

Section 10. Basketball Goals and Playground Equipment. All basketball goals and playground equipment require the prior approval of the Committee.

Section 11. Trash. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. All rubbish, garbage or other waste shall be regularly removed from a Lot and shall not be allowed to accumulate thereon.

Section 12. Tanks. No gas or oil storage tanks may be permanently used in connection with any Lot.

Section 13. Obstruction. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Association except construction materials and equipment during the construction period or except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Association.

Section 14. Prohibition of Damage and Certain Activities. Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof which would increase the

rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on any Lot or in any Home or on or in any Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area or any part thereof or of the exterior of the Property and buildings thereon shall be committed by any Owner or any invitee or tenant of any Owner and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees or tenants, to the Association and other Owners. No noxious, destructive or offensive activity shall be allowed in any Homes, on any Lots or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become a nuisance to any other Owner or to any other person at any time lawfully residing on the Property.

Section 15. Animals. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in or on any Lot, except that household pets may be kept on Lots, subject to rules and regulations adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purposes; provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three days' written notice from the Board, and provided further, that upon written request of twenty-five percent (25%) of the voting power of the Association, the Board of Directors shall have the authority to, and shall order the removal of, any pet.

Section 16. Storage. Outside storage of any items, including but without limiting the generality of the foregoing, sporting equipment, toys, outdoor cooking equipment, yard and garden tools and equipment and trash and garbage containers, shall not be allowed unless approved by the Architectural Review Board. The storage or collection of rubbish of any character whatsoever, any material that emits foul or obnoxious odors, the growing of any noxious or illegal weed or other natural substance, and the harboring of the source of any noise or activity which disturbs the peace, comfort or serenity of residents is prohibited. Usual household trash and garbage shall be regularly collected and may not be kept outside. -Notwithstanding the foregoing, no boats, snowmobiles, recreational vehicles, trailers, camping vehicles, buses, mobile homes, tractor/trailers, trucks, motorcycles, mini-bikes, mopeds, unlicensed or inoperable vehicles, or any other vehicles of any description other than normal passenger automobiles (including station wagons and small trucks such as pickups, sport utility vehicles and vans) shall at any time be stored or parked on any Lot outside of a garage, or on any street within the Property, or on any part of the Common Area, either permanently or temporarily. No vehicles of any type shall be stored/parked on the street overnight.

Section 17. Signs. No signs of any kind (other than designations, in such styles and materials as the Association shall by rule or regulation approve, of street addresses and names of occupants) shall be displayed to the public view on any Lot, except that a "For Sale" or "For Lease" sign may be displayed on a Lot which is being offered for sale or lease provided that it is in such form, style and location as the Board may require, and except that Declarant shall be permitted to erect and

maintain upon the Property such signs as it deems appropriate to advertise the development during the construction and sale periods.

Section 18. Satellite Dish. A satellite dish or other means of receiving the transfer of wireless technology shall be allowed on the Property if, and only if, installed, operated and maintained in full compliance with the standards and rules promulgated by the Architectural Review Board.

Section 19. Rentals. Any lease between an Owner and a lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. No Home or Lot may be leased for a period of less than 90 days. Other than the foregoing, there shall be no restrictions on the right of any Owner to lease his Home.

Section 20. Rules and Regulations. The Board may adopt, and may amend, modify, rescind and cancel, such other rules and regulations from time to time governing the use and enjoyment of the Property, including the Common Area, as the Board in its sole discretion deems appropriate or necessary which rules shall not limit the ability of the Members to use each and every Common Area.

Section 21. Accessory Outbuilding Prohibited. No accessory outbuildings shall be erected on any Lot or Lots.

Section 22. Occupancy or Residential Use of Partially Completed Home Prohibited. No Home shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed for occupancy in accordance with the approved building plan. The determination of whether the Home shall have been substantially completed in accordance with the approved building plan shall be made by the Committee and such decision shall be binding on all parties.

Section 23. Other Restrictions. The Property shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Property, including, without limitation, the Common Services Easements and Restrictions and the Non-Exclusive License Agreement, all of which are incorporated herein by reference.

Section 24. Upkeep and Maintenance. Each Owner shall be responsible for the upkeep and maintenance of his Home and all other areas, features or parts of his Lot to the extent not otherwise maintained by the Association.

Section 25. Right to Perform Certain Maintenance. In the event that the Owner of any Lot in the Property shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration, Declarant shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, clean or perform



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such other acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of this Declaration. The cost therefor to Declarant shall be collected in a reasonable manner from Owner. Declarant or its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Upon the Applicable Date, the Association shall succeed to and be vested with the rights of the Declarant as provided for in this Section.

Section 26. Development and Sale Period. Nothing contained in this Article IX shall be construed or interpreted to restrict the activities of Declarant in connection with the development of the Property and sale of Lots. Declarant shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities upon any portion of the Property at any time owned or leased by Declarant, as in the sole opinion of Declarant may be reasonably required, or convenient or incidental to, the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 27. Mailboxes. All mailboxes require the prior approval of the Committee.

ARTICLE XI  
RIGHTS FOR THE PROTECTION OF FIRST MORTGAGEES

Section 1. Precedence. The provisions of this Article take precedence over any other conflicting provisions of this Declaration.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a First Mortgage on a Lot or Home and the address of such party (a holder of a First Mortgage on a Lot or Home who has so requested such notice shall be referred to herein as an "eligible mortgage holder" and an insurer or governmental guarantor of a First Mortgage on a Lot or Home who has so requested such notice shall be referred to herein as an "eligible insurer or guarantor"), any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(A) Any condemnation loss or any casualty loss which affects a material portion of the project or any lot or Home on which there is a First Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(B) Any delinquency in the payment of assessments or charges owed, or any other default in the performance of any obligation under the Declaration, By-Laws or Articles of Incorporation by an Owner of a Lot or Home subject to a First Mortgage held, insured, or guaranteed by such holder or insurer or guarantor, which remains uncured for a period of 60 days;

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(C) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(D) Any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Article; and

(E) Any default in the performance by the Owner of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days.

Section 3. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lot or Home will not be subject to any right of first refusal or any similar restriction in favor of the Association or other Owners.

Section 4. Liability for Unpaid Assessments. Any First Mortgagee who obtains title to or comes into possession of a Lot pursuant to the remedies provided in its First Mortgage or by foreclosure of the First Mortgage or by deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale in connection with any such First Mortgage shall not be liable for the unpaid assessments of the Lot which were payable prior to the acquisition of title to or possession of such Lot by the First Mortgagee.

Section 5. Certain Amendments. In addition to other requirements set forth herein, unless at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the First Mortgagees of the Lots or their assigns (based upon one vote for each First Mortgage owned), and at least seventy-five percent (75%) (or such higher percentage as is required by law or this Declaration) of the Owners (other than any sponsor, developer, or builder, including the Declarant of the Lots (based upon one vote for each Lot owned) have given their prior written approval, neither the Association nor the Owner shall be entitled to:

- (A) Terminate the legal status of the project (except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation);
- (B) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed such a transfer.
- (C) Use hazard insurance proceeds for losses to any Common Area or other common property for other than the repair, replacement or reconstruction of such common property;
- (D) Add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (1) voting;
- (2) assessments, assessment liens or subordination of such liens;
- (3) reserves for maintenance, repair and replacement of the Common Area (or exterior maintenance of Homes if applicable);
- (4) insurance or Fidelity Bonds;
- (5) rights to use of the Common Area;
- (6) responsibility for maintenance and repair of the several portions of the project;
- (7) boundaries of any Lot;
- (8) the interests in the general Common Area;
- (9) leasing of Lots or Homes;
- (10) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot or Home;
- (11) any provisions which are for the express benefit of First Mortgage holders, eligible mortgage holders or eligible insurers or guarantors of First Mortgages on Lots, except in accordance with procedures set forth in this Declaration and the By-Laws in the event of amendment or termination made as a result of destruction, damage or condemnation or with respect to a reallocation of interests in the Common Area which might occur pursuant to any plan of expansion or phased development contained in this Declaration; or

(E) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof pertaining to the architectural design or the exterior appearance of Home(s).

For purposes of this Section, an addition or amendment to such documents shall not be considered material if it is made (I) for the purpose of correcting clerical, typographical or technical errors, (II) for clarification only, (III) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (IV) to induce any of the agencies or entities mentioned or referred to in subsection III herein above to make, purchase, sell, insure or guarantee First Mortgages covering Lots and Home(s), or (V) to bring such documents into compliance with any statutory requirements, and any such addition or amendment to such documents which is so considered not to be material may be made by Declarant acting alone and without the consent, approval or joinder of the Owners, the Association, any First Mortgagees, any other mortgagees or any other person.

An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within 30 days shall be deemed to have approved such request.

Section 6. Examination of Books and Records. First Mortgagees and holders, insurers and guarantors of First Mortgages shall have the right to examine the books and records of the Association, as set forth more fully in the By-Laws.

Section 7. Payment of Taxes and Insurance. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or other common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area or other common progeny, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 8. Designation of Representative. Any holder of a First Mortgage on a Lot or Home may designate a representative to attend meetings of members, but no such representative shall have any voting privileges unless such voting privileges have been granted to the holder of such First Mortgage by the Owner of the Lot involved.

Section 9. Distribution of Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the By-Laws shall be construed as giving to the Owner or to any other party priority over any rights of First Mortgagees of Lots pursuant to their First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area or other common property.

## ARTICLE XII INSURANCE

Section 1. Maintenance of Insurance. Commencing not later than the time of the first conveyance of a Lot to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance, all of which shall be issued by insurance carriers meeting at least the minimum requirements of, and shall otherwise comply with the requirements of the agencies and entities mentioned or referred to herein, to-wit

(A) Master or blanket type of policy of fire insurance with extended coverage endorsement (including vandalism, sprinkler leakage (if appropriate), debris removal, cost of demolition, malicious mischief, windstorm and water damage) insuring the Common Area (including all of the fixtures installed therein). Said policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement,
- (2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

The name of the insured under such policies must be set forth therein substantially as follows:

"Highland Springs Homeowners Association, Inc. for the use and benefit of the individual Owners".

The policies may also be issued in the name of an authorized representative of the Association, including any insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or insurance Trustee), as a trustee for each Owner and each such Owner's First Mortgage. Each Owner and each such Owner's First Mortgage, if any, shall be beneficiaries of the policy with respect to the Common Area equally with each other Lot. Policies must provide for the recognition of any insurance Trust Agreement.

If reasonably available, such policies shall include:

- (1) Agreed Amount Endorsement (or like endorsement);
  - (2) Inflation Guard Endorsement;
  - (3) Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement) if the project is subject to a construction code provision which would become operative and require changes to undamaged portions of the improvements, thereby imposing significant costs in the event of partial destruction of the project by an insured peril;
  - (4) Steam Boiler Coverage (if applicable) for loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location; and
  - (5) All such policies must provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.
- (B) Worker's Compensation, occupational disease and like insurance (if the Association has eligible employees);
- (C) Comprehensive public liability insurance in such amounts and with such coverage as the Board of Directors shall from time to time determine, but at least:

- (1) covering events occurring anywhere on the Common Area (and public and private ways) or arising out of or in connection with the use, ownership or maintenance of the Common Area;
- (2) covering, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area, and legal liability arising out of lawsuits related to employment contracts of the Association, and such other coverages as are customarily covered with respect to projects similar in construction, location, and use;
- (3) insuring each officer and member of the Board of Directors, the managing agent and each Owner and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner and with a "Severability of Interest Endorsement" which would preclude the insurer from denying the claim of an Owner for the negligent act of another Owner, occupant or the Association; and
- (4) in amounts generally required by private institutional investors for projects similar in construction, location and use. (However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence).

(D) Such other insurance as the Board of Directors may determine.

(E) All such policies must provide that they may not be changed or substantially modified by any party without at least 10 days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

Section 2. Owners' Individual Policies. Each Owner should carry, and shall be responsible for carrying, insurance for his own benefit insuring his personal liability, his Lot, his Home, and other personal progeny, and fixtures, furniture, furnishings, and other personal property, and fixtures and other property supplied or installed by him or a previous Owner or tenant.

Section 3. Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any Trustee with whom the Association may enter into any insurance Trust Agreement or any successor to such Trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Any insurance Trustee must be a corporation or association organized or authorized to do business under the laws of the State of Indiana, and authorized and permitted by its charter documents and by state law to conduct a trust business.

Section 4 Insurance Premiums. Insurance premiums for any blanket property insurance coverage, and the other insurance coverages purchased by the Association, shall be common expenses to be paid by assessments levied by the Association, and such assessments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

#### ARTICLE XIII EMINENT DOMAIN

Section 1. Representation. The Association shall represent the Owners in any condemnation proceedings and in any negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof, and by acceptance of a deed for his, her or its Lot, each Owner appoints the Association as such Owner's agent and attorney-in-fact for such purposes. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or other trustee (such as a bank or title insurance company appointed as such by the Association), for the use and benefit of the Owners and their Mortgagees as their interests may appear.

Section 2. Reconstructions. In the event of a partial taking of the Common Area (or conveyance in lieu thereof) the Association shall promptly cause the remaining portions of the Common Area to be restored functionally and aesthetically to reasonably the same condition as before the taking, using so much of the proceeds of such taking for such purpose as shall be reasonably necessary. In the event of a total taking of the Common Area (or conveyance in lieu thereof), and the project is terminated by the election herein above required, the proceeds shall be allocated equally among each Lot, payable jointly to the Owners and mortgage holders thereof.

#### ARTICLE XIV GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of these covenants and restrictions and of the provisions contained in the Articles of Incorporation and By-Laws of the Association may be by any proceeding at law or in equity instituted by the Association or by any Owner against any person (including the Association) violating or attempting to violate any covenant or restriction, either to restrain violation, to compel compliance, or to recover damages, and against the land, to enforce any lien created by these covenants; and, failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Attorneys' fees and costs of any such actions to restrain violation or to recover damages as determined by the court shall be assessable against and payable by any persons violating the terms contained herein. Not action taken under this Section shall interfere with the rights of the Declarant, the Access Entity, its successors, assigns and devisees to enforce a violation of these Declarations under Article XVII.

Section 2. Mergers. Upon a merger or consolidation of the Association with another corporation as provided in its Articles and By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or 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 upon any other properties in one scheme. No such merger or consolidation, however, shall effect any revocation, change or additions to the covenants established by this Declaration within the Property, except as herein above provided.

Section 3. Severability. Invalidation of any one or more of these covenants or restrictions by legislation, judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4. Notices. Any notice required to be sent to any Member of the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Member appearing on the records of the Association at the time of such mailing.

Section 5. Headings: Interpretation. All headings in the Declaration are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Declaration. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The introduction paragraph and recitals set forth above shall form a part of this Declaration. The term "including" or terms of similar import, shall mean "including, without limitation" of its equivalent whenever used herein, and shall not limit the generality of any description preceding such term. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof. The term "or" is not exclusive. Terms such as "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Declaration as a whole, and not to any particular article, section, paragraph or provision.

Section 6. Construction. In the event of an apparent conflict between this Declaration and the By-Laws, the provisions of this Declaration shall govern.

Section 7. Complete Agreement. This Declaration, the schedules and exhibits hereto, together with all other agreements, documents, releases, schedules, exhibits and other writings incorporated into this Declaration shall constitute the complete and exclusive statement of agreement among the parties with respect to their subject matter.

Section 8. Obligation of Good Faith. The parties shall, in the performance of all obligations under this Declaration be obligated to act in good faith with one another in the performance of their duties hereunder; provided, however, that this provision shall not be construed to limit or lessen any



higher duties which may exist between the parties by contract, operation of law or otherwise, to the extent any such higher duties may exist.

#### ARTICLE XV AMENDMENT

Except as hereinafter provided, this Declaration may be amended during the initial term provided above by an instrument signed by not less than ninety percent (75%) of the Owners and thereafter by an instrument signed by not less than seventy-five percent (60%) of the Owners. Certain amendments also require additional approval as specified in this Declaration.

The foregoing notwithstanding, none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval, as the case may be, so long as Declarant owns a Lot or Lots. The foregoing notwithstanding, this Declaration may also be amended by Declarant at any time prior to the Applicable Date if it has an ownership interest in the Property.

#### ARTICLE XVI PARTS OF THE PROPERTY

Section 1. Granting of Permits, Licenses and Easements. The Association is granted the authority to grant permits, licenses and easements over the Common Areas for roads, access and other purposes necessary for the proper operation of the Development as provided herein; provided, however, that the Association and each Owner shall be prohibited from granting permits, licenses and easements over any Lot, Common Area, or any other portion of the Development for any Community Intranet Services, Security Monitoring Services, Communication Services or Utility Services without the prior written consent of the Access Entity, Declarant, or the designees, successors or assigns thereof, which may be granted or withheld in their sole discretion. In no event shall the Association or an Owner impair or limit the Development's Common Services Easements and Restrictions (as defined in Article XVI, Section 2.A hereof) or the operations of the Community Intranet Services, Security Monitoring Services, any other Communication Services or Utility Services derived thereof.

The Declarant shall retain and reserve and is hereby granted the authority to grant permanent easements for the use and enjoyment of the Common Area or portions thereof to any Owners, their families, tenants, guests, and homeowner associations and members of such homeowner associations of real estate adjacent or contiguous to the Property (collectively the "Adjacent Owners") and to provide for the cost of maintenance and operation thereof including payments of joint assessments by such Adjacent Owners upon terms and conditions the Declarant deems appropriate ("Adjacent Owners Easement and Maintenance Agreement").

Section 2. Reservation of Rights to the Use of the Property.

A. Access Entity Communication Services and Utility Easements. The Declarant has granted to the Access Entity the Common Services Easements and Restrictions attached hereto as Exhibit B and incorporated herein by this reference ("Common Services Easements and Restrictions"). The Access Entity has an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Development (i) for the purposes of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing the Facilities of any type bringing the Community Intranet Services, Security Monitoring Services, any other Communication Services and any Utility Services to each Lot and any improvements on the Common Area, (ii) to provide access, ingress and egress to, from, over, above, upon, along, in, through and under the Development, and (iii) to make improvements to and within the Development to provide for the rendering of public and quasi-public services to the Development (collectively referred to as the "Declarant's General Easement"). The easements, rights and privileges conveyed to the Access Entity under the Common Services Easements and Restrictions is transferable by the Access Entity to any Person solely at the option and benefit of the Access Entity, its designees, successors or assigns without notice to or consent of the Association, the Owners or any other Person. The Access Entity may at any time and from time to time grant similar or lesser easements, rights, or privileges to other Persons. By way of example, but not in limitation of the generality of the foregoing, the Access Entity, and others to whom Access Entity may grant such similar or lesser easements, rights, or privileges, may so use any portion of the Development to supply telecommunication services to each Home and to permit public and quasi-public vehicles, including, without limitation, police, fire, and other emergency vehicles, trash and garbage collections, post office vehicles, and privately-owner delivery vehicles, and their personnel to enter upon and use the drives and streets, and the Common Area, of the Development in the performance of their duties. The Declarant's General Easement shall be for exclusive benefit of the Access Entity, its designees, successor or assigns and may not be impaired, limited or transferred, sold or granted to any Person by the Association or the Owners.

B. Plat Easements. In addition to such other easements created in the Declaration or in a supplemental declaration, and as may be created by the Declarant pursuant to other written instruments recorded in the Office of the Recorder of Hendricks County, Indiana, the Property shall be subject to drainage easements, sanitary sewer easements, utility easements, and dedicated street rights-of-way, either separately or in any combination thereof, shown on the plats for the Development which are reserved for the use of Declarant, the Association, the Owners and public and quasi-public and governmental agencies, respectively, as follows:

(i) Drainage Easements. (D.E.) are created for the limited purposes of providing paths and courses for area and local storm drainage, either over land or in an adequate underground conduit, to serve the needs of the Development and adjoining ground and/or public drainage systems, and it shall be the Association's responsibility to maintain the drainage across the Common Area in the Development. The Drainage Easements are marked, either separately or in combination, on the Plat as "Drainage Easement" or "D.E.". Said areas are subject to construction or reconstruction solely to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage on the Property, by Declarant and by the Association; provided,

however, such easement shall not confer in any way any obligation to perform such construction or reconstruction upon the Declarant or the Association. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement. The Owner of any Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on the Lot free from obstructions so that the surface water drainage will be unimpeded. The Drainage Easement is created and reserved (i) for the use of Declarant during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Property and adjoining property, and (ii) for the use of the Association and for access to and maintenance, repair, and replacement of such drainage system. Drainage swales, (ditches) located within Drainage Easements shall not be altered, dug out, filled in, tiled in or otherwise changed without the written consent of the Hendricks County Drainage Board and/or any other governmental authority having jurisdiction over drainage on the Property (the "Drainage Board"). Owners must maintain these swales as sodded grass ways or other non-eroding surfaces. Owners violating the Drainage Easement will be subject to action by the Drainage Board which may include the Drainage Board restoring such swale to the proper state which cost shall be the responsibility of the Owner. There is a part of the Property on the Plat marked "Common Area." The Common Area shall be used (i) for storm water retention drainage purpose; (ii) for the aesthetic and visual enjoyment of the Owners of Lots and, (iii) following the end of the Development Period, for such purposes allowed herein.

(ii) Utility Easements (U.E.) - Are created (i) for the exclusive use of the local governmental agency having jurisdiction over the sanitary waste disposal system of said town, city and/or county designated to serve the Development for the sole purpose of installation and maintenance of sewers that are part of said system, and (ii) for the exclusive use of the Declarant. Its designees, successors or assigns, for the installation and maintenance of Communication Services and Utility Services as the Declarant may deem necessary for the Development in its sole discretion. Each Owner of a Lot must connect with any public sanitary sewer available. No permanent structures shall be constructed within any such easement areas except as may be approved by Declarant, its designees, successors or assigns; provided, however, such easements shall be subject to, without limitation, the Common Services Easements and Restrictions (as described in Article XVI, Section 2.A hereof).

(iii) Streets. The rights-of-way "R/W" (denoted on the plats and plans as drives, streets and courts and with the streets being demarcated as being 50' across) (hereinafter referred to as the "Streets") as shown on the Plats and Plans shall be subject to a limited dedication to the public for only roadway purposes by specific notation on the plat or by separate instrument. Any dedicated Streets shall be subject to, without limitation, the following: (i) The Declarant's Reserved Easements (as described in Article IV, Section 3 hereof), (ii) The Common Services Easements and Restrictions as described in Article XVI, Section 2.A, and (iii) The Non-Exclusive License Agreement recorded as instrument number 2006-2753 in the Office of the Recorder of Hendricks County, Indiana. Without limiting the foregoing, no Communication Services or Utility Services shall be allowed to be installed in, over or under the Dedicated Streets without the prior

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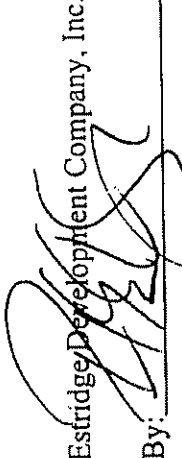
written consent of the Access Entity, the Declarant, or its/their designees, successors or assigns which may be granted or withheld in their sole discretion.

(iv) Landscape Easement. The "Landscape Easement" ("L.E.") shall only be used for landscaping purposes and the landscaping located within the easement may be maintained by the Association, and the Association shall have an easement of ingress and egress on and over such area for the purpose of maintenance. The landscaping and other improvements planted or installed by the Declarant and/or the Association in this area may not be removed by an Owner, and no fence shall be placed in such area by an Owner, except as approved by the Association or the Declarant.

ARTICLE XVII  
ENFORCEMENT

Section 1. Remedies. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Declarant and Association, any person or entity having any right title or interest in the Real Estate (or any part thereof), or any Person having any right, title or interest in a Lot which is now or hereafter made subject to the Declaration, and all persons or entities claiming under them, against the Person violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and reasonable attorneys' fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Declarant nor the Association shall be liable for damages of any kind to any Person for failing to enforce the provisions of this Declaration.

In Witness hereof, Declarant has caused this document to be executed as of the date first written above.

Estridge/Development Company, Inc.  
By:   
Printed: Paul E. Estridge, Jr.  
Title: President

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STATE OF INDIANA )  
 ) SS: ACKNOWLEDGMENT  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared, Paul E. Estridge, Jr. the President of Estridge Development Company, Inc., who acknowledged the execution of the foregoing Covenants, Conditions & Restrictions on behalf of Estridge Development Company, Inc.

Witness my hand and Notarial Seal this 27th day of November, 2000.

My Commission Expires:

July 12, 2008

Janice S. Muller  
Notary Public

Residing in Hamilton County

Janice S. Muller  
Printed Name

IM-319217-2

Exhibit       
A

## TRACT A:

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a railroad spike set at the southwest corner of said section; thence South 88 degrees 55 minutes 00 seconds East along the south line of said section 419.10 feet; thence North 1 degree 05 minutes 00 seconds East 440.00 feet to the point of beginning of this description: FROM SAID BEGINNING POINT North 1 degree 05 minutes 00 seconds East 300.52 feet; thence North 88 degrees 55 minutes 00 seconds West parallel with the south line of said section 21.78 feet to the center of the former Brownsburg and Fayette Road; thence South 26 degrees 41 minutes 00 seconds West along said center line 196.02 feet; thence South 36 degrees 39 minutes 00 seconds West along said center line 63.87 feet; thence South 62 degrees 21 minutes 33 seconds East 160.57 feet to the point of beginning, containing 0.528 acres, more or less. Subject to all legal highways, rights of way and easements.

## TRACT B:

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning on the south line of said section North 89 degrees 26 minutes 39 seconds East 419.10 feet, measured along said south line, from a railroad spike set at the southwest corner of said section: thence North 0 degrees 33 minutes 21 seconds West 440.00 feet; thence North 63 degrees 59 minutes 54 seconds West 160.57 feet to the center line of the former Brownsburg and Fayette Road; thence North 35 degrees 00 minutes 39 seconds East along said center line 63.87 feet; thence North 25 degrees 02 minutes 39 seconds East along said center line 196.02 feet; thence North 25 degrees 59 minutes 30 seconds East along said center line 199.98 feet; thence North 19 degrees 21 minutes 30 seconds East along said center line 148.50 feet; thence North 1 degree 10 minutes 28 seconds East along said center line 242.28 feet to the north line of Lot 7 in the Arbuttle Partition as surveyed by County Surveyor Job Hadley June 4, 1872, as the same appears in Deed Record 37, pages 319-323, in the office of the Recorder of the aforesaid county; thence North 89 degrees 32 minutes 11 seconds East along the north line of said Lot 7 a distance of 2,118.51 feet to a point on the east line of said quarter section that is South 0 degrees 36 minutes 03 seconds East 1,354.94 feet, measured along said east line, from a stone found at the northeast corner of said quarter section; thence South 0 degrees 36 minutes 03 seconds East along said east line 1,297.80 feet to a stone found at the southeast corner of said quarter section; thence South 89 degrees 26 minutes 39 seconds West along the south line of said quarter section 2,245.02 feet to the point of beginning; containing 66.423 acres, more or less. Subject to all legal highways, rights of way and easements.

CONTINUED

**EXCEPT:**

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a railroad spike set at the southwest corner of said section; thence South 88 degrees 55 minutes 00 seconds East along the south line of said section 419.10 feet; thence North 1 degree 05 minutes 00 seconds East 440.00 feet to the point of beginning of this description: FROM SAID BEGINNING POINT North 1 degree 05 minutes 00 seconds East 300.52 feet; thence North 88 degrees 55 minutes 00 seconds West parallel with the south line of said section 21.78 feet to the center of the former Brownsburg and Fayette Road; thence South 26 degrees 41 minutes 00 seconds West along said center line 196.02 feet; thence South 36 degrees 39 minutes 00 seconds West along said center line 63.87 feet; thence South 62 degrees 21 minutes 33 seconds East 160.57 feet to the point of beginning, containing 0.528 acres, more or less. Subject to all legal highways, rights of way and easements.

**ALSO:**

A part of the Northeast Quarter and a part of the Southeast Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the southwest corner of said Southeast Quarter Section; thence North 0 degrees 36 minutes 03 seconds West along said west line of said quarter section 2.652.74 feet to a stone found at the center of said section; thence North 0 degrees 32 minutes 13 seconds West along the west line of said Northeast Quarter 64.08 feet to the southwestern line of the right of way of the Consolidated Rail Corporation; thence South 29 degrees 27 minutes 03 seconds East along said southwestern right of way line, 1,067.43 feet to the east line of that certain parcel of land described in a deed dated February 11, 1938, and entered for record in Deed Record 145, page 333, in the office of the Recorder of the aforesaid county; thence South 0 degrees 34 minutes 50 seconds East along said east line 1.781.02 feet to the south line of said section; thence South 89 degrees 18 minutes 15 seconds West along said south line 514.49 feet to the point of beginning; containing 26.583 acres, more or less. ALSO, a part of the Northeast Quarter of Section 35, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the northwest corner of said Northeast Quarter Section; thence North 89 degrees 18 minutes 15 seconds East along the north line of said section 514.49 feet to the east line of that certain parcel of land described in a deed dated February 11, 1938, and entered for record in Deed Record 145, page 333, in said Recorder's office; thence South 0 degrees 34 minutes 50 seconds East along said east line 87.12 feet; thence South 89 degrees 18 minutes 15 seconds West parallel with said north line 514.80 feet to the west line of said quarter section; thence North 0 degrees 22 minutes 47 seconds West along said west line 87.12 feet to the point of beginning, containing 1.029 acres, more or less. Containing in all 27.612 acres, more or less. Subject to all highways, easements and rights of way.

CONTINUED

ALSO: A part of the Northwest Quarter of Section 35, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the northeast corner of said quarter section; thence South 0 degrees 22 minutes 47 seconds East along the east line of said quarter section 1,319.34 feet to the northeast corner of Northern Acres, Section 10, the plat of which is entered for record in Plat Book 7, page 25, in the office of the Recorder of said county; thence South 89 degrees 22 minutes 03 seconds West along the north line of said Northern Acres, Section 10, and along the north line of Section 9 of said subdivision, 1,126.76 feet to the southeast corner of Starkey's Subdivision, Section 4, the plat of which is entered for record in Plat Book 7, page 91, in said Recorder's office; thence North 0 degrees 37 minutes 57 seconds West along the boundary of said Section 4 a distance of 73.02 feet (North 0 degrees 37 minutes 06 seconds West 72.77 feet by said plat); thence North 23 degrees 26 minutes 33 seconds East along said boundary 191.78 feet; thence along said boundary Southeasterly 59.83 feet on an arc to the left having a radius of 522.30 feet and subtended by a long chord having a bearing and length of South 69 degrees 50 minutes 19 seconds East 59.80 feet; thence North 16 degrees 52 minutes 45 seconds East along said boundary 215.80 feet; thence South 81 degrees 53 minutes 11 seconds East along said boundary 30.62 feet; thence North 0 degrees 33 minutes 21 seconds West along said boundary 892.50 feet to the north line of said Section 35; thence North 89 degrees 26 minutes 39 seconds East Along said north line 902.05 feet to the point of beginning, containing 28.652 acres, more or less. Subject to all legal highways, rights of way and easements. Containing in all 95.075 acres, more or less.

NOTE: This policy does not insure the accuracy of the quantity of land appearing on the legal description in Schedule A, hereof.



Exhibit B 41

Cross Reference

This instrument burdens real estate located in Hendricks County, State of Indiana. The last deeds conveying the burdened real estate were recorded in the office of the Recorder of Hendricks County as Instrument Numbers 200000003964, 200000004115 and 200000021434. This instrument burdens easements located in Hendricks County, State of Indiana.

**COMMON SERVICES  
EASEMENTS AND RESTRICTIONS**

THIS COMMON SERVICES EASEMENTS AND RESTRICTIONS (this "Easement") is made and entered into on this 27th day of November, 2000, by and among ESTRIDGE DEVELOPMENT COMPANY, INC., an Indiana corporation (the "Grantor") and HIGHLAND SPRINGS ACCESS PROPERTIES, LLC, an Indiana limited liability company (the "Grantee"). Capitalized terms not otherwise defined in this Easement shall have the meanings ascribed to them in Appendix A attached hereto and by this reference incorporated in this Easement.

**ARTICLE I**

**RECITALS**

Section 1.01. WHEREAS, Grantor is, and at all relevant time has been, the fee simple title owner of the Development.

Section 1.02. WHEREAS, Grantor wishes to grant to Grantee the perpetual and exclusive private easements set forth below, subject only to the terms and limitations of this Easement.

Section 1.03. WHEREAS, Grantor retains and reserves the exclusive perpetual Declarant's Reserved Easement set forth in Article IV, Section 3 of the Declarations to be recorded by the Grantor with respect to the Development (the "Declarant's Easement").

Section 1.04. WHEREAS, the Declarant's Easements are and shall be private easements, for the exclusive use of the Grantor, and not a public right-of-way, public easement or otherwise available for general use by the public.

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Section 1.05. WHEREAS, Grantor also retains, reserves and is granted the Plat Utility Easements set forth in Article XVI, Section 2.B(ii)(ii) of the Declarations and designated as Utility Easements (U.E.) within the Platted Easement Area on the Plats; and, such Plat Utility Easements are private easements created for the exclusive use of the Grantor, and not a public right-of-way, or public easement or otherwise available for general use by the public.

Section 1.06. WHEREAS, Grantor represents and warrants to the Grantee that Grantor is, and at all relevant times has been, the true and lawful owner of the Development; and, that Grantor has the full right and power to grant and convey the rights set forth in this Easement.

Section 1.07. WHEREAS, Grantee desires the private and personal grant of an In Gross Easement over and across the Development, privately and personally vesting in Grantee the exclusive and perpetual right to identify and privately contract with Common Service Providers for the use of the In Gross Easement Area.

Section 1.08. WHEREAS, Grantee desires the private and personal grant of a Service Easement over and across designated portions of the Development, privately and personally vesting in Grantee the exclusive and perpetual right to privately contract for the establishment of Facilities within the Service Easement Area.

Section 1.09. WHEREAS, the Plats to be recorded by the Grantor with respect to the Development shall designate the Service Easement Area for the Service Easement as Drainage Easements (D.U.).

Section 1.10. WHEREAS, Grantee shall cause, by virtue of private contracts, extensive improvements to be made to and within the Development for the Mandatory Common Service, which improvements shall be situated on, over, under and/or across the Service Easement Area and make available the Mandatory Common Services within the Development.

Section 1.11. WHEREAS, certain Common Service Providers have developed expertise in providing Common Services to their customers, which expertise are currently and on a continuing basis being employed to develop superior, novel and cost competitive Communication Services.

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Section 1.12. WHEREAS, the Grantor desires to have Advanced Telecommunications Capabilities, bundled services and billing, and, to the extent technologically feasible, Advanced Bundled Services available at the Development.

Section 1.13. WHEREAS, the Grantor and Grantee anticipate continued deregulation of electricity, water and gas, as well as other utilities (such as those related to the Communication Services), which deregulation facilitates individual users having the ability to aggregate and negotiate discounted Communication Services and Utility Services charges.

**THIS INDENTURE WITNESSETH**, that in consideration of ten dollars (\$10.00), the mutual covenants contained in this Easement and other good and valuable consideration, the receipt and sufficiency of which are by this Easement acknowledged, the Parties to this Easement agree as follows:

## ARTICLE II

### EASEMENT

Section 2.01. Grant of In Gross Easement. Grantor hereby declares, creates, transfers, assigns, grants and conveys unto Grantee, its grantees, licensees, lessees, franchisees, successors and assigns, an exclusive and perpetual right, privilege and easement over, upon, under, in, through and across the In Gross Easement Area for the limited purpose of identifying and contracting, in Grantee's sole and complete discretion, any and all of the Common Service Providers allowed to provide or otherwise make available Facilities and Common Services for the Development and within the In Gross Easement Area ("In Gross Easement"). The Grantee shall have the exclusive right to identify and contract with Common Service Providers who intend to provide or otherwise make available Common Services to the Development within the In Gross Easement Area. This grant shall not entitle Grantee, its grantees, licensees, lessees, franchisees, successors or assigns to install, repair or relocate Facilities within the In Gross Easement Area, except in the Service Easement Area. Elsewhere within the In Gross Easement Area, the Owners and the Association shall be entitled to construct or otherwise erect barriers or other temporary or permanent obstructions or structures as provided in Section 2.04 hereof. Grantor and its grantees, licensees, lessees, franchisees, successors and assigns agree that no barriers or competing Facilities or other obstructions, permanent or temporary, of any form shall be placed or erected or permitted within the In Gross Easement Area so as to impair or lessen or compromise, in any fashion, directly or indirectly, Grantee's exclusive and perpetual In

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Gross Easement and rights affiliated with such In Gross Easement. The In Gross Easement is intended, and shall be, for the exclusive, private and personal benefit of the Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. The In Gross Easement may not and shall not be impaired, limited, lessened or transferred, sold or granted, in any fashion, directly or indirectly, by Grantor or its grantees, licensees, lessees, franchisees, successors or assigns. Grantor and its grantees, licensees, lessees, franchisees, successors and assigns hereby relinquish and are prohibited from, without limitation, granting any rights, permits, licenses, rights-of-way or easements over the In Gross Easement Area to any Person, directly or indirectly, or through an intermediary or series of intermediaries or third parties, which would permit or otherwise allow the establishment of any Common Services or Facilities for Common Services on, over, under or across the In Gross Easement Area (collectively, "Prohibited In Gross Easement Transfers"). The Grantor and its grantees, licensees, lessees, franchisees, successors and assigns shall be divested of any and all authority to declare, create, transfer, assign, grant or otherwise convey any Prohibited In Gross Easement Transfers, except as provided in Section 2.08, Section 2.09 and Section 2.10 hereof. The In Gross Easement is intended, and shall, "run with the land" and be binding upon the Grantor and its grantees, licensees, lessees, franchisees, successors, and assigns, including, without limitation, any Owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors and assigns. Any title or interest in the In Gross Easement Area shall reflect this In Gross Easement.

Section 2.02. Grant of Service Easement. Grantor hereby declares, creates, transfers, assigns, grants and conveys unto Grantee, its grantees, licensees, lessees, franchisees, successors and assigns, an exclusive and perpetual right, privilege and easement over, upon, under and across the Service Easement Area (a) to construct, lay, install, own, operate, lease, license, franchise, alienate, assign, modify, alter, supplement, inspect, maintain, repair, reconstruct, replace, remove, relocate, expand or otherwise service in the Service Easement Area any and all necessary or desirable Facilities of any type used to provide or make available any Common Services within the Development, (b) to excavate and perform any necessary or desirable work upon and under the surface of the Service Easement Area as and when required to make available Common Services or service the Facilities in the Development, and (c) to create and provide ingress and egress to and from the Service Easement Area at any time (collectively, (a), (b) and (c) shall constitute the "Service Easement"). The Service Easement is intended, and shall be, for the exclusive private and personal benefit of Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. Grantor covenants and agrees

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that no barriers or competing Facilities or other obstructions, permanent or temporary, of any form shall be placed or erected or permitted within the Service Easement Area so as to impair or lessen or compromise, in any fashion, directly or indirectly, Grantee's exclusive and perpetual easement and private right to exclusively and perpetually identify, or contract with, third parties that shall own and operate Facilities on, over, under and across the Service Easement Area to provide Common Services within the Development, in Grantee's sole and absolute discretion. The Service Easement is intended, and shall be, for the exclusive, private and personal benefit of the Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement. The Service Easement may not and shall not be further impaired, limited, lessened or transferred, sold or granted, in any fashion, directly or indirectly, by Grantor or its grantees, licensees, lessees, franchisees, successors or assigns. Grantor and its grantees, licensees, lessees, franchisees, successors or assigns hereby relinquish and are prohibited from, without limitation, granting rights, permits, licenses, rights-of-way and easements over the Service Easement Area to any Person, directly or indirectly, or through an intermediary or series of intermediaries or third party(s), which would permit the establishment of any Common Services or Facilities for Common Services on, over, under or across the Service Easement Area (collectively "Prohibited Service Easement Transfers"). The Grantor and its grantees, licensees, lessees, franchisees, successors or assigns shall be divested of any and all authority to declare, create, transfer, assign, grant or convey any Prohibited Service Easement Transfers, except as provided in Section 2.08, Section 2.09 and Section 2.10 hereof. The Service Easement is intended, and shall, "run with the land" and be binding upon the Grantor and its grantees, licensees, lessees, franchisees, successors, and assigns, including, without limitation, any Owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors and assigns. Any title or interest in the Service Easement Area shall reflect this Service Easement.

Section 2.03. Use of Easement. The Combined Easement shall be for the private, personal, exclusive and perpetual use and benefit of Grantee and its grantees, licensees, lessees, franchisees, successors and assigns who have been identified and contracted with Grantee to own, install, repair, relocate, expand, or otherwise service the Facilities used by Common Service Providers in providing Common Services to the Development in accordance with this Easement. Grantor agrees and stipulates that, due to the private, personal and exclusive nature of the grant conveyed in this Easement, no other Common Services use of the Combined Easement Area shall be made by any Person, including Grantor and its grantees, licensees, lessees, franchisees, successors or assigns.

Section 2.04. Owner and Association Improvements. The Owners and their successors in interest, shall be entitled to place such temporary or permanent barriers or other permanent obstructions and structures within the Owner Improvement Area as the Owner desires, from time to time, except as prohibited by this Easement and the Declarations. The Association and its successors in interest shall be entitled to construct or otherwise erect barriers or other temporary or permanent obstructions or structures in the Common Areas (as defined in the Declarations), except as prohibited by this Easement and the Declarations. No barriers or other temporary or permanent obstructions or structures shall be placed by the Owners or the Association in the Service Easement Area.

Section 2.05. Reservation of Right to Use. Grantor hereby declares, creates, transfers, assigns, grants and conveys to Grantee and its grantees, licensees, lessees, franchisees the private, personal and exclusive right to use, temporarily, additionally, additional space within the In Gross Easement Area and outside of the Service Easement Area, when such additional space is reasonably available and necessary from time to time for ingress and egress across adjacent real estate outside of the Service Easement Area but within the In Gross Easement Area for the purposes of access to and use or improvement of the Service Easement Area, and for equipment and materials necessary for any repair, maintenance, or upgrade of the Service Easement Area and the Facilities situated on, over, under or across such area which right is for the private and personal benefit of Grantee and its grantees, licensees, lessees, franchisees, successors, and assigns who have been identified by and contracted with the Grantee to provide Common Services within the Development pursuant to this Easement.

Section 2.06. Reservation of Common Services Rights. Grantor hereby declares, creates, transfers, assigns, grants and conveys to Grantee the private, personal, exclusive and perpetual right to use the In Gross Easement Area, and any improvements located within the In Gross Easement Area, for any purpose which is not inconsistent with the rights granted to any Owner, the Association, or reserved in Grantor by this Easement or the Declarations; provided, further, that any such use be directed toward the protection of Grantee's exclusive rights to provide Common Services as set forth in this Easement. Grantor agrees and covenants that it will not make any use of the Combined Easement Area which is inconsistent with the uses or purposes for which either the In Gross Easement or the Service Easement has been granted to Grantee; provided, finally, that notwithstanding anything in this Easement to the contrary, Grantor expressly reserves unto itself, its grantees, licensees, lessees, franchisees, successors, assigns, the right to use the In Gross Easement Area which falls outside of the Service Easement Area in any manner not inconsistent with the grant to provide Common Services made to Grantee by this Easement and as contemplated in the Declarations.

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Section 2.07. Non-Interference and Repair of Service Easement Area. Grantor covenants and agrees that no barriers or competing Facilities or other obstructions or structures shall be placed or erected, temporarily or permanently, so as to impair the use of any portion of the Service Easement Area for Common Services by Grantee or third parties identified or designated by Grantee. The Grantor shall not construct Facilities or any other Common Service improvements in the Service Easement Area or change the finish grade of the Service Easement Area without the prior written consent of the Grantee, which consent may be given or withheld in Grantee's sole and absolute discretion. Neither Grantee nor third parties identified or designated by Grantee shall do or permit anything to be done within or upon the Service Easement Area which will interfere with Grantor's use, maintenance, enjoyment or possession of the Service Easement, except as may be expressly provided otherwise in this Easement. Grantee shall be obligated to repair the Service Easement Area and for any damage(s) caused by Grantee, its agents or officers, or which shall include, without limitation, restoration of the Service Easement Area following installation or removal or maintenance or upgrade of any Facility to the same condition that such Service Easement Area existed prior to such installation or removal or maintenance and the granting of the Service Easement contemplated by this Easement. To the extent Grantee performs any such installation or removal or maintenance or upgrade of any Facility which may be located, for whatever reason, outside of the Service Easement Area but within the In Gross Easement Area, then Grantee shall have the same responsibilities as if such work had been performed within the Service Easement Area. Grantee shall have the right to remove or trim such trees and brush in and around the Service Easement as is deemed necessary by Grantee, in Grantee's sole and absolute discretion, to exercise or protect the rights conveyed to Grantee in this Easement.

Section 2.08. Termination of Exclusivity (Failure to Identify Provider). Grantee shall, within one hundred twenty (120) days from the date this Easement is recorded in the office of the Recorder of the county in which the Development is located, identify and provide access to the Mandatory Common Service Providers for each of the Mandatory Common Services. The initial Mandatory Common Service Providers are identified on Exhibit E attached hereto. Upon the request of the Grantor, from time to time, Grantee shall promptly up-date and provide the list of the names and addresses of the current Mandatory Common Service Providers to the Grantor. Failure by Grantee to identify and provide access to each of Mandatory Commons Services Providers in a timely manner pursuant to this Easement shall result in the termination of Grantee's exclusivity within the Combined Easement with respect to each of the Mandatory Common Services Providers not identified or granted access by the Grantee. Upon such termination, Grantor shall have the right to identify and grant access to an Alternative Mandatory Common Service Providers for Mandatory Common Services not identified or granted access by the Grantee in accordance with this

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Easement ("Initial Mandatory Alternative Provider"); provided, however, such Initial Mandatory Alternative Provider shall be granted access subject to and in accordance with this Easement and the Declarations.

Section 2.09. Termination of Exclusivity (Inadequate or Costly Service). The Mandatory Common Services to be furnished by each Mandatory Common Service Provider shall be reasonably adequate based upon like services available to the general area around the Development from third party Common Service Provider(s). The charges made by the Mandatory Common Service Provider for such Mandatory Common Services shall be reasonable and just. A charge which is equal to, or less than, the standard, nonpromotional charge for like services shall be conclusively presumed reasonable and just. For purposes of identifying third party Common Service Provider for Telephone Services (Local), telephone services and charges shall be compared to corresponding telephone services and charges of Ameritech, or its successor, and a Common Service Provider for Cable Television Services, cable services or charges shall be compared to corresponding Cable Television Services and charges of Comcast, or its successor. It is the intent of the parties to this Easement to evaluate all services and charges against those existing and available to the Development on a consistent basis, from time to time for Mandatory Common Services. Upon a final, nonappealable determination by the appropriate authority (a) that the Mandatory Common Services being furnished by a Mandatory Common Service Provider to the Development are not reasonably adequate based upon like services available to the Development from a third party Mandatory Common Service Provider, or (b) that the charges made by Mandatory Common Service Provider(s) for such Mandatory Common Services are not reasonable and just; then, the exclusivity within the Combined Easement with respect to each Mandatory Common Service subject to such determination shall terminate. Upon such determination and termination, the Grantee shall have the right to identify and grant access to another Mandatory Common Service Provider to provide the same Mandatory Common Service subject to such determination ("Subsequent Mandatory Alternative Service"); provided, however, such new Mandatory Common Service Provider providing the Subsequent Mandatory Alternative Service shall be granted access subject to and in accordance with this Easement and the Declarations.

Section 2.10. Grantee's Consent, Approval of Declarations and Plats. Notwithstanding any other provision in this Easement, the Grantor may grant or convey rights, permits, licenses, right-of-way and easements which are expressly prohibited in this Easement, including, without limitation, Prohibited In Gross Easement Transfers and Prohibited Service Easement Transfers upon the prior written consent of Grantee, which consent may be given or withheld in the Grantee's sole and absolute discretion. For example, it is contemplated herein that the Grantor shall declare and create the Declarations

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and Plats which shall be reviewed and approved by the Grantee in writing prior to the recording of such Declarations and Plats in accordance with this Section 2.10.

Section 2.11. Private Grant. The Parties do, understand, and intend to, privately declare, create, and grant the Combined Easement set forth in this Easement in order to allow the Grantee, its grantees, licensees, lessees, franchisees, successors and assigns only and exclusively the limited rights and privileges set forth in this Easement. The Combined Easement is not declared, created, or granted for public or general utility use, and shall not be so construed.

Section 2.12. Construction and Usage of "exclusivity" term. Reference to the term "exclusive" or "exclusivity" shall mean and refer to the right of Grantee to provide Common Services and to use the Combined Easement Area for such use. The term shall not be construed as prohibiting Grantor from permitting other uses or easements upon the Development or Combined Easement Area which do not involve the provision of Common Services or any interference with the rights of Grantee to provide Common Services under this Easement. For example, it is contemplated that the Grantor shall declare and create a utility easement for the sanitary waste disposal system and drainage system in the Development.

### ARTICLE III

#### INDEMNIFICATION AND RIGHT TO DEFEND

Section 3.01. Indemnification. Grantee agrees to indemnify, defend and hold harmless the Grantor and the heirs, executors, administrators, legal representatives, successors, licensee, and assigns of the Grantor, including, but not limited to, the Owners, the Association, and their successors in interest ("Indemnitees") from and against any and all losses, claims, damages and liabilities, joint or several (including reasonable investigation fees, attorneys' fees, accountant's fees, expert witness fees, and other related expenses incurred in connection with any action, suit or proceeding or any claim asserted), to which the Indemnitees may become subject as a result of this Easement, and/or the enforcement of the rights of Grantee under this Easement; provided, however, that Grantee shall not be required to indemnify, defend or hold harmless Indemnitees from Indemnitees' own negligence, or any act or omission which is wrongful on Indemnitees part.

Section 3.02. Right to Defend. Grantee has the right of notice and to defend any controversy or claim arising out of or relating to this Easement, any alleged breach, any

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question as to the validity of its terms or conditions or legal effect, the construction of its terms or conditions or legal effect, and the interpretation of the rights and duties of the Parties under this Easement. The Grantor and its grantees, licensees, lessees, franchisees, successors and assigns, including, without limitation, any owner, the Association and their heirs, executors, administrators, legal representatives, grantees, licensees, lessees, franchisees, successors, and assigns shall notify Grantee of any claim, suit, administrative proceeding (including regulatory proceedings), or any other action or threatened action which may, either presently or at a future date, give rise to Grantee's duty to indemnify or Grantee's right to defend, which notice shall be in writing and provided to Grantee promptly but in no event more than fifteen (15) business days from the date that Grantor or the Grantor's successors in interest, becomes aware of such claim, suit or proceeding, or potential claim, suit or proceeding.

ARTICLE IV

NOTICES

Section 4.01. Notices to Grantor. Any notice to be given or served upon Grantor in connection with this Easement must be in writing and shall be deemed to have been given and received when delivered to the following address, certified mail, return receipt requested, or by personal service:

Grantor:

Estridge Development Company, Inc.  
1041 West Main Street  
Carmel, Indiana 46032  
Attention: Paul E. Estridge, Jr., President

With copies to:

Frank A. Hoffman, Esq.  
Krieg DeVault Alexander & Capehart, LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204

Section 4.02. Notices to Grantee. Any notice to be given or served upon Grantee in connection with this Easement must be in writing and shall be deemed to have been given and received when delivered to the following address, certified mail, return receipt requested, or by personal service:

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Grantee: Highland Springs Access Properties, LLC  
1041 West Main Street  
Carmel, Indiana 46032

With copies to: Frank A. Hoffman, Esq.  
Krieg DeVault Alexander & Capehart, LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204

Section 4.03. Address Changes. Either Grantor or Grantee may change its address as specified for notices under this Easement by designating a new address, in writing, and recorded in the office of the Recorder of Hamilton County, state of Indiana, and delivered in accordance with this Part IV of this Easement to the other Party.

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date first above written.

**ESTRIDGE DEVELOPMENT  
COMPANY, INC.**

**HIGHLAND SPRINGS ACCESS  
PROPERTIES, LLC**

By: \_\_\_\_\_  
Paul E. Estridge, Jr., President

By: \_\_\_\_\_  
Paul E. Estridge, Jr., Managing Member

Appendix: A Definitions and Interpretation

- Exhibits: A Legal Description of Development
- B Legal Description of In Gross Easement Area
- C Declarations for Highland Springs Development, recorded in the office of the Recorder of Hendricks County, State of Indiana
- D Plats For Highland Springs Development, recorded in the Office of the Recorder of Hendricks County, State of Indiana
- E Mandatory Service Providers

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STATE OF INDIANA )  
 )SS:  
COUNTY OF HAMILTON )

Before me, a notary public in and for said County and State this 27th day of November, 2000, personally appeared Paul E. Estridge, Jr., President of Estridge Development Company, LLC, who acknowledged the execution of the foregoing instrument on behalf of such corporation and by its authority for the purposes set forth in such instrument.

Witness my hand and Notarial Seal this 27th day of November, 2000.

My Commission Expires: \_\_\_\_\_ Notary Public

My County of Residence is: \_\_\_\_\_ Printed Name

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State this 27th day of November, 2000, personally appeared Paul E. Estridge, Jr., the Managing Member of Highland Springs Access Properties, LLC, who acknowledged the execution of the foregoing instrument on behalf of such limited liability company and by its authority for the purposes set forth in such instrument.

Witness my hand and Notarial Seal this 27th day of November, 2000.

My Commission Expires: \_\_\_\_\_ Notary Public

My County of Residence is: \_\_\_\_\_ Printed Name

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THIS INSTRUMENT PREPARED BY:

Frank A. Hoffman, Esq.  
Krieg DeVault Alexander & Capehart, LLP  
2800 One Indiana Square  
Indianapolis, Indiana 46204-2079  
(317) 636-4341

UM-316598-1

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APPENDIX ADefinitions and InterpretationsARTICLE IDEFINITIONS

Access Entity. The term or phrase "Access Entity" shall mean and refer to Highland Springs Access Properties, LLC.

Advanced Bundled Services. The term or phrase "Advanced Bundled Services" shall mean and refer to the provision of (i) Telephone Services (local), (ii) Cable Television Services, (iii) Internet Bandwidth Access Services, (iv) Community Intranet Services, (v) single bill (*i.e.*, bundled billing for all Communication Services and Utility Services provided, and (vi) Premium Advanced Telecommunication Capabilities.

Advanced Telecommunications Capability. The term or phrase "Advanced Telecommunications Capability" or "ATC" shall mean and refer to high speed, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video telecommunications over lines or wireless channels with information carrying capability in excess of 200 Kbps (Kilobits per seconds) per user in both directions simultaneously, including, without limitation, Internet Bandwidth Access Services based upon industry average concentration levels.

Affiliate. The term "Affiliate" shall mean and refer to with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning, or controlling five percent (5%) or more of the voting securities or voting control of such Person; or, (iii) any Person who is an officer, director, manager, general partner, trustee or holder of five percent (5%) or more of the voting securities or voting control of any Person described in clauses (i) or (ii).

Association. The term "Association" shall mean and refer to the Association as defined in the Declarations.

Cable Television Services. The term or phrase "Cable Television Services" shall mean and refer to the one-way transmission to users of video programming or other programming services provided through any Facilities related to such services, together with such user interaction, if any, which is required for the selection or use of the video programming or other programming services.

Combined Easement Area. The term or phrase "Combined Easement Area" shall mean and refer to the In Gross Easement and the Service Easement, collectively.

Common Service Provider. The term or phrase "Common Service Provider" shall mean and refer to any third party provider of one or more Common Services, which may include a combination of persons, such that one (1) or more of Common Services are available within the Development.

Common Services. The term "Common Services" shall mean and refer to any one or more of the Communication Services and Utility Services.

Communication Services. The term or phrase "Communication Services" shall mean and refer to Cable Television Services, Community Technology Services, E-commerce Transaction Services, Internet Bandwidth Access Services, Community Intranet Services, Telephone Services (local), Telephone Services (long distance), Video On Demand Services, Security Monitoring Services, any other cable or telephone services, any other communication, utility or common functional services together with the Facilities related to such services; provided, however, that the term or phrase "Communication Services" shall not include Excluded Devices.

Community Intranet Services. The term or phrase "Community Intranet Services" shall mean and refer to the private communications network within the Development that uses substantially the same or similar software that is utilized on the public internet, but that is primarily for use within the Development.

Community Technology Services. The term or phrase "Community Technology Services" shall mean and refer to the construction, sale, installation, leasing, licensing, modification, supplementation, maintenance, repair, reconstruction or removal of any device (including, without limitation, any hardware or software device) principally used by individual users for Communication Services.

Declarations. The term "Declarations" shall mean and refer to the Declarations of Covenants, Conditions, Easements and Restrictions for Highland Springs to be recorded in the office of the recorder of the county in which the Development is located and which burden the Development, as such Declarations are amended from time to time.

Developer. The term "Developer" shall mean and refer to Estridge Development Company, Inc., an Indiana limited liability company.

Development. The term "Development" shall mean and refer to the real estate commonly known as Highland Springs and situated in the County of Hendricks, State of Indiana, the legal description of which is attached hereto as Exhibit A, and by this reference is incorporated in this License.

E-commerce Transaction Services. The term or phrase "E-commerce Transaction Services" shall mean and refer to transactions conducted over the internet or through internet access, comprising the sale, lease, license, offer or delivery of property, goods, services or information,

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whether or not for consideration; provided, however, the term or phrase "E-commerce Transactions Services" shall not include Internet Bandwidth Access Services.

Excluded Devices. The term of phrase "Excluded Devices" shall mean and refer to any Community Intranet Services device, Security Monitoring Services device, or any other Communication Services device, or Utility Services device, which satisfies both of the following described characteristics:

- (a) The device is nonpermanent. By way of example and not limitation, any device which is affixed to real estate is a permanent device. A nonpermanent device must not, at any time, be affixed to real estate within the Combined Easement Area either by, for example and not limitation, submersion into the ground, screws, bolts, glue or wiring.
- (b) Use of the device must occur primarily outside of the In Gross Easement Area, with use within the In Gross Easement Area being incidental or sporadic.

For example, mobile cellular telephones, pagers, car alarms and portable computer peripherals, which are used primarily outside of the In Gross Easement Area, will generally constitute Excluded Devices. A satellite dish or other means of receiving the transfer of wireless technology used primarily in the In Gross Easement Area, even if easily removed from the residential structure, would not qualify as an Excluded Device, unless such device is otherwise permitted by the Declarations (or, by reference, the Development Control Committee). Wireless signals, of any nature, which are not received by any Owners, or on behalf of any Owners or at the request of any Owner(s), within the In Gross Easement Area, shall constitute Excluded Devices.

Facility or Facilities. The term or terms "Facility" or "Facilities" shall mean and refer to the construction, installation, modification, alteration, supplementation, repair, reconstruction or replacement of any and all necessary or desirable hardware or equipment of any type used to provide or otherwise make available any Common Services including, without limitation, cable, wire, fiber, main, pipe, boxes, conduit, manhole, transformers, pumps, amplifiers, dishes, antennae, microwave, satellite, pedestal, equipment enclosures, poles, wireless communication technology, or any other hardware or equipment of any type necessary or desirable to transfer or provide any Common Services, including, without limitation, communication, video, data, e-commerce, internet, intranet, security systems, communication utility services, information systems, cable television, as well as any other Communication Services or uses for which such hardware or equipment may be used, and further including, without limitation, electricity, water, waste water, gas and any other Utility Services for which such services may be used.

GAAP The term "GAAP" shall mean and refer to United States generally accepted accounting principles applied on a consistent basis and as in effect from time to time.



General Easements. The term or phrase "General Easements" shall mean the Declarant's Communication Services and Utility Easements created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Article XVI, Section 2.A in the Declarations.

In Gross Easement. The term or phrase "In Gross Easement" shall mean the In Gross Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.01 of the Common Services Easements and Restrictions.

In Gross Easement Area. The term or phrase "In Gross Easement Area" shall mean and refer to that certain area of real estate located in Hendricks County, state of Indiana, the legal description of which is attached hereto as Exhibit B.

Internet Bandwidth Access Services. The term or phrase "Internet Bandwidth Access Services" shall mean and refer to any service that enables users to access content, information, electronic mail or other services offered over the internet, and may also include access to proprietary content, information and other services as part of a package of services offered to users and any Facilities related to such service; provided, however, that the term or phrase "Internet Bandwidth Access Services" shall not include E-commerce Transaction Services, Telephone Services (local) or Telephone Services (long distance).

Mandatory Common Service Provider. The term or phrase "Mandatory Common Service Provider" shall mean and refer to a Common Service Provider that provides one (1) or more of the Mandatory Common Services. The Mandatory Common Service Providers shall be listed on Exhibit E attached hereto.

Mandatory Common Services. The term or phrase "Mandatory Common Services" shall mean and refer to the Common Services set forth on Exhibit E attached hereto.

Non-Affiliate. The term or phrase "Non-Affiliate" shall mean and refer to any Person who does not qualify as an Affiliate.

Owner. The term "Owner" shall mean the individual lot owners, or their lessee, tenants or any other successors in interest, of those lots set forth in the Plats.

Owner Access Area. The term or phrase "Owner Access Area" shall mean and refer to the area reasonably necessary for Common Service Providers to establish Common Services to an Owner's individual residential structure situated upon the Owner Improvement Area, which area shall commence at the Platted Easement Area and proceed as directly as reasonably practicable to the individual residential structure and upon and within the structure as contemplated by the Owner's contract with the builder.

Owner Improvement Area. The term or phrase "Owner Improvement Area" shall mean and refer to that area within the In Gross Easement Area which is not common area, duly deeded and titled to the Owner, or his or her successor in interest, upon which the Owner shall be entitled to construct or otherwise erect such temporary or permanent barriers or other temporary or permanent obstructions or structures as the Owner shall desire, so long as such barriers or other obstructions or structures are in conformity with the Declarations; and, further, so long as such barriers or obstructions or structures shall not be situated upon or within the Service Easement Area.

Party. The term "Party" or "Parties" shall mean and refer to the Persons referenced in the introductory paragraph of any agreement which incorporates this Appendix A, as well as any other Person made a Party to any such agreement either at the time of execution thereof or subsequent thereto.

Person. The term "Person" shall mean and refer to any individual, corporation, company, business trust, association, partnership, limited liability company, joint venture, governmental authority, or any other individual or entity, including subsidiaries, Affiliates, and controlled entities.

Plats. The term "Plats" shall mean and refer collectively to all of the Plats that subdivide the Development as amended from time to time that subdivide the Development, recorded or to be recorded in the office of the Recorder of Hendricks County, for the state of Indiana.

Plat Utility Easement. The term or phrase "Plat Utility Easement" shall mean the exclusive Communication Services and Utility Services Easements created pursuant to Article XVI, Section B(ii)(ii) of the Declarations and designated on the Plat as Utility Easements (U.E.).

Platted Easement Area. The term or phrase "Platted Easement Area" shall mean and refer to all of the drainage, utility and sanitary sewer easement area designated as Article XVI, Section 2.B on the Plats, together with the streets designated on the Plats.

Premium Advanced Telecommunication Capability. The term or phrase "Premium Advanced Telecommunication Capability" or "PATC" shall mean and refer to Advanced Telecommunication Capability within the Development, except that the carrying capability exceeds 600 Kbps in both directions simultaneously.

Reserved Rights. The term or phrase "Reserved Rights" shall mean and refer to the rights set forth in Section 2.05 and Section 2.06 of the Common Services Easements and Restrictions.

Security Monitoring Services. The term or phrase "Security Monitoring Services" shall mean and refer to the provision of systems, hardwares, devices and wiring within the residences, commercial structures (if any) and the Development which enable the monitoring for security purposes of such residences, commercial structures (if any) and Development; provided, however, that the term or phrase "Security Monitoring Services" expressly contemplates that a Common

Service Provider may enter into a third party contract (e.g., a monitoring contract) with a security monitoring company.

Service Easement. The term or phrase "Service Easement" shall mean the Service Easement created for the exclusive use of the Grantor (as that term is defined in the Common Services Easements and Restrictions) pursuant to Section 2.02 of the Common Services Easements and Restrictions.

Service Easement Area. The term or phrase "Service Easement Area" shall mean and refer to each and all of the following areas, individually and collectively, as the context requires or as is permitted by law, *to wit*:

- (a) All of the Platted Easement Area.
- (b) All of the Owner Access Area.
- (c) Those portions of the common areas identified on the Plats to the extent reasonably necessary for the establishment of Common Services and Facilities to serve the Owners.

Technology Services Group. The term or phrase "Technology Services Group" shall mean and refer to First Mile Services, LLC, an Indiana limited liability company, E.Com Technologies, LLC, an Indiana limited liability company, and GoTown.net, LLC, an Indiana limited liability company, collectively or singularly as the case may require, and their respective successors and assigns or any other Person so designated by the Access Entity.

Telephone Services (local). The term or phrase "Telephone Services (local)" shall mean and refer to service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or any other Facilities (or any combination thereof) by which a user can originate and terminate a telecommunications service.

Telephone Services (long distance). The term or phrase "Telephone Services (long distance)" shall mean and refer to telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with users for exchange service and any Facilities related to such services.

Utility Services. The term or phrase "Utility Services" shall mean and refer to any sewer, water, gas, electric, any other utility or common functional services provided to the residences and commercial structures (if any) within the Development together with any Facilities related to such

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services; provided, however, that the term or phrase "Utility Services" shall not mean or refer to or include any "Communication Services."

Video On Demand Services. The term or phrase "Video On Demand Services" shall mean and refer to the service of providing video programming to users over networks on an on demand, or interactive, point to point basis and any Facilities related to such services; provided, however the term or phrase "Video On Demand Services" shall not include services providing video programming prescheduled by the programming provider, such as Cable Television Services.

## ARTICLE II

### MISCELLANEOUS PROVISIONS AND CONSTRUCTION OF AGREEMENT

Section 2.01 Complete Agreement. Any agreement which incorporates this Appendix A, together with the schedules, appendices and exhibits thereto, and all other agreements, certificates, documents, schedules, appendices, exhibits and other writings executed at or in connection with the signing of such agreement (collectively, the "Definitive Documents"), constitute the complete and exclusive statement of agreement among the Parties with respect to the covered subject matter. The Definitive Documents replace and supercede all prior agreements by and among the Parties. The Definitive Documents supercede all prior written and oral statements and no other representation, statement, condition or warranty not contained in the Definitive Documents will be binding upon the Parties, or have any force or effect whatsoever. Any prior agreements, promises, negotiations, or representations concerning the subject matter of the Definitive Documents which are not expressly set forth herein or therein are of no force or effect.

Section 2.02 Amendment or Alteration. The agreement which incorporates this Appendix A may be altered or amended in whole or in part, at any time. Amendments or alterations must take the form of a written instrument setting forth the amendments or alterations, which written instrument must be signed by the Party to be charged.

Section 2.03 Severability. If any covenant, agreement, term or provision of any agreement which incorporates this Appendix A is held to be illegal, invalid, unreasonable, or unenforceable under the present or future laws effective during the term thereof, such covenant, agreement, term or provision shall be fully severable. The agreement shall be construed and enforced as if such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision had never comprised a part thereof and, the remainder shall remain in full force and effect and shall not be affected by such illegal, invalid, unreasonable, or enforceable covenant, agreement, term or provision or by its severance therefrom. Furthermore, in lieu of the illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision, there shall be added automatically a provision as similar in terms to such illegal, invalid, unreasonable, or unenforceable covenant, agreement, term or provision as may be possible and be legal, valid, reasonable, and enforceable.

Section 2.04 Waiver. No delay or failure by any Party in exercising any rights under any agreement which incorporates this Appendix A, and no partial or simple exercise of such rights, shall constitute a waiver of that or any other right.

Section 2.05 Governing Law. (i) Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A, including, without limitation, any controversy or claim arising out of or relating to the agreement which incorporates this Appendix A, or its breach, the construction of its terms, or the interpretation of the rights and duties of the Parties, shall be construed and governed exclusively according to the internal laws of the state of Indiana, without regard to that jurisdiction's law regarding conflicts of law. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to the exclusive jurisdiction of Indiana state courts and of the federal courts with jurisdiction over Hendricks County, Indiana, regardless of the residence or situs of the Parties, to which jurisdiction of the court the Parties expressly submit, and waive objection thereto. Except as provided in Section 2.05(ii) below, any agreement which incorporates this Appendix A shall be subject to, and litigated in, the exclusive and preferred venue of Indiana state courts located in Hendricks County, Indiana or of the federal courts with jurisdiction over Hendricks County, Indiana.

(ii) To the extent any state or federal law or regulation prohibits or restricts the provisions set forth in Section 2.05(i) above; then, the state of Indiana will be automatically replaced with the state wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated, and Hendricks County will be automatically replaced with the county wherein any real estate which is subject to any agreement which incorporates this Appendix A is situated.

Section 2.06 Headings: Interpretation. All headings are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision hereof. The singular shall include the plural, and the masculine gender shall include the feminine and neuter, and *vice versa*, as the context requires. The term "including" shall mean "including, without limitation" or its equivalent whenever used herein and shall not limit the generality of any description preceding such term. The introductory paragraph and recitals set forth at the commencement of any agreement which incorporates this Appendix A shall form a part thereof. Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the agreement which incorporates this Appendix A. Reference to any agreement, document or instrument means such agreement, document or instrument, as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof. Reference in any agreement which incorporates this Appendix A to any article, section, appendix, schedule or exhibit means such article or section thereof or appendix or schedule or exhibit thereto. The term "or" is not exclusive. Terms such as "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to the agreement which incorporates this Appendix A, together with all incorporated reference in such agreement and this Appendix A as a whole, and not to any particular, article, section, paragraph or other provision of any specific document.

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Section 2.07 Multiple Counterparts. Any agreement which incorporates this Appendix A may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In making proof with respect thereto, it shall be necessary to produce only one copy thereof signed by the Party to be charged.

Section 2.08 Additional Documents and Acts. The Parties each agree to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions, and conditions of any agreement which incorporates this Appendix A.

Section 2.09 Further Assurances. At any time, and from time to time, each Party shall execute such additional instruments and take such additional actions as may be reasonably requested by the other Party to confirm or otherwise carry out the intent and purpose of any agreement which incorporates this Appendix A.

Section 2.10 Enforceability Certificate. Each of the Parties to any agreement which incorporates this Appendix A shall, without charge, at any time and from time to time, within seven (7) days following a written request by the other party, deliver a written instrument to the requesting party or to any other Person specified by such requesting party, duly executed, certifying: (i) that the agreement which incorporates this Appendix A is unmodified, or that the agreement has been modified and setting forth the specific modification; (ii) that the Term of the agreement is continuing, or the exact date (day, month and year) that the Term expired; and, (iii) any other matters relating to compliance with the agreement.

Section 2.11 Drafter of the Agreement. For purposes of construing any agreement which incorporates this Appendix A, the Parties agree that each (and, as applicable, its counsel) has reviewed and revised the agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the agreement which incorporates this Appendix A, or of this Appendix A, or any amendments, schedules or exhibits thereto or hereto.

Section 2.12 Successors. Any agreement which incorporates this Appendix A shall be binding upon and inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 2.13 Time. Time shall be of the essence with regard to any agreement which incorporates this Appendix A.

Section 2.14 Time Periods. All references to "days" shall mean and refer to calendar days. In the event the date for performance of any obligation under any agreement which incorporates this Appendix A shall fall on a Saturday, Sunday or day when the Hendricks County Superior Court, State of Indiana, is closed, then that obligation shall be performed on the next following regular business day.

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Section 2.15 Obligation of Good Faith. The Parties shall, in the performance of all obligations under any agreement which incorporates this Appendix A, be obligated to act in good faith with one another in the performance thereof and hereunder.

Section 2.16 Not a Partnership. Nothing herein contained shall be construed to create a partnership or joint venture as between the Parties.

Section 2.17 Exhibits, Appendices and Schedules. All exhibits, appendices and schedules referred to herein are intended to be, and are hereby, made specifically a part hereof and incorporated herein.

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## Exhibit          A

**TRACT A:**

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a railroad spike set at the southwest corner of said section; thence South 88 degrees 55 minutes 00 seconds East along the south line of said section 419.10 feet; thence North 1 degree 05 minutes 00 seconds East 440.00 feet to the point of beginning of this description; FROM SAID BEGINNING POINT North 1 degree 05 minutes 00 seconds East 300.52 feet; thence North 88 degrees 55 minutes 00 seconds West parallel with the south line of said section 21.78 feet to the center of the former Brownsburg and Fayette Road; thence South 26 degrees 41 minutes 00 seconds West along said center line 196.02 feet; thence South 36 degrees 39 minutes 00 seconds West along said center line 63.87 feet; thence South 62 degrees 21 minutes 33 seconds East 160.57 feet to the point of beginning, containing 0.528 acres, more or less. Subject to all legal highways, rights of way and easements.

**TRACT B:**

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning on the south line of said section North 89 degrees 26 minutes 39 seconds East 419.10 feet, measured along said south line, from a railroad spike set at the southwest corner of said section; thence North 0 degrees 33 minutes 21 seconds West 440.00 feet; thence North 63 degrees 59 minutes 54 seconds West 160.57 feet to the center line of the former Brownsburg and Fayette Road; thence North 35 degrees 00 minutes 39 seconds East along said center line 63.87 feet; thence North 25 degrees 02 minutes 39 seconds East along said center line 196.02 feet; thence North 25 degrees 59 minutes 30 seconds East along said center line 199.98 feet; thence North 19 degrees 21 minutes 30 seconds East along said center line 148.50 feet; thence North 1 degree 10 minutes 28 seconds East along said center line 242.28 feet to the north line of Lot 7 in the Arbuckle Partition as surveyed by County Surveyor Job Hadley June 4, 1872, as the same appears in Deed Record 37, pages 319-323, in the office of the Recorder of the aforesaid county; thence North 89 degrees 32 minutes 11 seconds East along the north line of said Lot 7 a distance of 2,118.51 feet to a point on the east line of said quarter section that is South 0 degrees 36 minutes 03 seconds East 1,354.94 feet, measured along said east line, from a stone found at the northeast corner of said quarter section; thence South 0 degrees 36 minutes 03 seconds East along said east line 1,297.80 feet to a stone found at the southeast corner of said quarter section; thence South 89 degrees 26 minutes 39 seconds West along the south line of said quarter section 2,245.02 feet to the point of beginning; containing 66.423 acres, more or less. Subject to all legal highways, rights of way and easements.

CONTINUED



**EXCEPT:**

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a railroad spike set at the southwest corner of said section; thence South 88 degrees 55 minutes 00 seconds East along the south line of said section 419.10 feet; thence North 1 degree 05 minutes 00 seconds East 440.00 feet to the point of beginning of this description: FROM SAID BEGINNING POINT North 1 degree 05 minutes 00 seconds East 300.52 feet; thence North 88 degrees 55 minutes 00 seconds West parallel with the south line of said section 21.78 feet to the center of the former Brownsburg and Fayette Road; thence South 26 degrees 41 minutes 00 seconds West along said center line 196.02 feet; thence South 36 degrees 39 minutes 00 seconds West along said center line 63.87 feet; thence South 62 degrees 21 minutes 33 seconds East 160.57 feet to the point of beginning, containing 0.528 acres, more or less. Subject to all legal highways, rights of way and easements.

**ALSO:**

A part of the Northeast Quarter and a part of the Southeast Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the southwest corner of said Southeast Quarter Section; thence North 0 degrees 36 minutes 03 seconds West along said west line of said quarter section 2.652.74 feet to a stone found at the center of said section; thence North 0 degrees 32 minutes 13 seconds West along the west line of said Northeast Quarter 64.08 feet to the southwestern line of the right of way of the Consolidated Rail Corporation; thence South 29 degrees 27 minutes 03 seconds East along said southwestern right of way line, 1,067.43 feet to the east line of that certain parcel of land described in a deed dated February 11, 1938, and entered for record in Deed Record 145, page 333, in the office of the Recorder of the aforesaid county; thence South 0 degrees 34 minutes 50 seconds East along said east line 1,781.02 feet to the south line of said section; thence South 89 degrees 18 minutes 15 seconds West along said south line 514.49 feet to the point of beginning; containing 26.583 acres, more or less. ALSO, a part of the Northeast Quarter of Section 35, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the northwest corner of said Northeast Quarter Section; thence North 89 degrees 18 minutes 15 seconds East along the north line of said section 514.49 feet to the east line of that certain parcel of land described in a deed dated February 11, 1938, and entered for record in Deed Record 145, page 333, in said Recorder's office; thence South 0 degrees 34 minutes 50 seconds East along said east line 87.12 feet; thence South 89 degrees 18 minutes 15 seconds West parallel with said north line 514.80 feet to the west line of said quarter section; thence North 0 degrees 22 minutes 47 seconds West along said west line 87.12 feet to the point of beginning, containing 1.029 acres, more or less. Containing in all 27.612 acres, more or less. Subject to all highways, easements and rights of way.

CONTINUED

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ALSO: A part of the Northwest Quarter of Section 35, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the northeast corner of said quarter section; thence South 0 degrees 22 minutes 47 seconds East along the east line of said quarter section 1,319.34 feet to the northeast corner of Northern Acres, Section 10, the plat of which is entered for record in Plat Book 7, page 25, in the office of the Recorder of said county; thence South 89 degrees 22 minutes 03 seconds West along the north line of said Northern Acres, Section 10, and along the north line of Section 9 of said subdivision, 1,126.76 feet to the southeast corner of Starkey's Subdivision, Section 4, the plat of which is entered for record in Plat Book 7, page 91, in said Recorder's office; thence North 0 degrees 37 minutes 57 seconds West along the boundary of said Section 4 a distance of 73.02 feet (North 0 degrees 37 minutes 06 seconds West 72.77 feet by said plat); thence North 23 degrees 26 minutes 33 seconds East along said boundary 191.78 feet; thence along said boundary Southeasterly 59.83 feet on an arc to the left having a radius of 522.30 feet and subtended by a long chord having a bearing and length of South 69 degrees 50 minutes 19 seconds East 59.80 feet; thence North 16 degrees 52 minutes 45 seconds East along said boundary 215.80 feet; thence South 81 degrees 53 minutes 11 seconds East along said boundary 30.62 feet; thence North 0 degrees 33 minutes 21 seconds West along said boundary 892.50 feet to the north line of said Section 35; thence North 89 degrees 26 minutes 39 seconds East Along said north line 902.05 feet to the point of beginning, containing 28.652 acres, more or less. Subject to all legal highways, rights of way and easements. Containing in all 95.075 acres, more or less.

NOTE: This policy does not insure the accuracy of the quantity of land appearing on the legal description in Schedule A, hereof.

Exhibit       
B

## TRACT A:

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a railroad spike set at the southwest corner of said section; thence South 88 degrees 55 minutes 00 seconds East along the south line of said section 419.10 feet; thence North 1 degree 05 minutes 00 seconds East 440.00 feet to the point of beginning of this description: FROM SAID BEGINNING POINT North 1 degree 05 minutes 00 seconds East 300.52 feet; thence North 88 degrees 55 minutes 00 seconds West parallel with the south line of said section 21.78 feet to the center of the former Brownsburg and Fayette Road; thence South 26 degrees 41 minutes 00 seconds West along said center line 196.02 feet; thence South 36 degrees 39 minutes 00 seconds West along said center line 63.87 feet; thence South 62 degrees 21 minutes 33 seconds East 160.57 feet to the point of beginning, containing 0.528 acres, more or less. Subject to all legal highways, rights of way and easements.

## TRACT B:

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning on the south line of said section North 89 degrees 26 minutes 39 seconds East 419.10 feet, measured along said south line, from a railroad spike set at the southwest corner of said section; thence North 0 degrees 33 minutes 21 seconds West 440.00 feet; thence North 63 degrees 59 minutes 54 seconds West 160.57 feet to the center line of the former Brownsburg and Fayette Road; thence North 35 degrees 00 minutes 39 seconds East along said center line 63.87 feet; thence North 25 degrees 02 minutes 39 seconds East along said center line 196.02 feet; thence North 25 degrees 59 minutes 30 seconds East along said center line 199.98 feet; thence North 19 degrees 21 minutes 30 seconds East along said center line 148.50 feet; thence North 1 degree 10 minutes 28 seconds East along said center line 242.28 feet to the north line of Lot 7 in the Arbuckle Partition as surveyed by County Surveyor Job Hadley June 4, 1872, as the same appears in Deed Record 37, pages 319-323, in the office of the Recorder of the aforesaid county; thence North 89 degrees 32 minutes 11 seconds East along the north line of said Lot 7 a distance of 2,118.51 feet to a point on the east line of said quarter section that is South 0 degrees 36 minutes 03 seconds East 1,354.94 feet. measured along said east line, from a stone found at the northeast corner of said quarter section; thence South 0 degrees 36 minutes 03 seconds East along said east line 1,297.80 feet to a stone found at the southeast corner of said quarter section; thence South 89 degrees 26 minutes 39 seconds West along the south line of said quarter section 2,245.02 feet to the point of beginning; containing 66.423 acres, more or less. Subject to all legal highways, rights of way and easements.

CONTINUED

**EXCEPT:**

A part of the Southwest Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Commencing at a railroad spike set at the southwest corner of said section; thence South 88 degrees 55 minutes 00 seconds East along the south line of said section 419.10 feet; thence North 1 degree 05 minutes 00 seconds East 440.00 feet to the point of beginning of this description: FROM SAID BEGINNING POINT North 1 degree 05 minutes 00 seconds East 300.52 feet; thence North 88 degrees 55 minutes 00 seconds West parallel with the south line of said section 21.78 feet to the center of the former Brownsburg and Fayette Road; thence South 26 degrees 41 minutes 00 seconds West along said center line 196.02 feet; thence South 36 degrees 39 minutes 00 seconds West along said center line 63.87 feet; thence South 62 degrees 21 minutes 33 seconds East 160.57 feet to the point of beginning, containing 0.528 acres, more or less. Subject to all legal highways, rights of way and easements.

**ALSO:**

A part of the Northeast Quarter and a part of the Southeast Quarter of Section 26, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the southwest corner of said Southeast Quarter Section; thence North 0 degrees 36 minutes 03 seconds West along said west line of said quarter section 2,652.74 feet to a stone found at the center of said section; thence North 0 degrees 32 minutes 13 seconds West along the west line of said Northeast Quarter 64.08 feet to the southwestern line of the right of way of the Consolidated Rail Corporation; thence South 29 degrees 27 minutes 03 seconds East along said southwestern right of way line, 1,067.43 feet to the east line of that certain parcel of land described in a deed dated February 11, 1938, and entered for record in Deed Record 145, page 333, in the office of the Recorder of the aforesaid county; thence South 0 degrees 34 minutes 50 seconds East along said east line 1,781.02 feet to the south line of said section; thence South 89 degrees 18 minutes 15 seconds West along said south line 514.49 feet to the point of beginning; containing 26.583 acres, more or less. ALSO, a part of the Northeast Quarter of Section 35, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the northwest corner of said Northeast Quarter Section; thence North 89 degrees 18 minutes 15 seconds East along the north line of said section 514.49 feet to the east line of that certain parcel of land described in a deed dated February 11, 1938, and entered for record in Deed Record 145, page 333, in said Recorder's office; thence South 0 degrees 34 minutes 50 seconds East along said east line 87.12 feet; thence South 89 degrees 18 minutes 15 seconds West parallel with said north line 514.80 feet to the west line of said quarter section; thence North 0 degrees 22 minutes 47 seconds West along said west line 87.12 feet to the point of beginning, containing 1.029 acres, more or less. Containing in all 27.612 acres, more or less. Subject to all highways, easements and rights of way.

CONTINUED

ALSO: A part of the Northwest Quarter of Section 35, Township 17 North, Range 1 East, Hendricks County, Indiana, described as follows: Beginning at a stone found at the northeast corner of said quarter section; thence South 0 degrees 22 minutes 47 seconds East along the east line of said quarter section 1,319.34 feet to the northeast corner of Northern Acres, Section 10, the plat of which is entered for record in Plat Book 7, page 25, in the office of the Recorder of said county; thence South 89 degrees 22 minutes 03 seconds West along the north line of said Northern Acres, Section 10, and along the north line of Section 9 of said subdivision, 1,126.76 feet to the southeast corner of Starkey's Subdivision, Section 4, the plat of which is entered for record in Plat Book 7, page 91, in said Recorder's office; thence North 0 degrees 37 minutes 57 seconds West along the boundary of said Section 4 a distance of 73.02 feet (North 0 degrees 37 minutes 06 seconds West 72.77 feet by said plat); thence North 23 degrees 26 minutes 33 seconds East along said boundary 191.78 feet; thence along said boundary Southeasterly 59.83 feet on an arc to the left having a radius of 522.30 feet and subtended by a long chord having a bearing and length of South 69 degrees 50 minutes 19 seconds East 59.80 feet; thence North 16 degrees 52 minutes 45 seconds East along said boundary 215.80 feet; thence South 81 degrees 53 minutes 11 seconds East along said boundary 30.62 feet; thence North 0 degrees 33 minutes 21 seconds West along said boundary 892.50 feet to the north line of said Section 35; thence North 89 degrees 26 minutes 39 seconds East Along said north line 902.05 feet to the point of beginning, containing 28.652 acres, more or less. Subject to all legal highways, rights of way and easements. Containing in all 95.075 acres, more or less.

NOTE: This policy does not insure the accuracy of the quantity of land appearing on the legal description in Schedule A, hereof.

EXHIBIT C

Declarations

The Declaration of Covenants, Conditions, Easements and Restrictions of Highland Springs to be recorded in the Office of the Recorder of Hendricks County, Indiana promptly after recordation of this instrument.

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EXHIBIT D

Plats

The Plat for Highland Springs to be recorded in the Office of the Recorder of Hendricks County, Indiana promptly after recordation of this instrument.

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EXHIBIT E

Mandatory Common Service Providers

<u>Mandatory Common Services</u>	<u>Provider Name and Address</u>
1. Sewer	Town of Brownsburg
2. Water	Town of Brownsburg
3. Electric	Cinergy
4. Gas	Indiana Gas
5. Telephone Service (local)	Ameritech