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**DECLARATION OF COVENANTS AND RESTRICTIONS**

**OF**

**PARKS AT PRESTWICK**



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**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
PARKS AT PRESTWICK**

This Declaration of Covenants and Restrictions of the Parks at Prestwick ("Declaration") is made this 28th day of January, 2003 by Prestwick Development, LLC (the "Declarant"),

**WITNESSETH:**

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

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, lakes, landscaped areas, open spaces, walls, fences and other common areas and amenities for the benefit of such residential community, to be known as the "Parks at Prestwick"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values and amenities in such community and the common areas therein contained, and, to this end, Declarant desires to subject the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each Owner of all or part thereof; 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 supervising, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof;

WHEREAS, Declarant has caused, or will cause, to be incorporated under the Indiana Code 23-17-1, et seq., under the name "Parks at Prestwick Homeowners Association, Inc.", or a similar name, as such agency for the purpose of exercising such functions; and

WHEREAS, Declarant contemplates that in addition to the covenants, conditions, easements and restrictions imposed hereby and the amenities, improvements and services of common benefit to all residents, such communities within the Real Estate may be subject to further covenants, conditions, easements and restrictions and provided with further amenities, improvements and services of benefit only to the residents of a particular community or

communities, and in furtherance thereof, Declarant intends that a Supplemental Declaration (as defined herein) will be recorded making reference to this Declaration and setting forth the various terms and provisions relating to such communities' specific amenities, improvements, services and other matters and Declarant contemplates that each Community (as defined herein) may form a separate Community Association (as herein defined) and as set forth in the Supplemental Declaration for that Community.

NOW, THEREFORE, Declarant, as owner of the Real Estate or with the consent of the owners of the Real Estate and any additional property which is hereafter made subject to this Declaration by Supplemental Declaration hereby declares that the Real Estate 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 Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of the Lots situated therein.

**ARTICLE I  
Definitions**

**Section 1.** The following words and terms, when used herein or in any supplement or amendment hereto, unless the context clearly requires otherwise, shall have the following meanings:

"Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;

"Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;

"Association" shall mean and refer to Parks at Prestwick Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-1, et seq., which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;

"Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;

"Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided for in the Articles, Bylaws and this Declaration;

"Bylaws" shall mean and refer to the Code of Bylaws of the Association, as the same may be amended from time to time;



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"Committee" shall mean and refer to the "Parks at Prestwick Architectural Control Committee", the same being the committee or entity established pursuant to Article VIII, Section I, of this Declaration for the purposes herein stated;

"Common Areas" shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not dedicated to the public, which are not Lakes and which are not identified as Lots on any such plat, whether such plat is heretofore or hereafter recorded, (ii) such portions of the Real Estate as are herein declared to be Common Areas on the plat of the Real Estate even though located on or constituting part of one or more such Lots shown on any such plat, (iii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the Real Estate which are not Lots, or both;

"Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses;

"Community" shall mean and refer to separately designated and developed residential areas. In the absence of specific designation of separate Community status, all Real Estate made subject to this Declaration shall be considered a part of the same Community; provided, however, the Declarant may designate in any Supplemental Declaration adding property to the terms and conditions of this Declaration that such property shall constitute a separate Community or Communities; provided further that after the Applicable Date, upon approval of two-thirds (2/3) of the Board of Directors, the Board of Directors may also designate Community status to any area of the Real Estate so requesting.

"Community Assessments" shall mean assessments for such expenses as may be provided for herein or in any Supplemental Declaration which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Lots in a given Community against which the specific Community Assessment is levied and for the purposes of maintaining the properties or providing services for the Owners within a given Community, as will be more particularly described in the Supplemental Declaration creating the same. The Community Assessments shall be levied equally against Owners of Lots in a Community, provided that in the event assessments are levied for exterior maintenance of dwellings, or insurance on dwellings, or replacement reserves which pertain to particular dwellings within a given Community (pursuant to a Supplemental Declaration), such assessments (that are for the use and benefit of particular Lots) shall be levied upon a pro rata basis among the benefited Owners.

"Declarant" shall mean and refer to Prestwick Development, LLC and any successors and assigns of Prestwick Development, LLC whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited

to, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

"Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family;

"Forest Preserve Area" shall mean those common areas set aside for forest preservation.

"Government Assisted Financing" shall mean financing that is provided by the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which provides (or may in the future provide) financing similar to the financing currently by such entities.

"Guidelines" means the guidelines adopted by the Committee pursuant to Section 2 of Article IX.

"Lakes" shall mean and refer to the Lakes located on the Real Estate;

"Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit), as designated by Declarant by its deed of the same to another Person. For purposes of this Declaration, a "Lot" may be (i) any single numbered parcel of land identified as a Lot on such subdivision plat or any condominium unit identified in a Horizontal Property Regime, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the Real Estate constitutes a "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another Person it is agreed between Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes such "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, such "Lot" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of conveyance so adjusting or changing the description of a "Lot" shall state on its face that it is made for such purpose. Any part of a "Lot" reconveyed to Declarant shall, upon

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such re-conveyance, lose its character as part of a "Lot" and may thereafter be conveyed by Declarant as part of another "Lot". The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Lots" or for any other reason;

"Mortgages" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;

"Owner" shall mean and refer to the record Owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;

"Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;

"Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as is hereafter made subject to this Declaration by Supplemental Declaration;

The "Real Estate" or "Development" shall mean and refer to the parcel of real estate in Hendricks County, Indiana, described in Exhibit "A" attached to this Declaration, as referred to in the first recital clause of this Declaration, and defined therein as the Real Estate;

"Regulations" shall mean the additional rules and regulations with respect to the use, occupation, operation and enjoyment of the Real Estate and the Common Areas (in addition to those set forth in this Declaration) adopted by the Board pursuant to Section 7(g) of Article V.

"Restrictions" shall mean and refer to the agreements, conditions, covenants, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time;

"Supplemental Declaration" shall mean any amendment to this Declaration which adds additional property to that covered by this Declaration or otherwise imposes additional covenants, conditions, easements or restrictions on all or any portion of the Development. Such Supplemental Declaration may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land subject to that Supplemental Declaration to the provisions of this Declaration and shall set forth the specific development standards, services to be provided by the Community Association to Owners in the Community being created thereby, the initial level of assessments for Community Assessments associated therewith and such other matters as the Declarant may determine to include therein.

**Section 2.** Other terms and words defined elsewhere in this Declaration shall have the meanings herein attributed to them.

**ARTICLE II**

**Declaration; Common Areas and Rights Therein**

**Section 1. Declaration.** Declarant hereby expressly declares that the Properties shall be held, transferred and occupied subject to the Restrictions. The Owners of any Lot subject to these Restrictions, and all other Persons, 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 conclusively be deemed to have accepted such deed, executed such contract and undertaken such occupancy subject to each Restriction and agreement herein contained. By acceptance of such deed, or execution of such contract, or undertaking such occupancy, each Owner and all other Persons acknowledge the rights and powers of Declarant, the Committee and of the Association with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant, the Committee, the Association, and the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

**Section 2. Easement to Owner.** Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Areas (except for such portions of the Common Areas, if any, as to which, in accordance with other provisions hereof, the use, enjoyment and benefit is limited to the Owners of certain designated Lots to the exclusion of other Lots) subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot.

**ARTICLE III**

**Common Areas; Easements**

**Section 1. Agreement to Construct and Convey Other Common Areas.** Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, Common Areas consisting of the following items:

- (a) a storm drainage system for the Real Estate, which may include lakes, inlet pipes, open ditches, swales, pipes and other structures and drainage courses;
- (b) the installation, in common areas or landscape easements of landscaping and other screening materials which may include parks, trails and other amenity areas;
- (c) the installation of entrance and retaining walls and other masonry fences in common areas or landscape easements (regardless of whether the same are in an area designated in a plat as Common Area or in an area subject to an easement reserved by Declarant);
- (d) the installation, within the street rights-of-way, of street lighting, street directories and street signs in common areas or in landscape easements.

Upon final construction or provision of the Common Areas described in this Section 1, but in no event later than the Applicable Date, Declarant covenants to convey by quitclaim deed all of its right, title and interest in and to said Common Areas to the Association and all such right, title and interest in and to said items (whether owned in fee, by leasehold, by contract or in the nature of an easement or license) shall then be the property of the Association and shall be accepted by the Association. As to any of such items of and constituting the Common Areas located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein as described in Article II, Section 2, of this Declaration.

**Section 2. Additional Common Areas at Declarant's Option.** Declarant may, at its option but without obligation to do so, convey other portions of the Real Estate to the Association for, or construct, install or provide for other items for or on, or services to serve, the Real Estate as amenities for, the mutual benefit, use or enjoyment of the Owners. Included as examples of the foregoing, but not limited therein, might be a community television antenna or receiving device to serve all of the Dwelling Units, storage buildings for storage of articles by Owners or provisions of portions of the Real Estate for recreational or other common uses or purposes for the Owners, including without limitation, a swimming pool, tennis courts, bath house or other recreational facilities or additional entrances, forest preserve area, landscaped areas and walls. Any such portions of the Real Estate, or other items, or services, which Declarant, at its sole option, elects to convey, construct, install or provide as Common Areas shall become a part of the Common Areas only when so designated by Declarant in a written instrument executed by Declarant and delivered to the Association. Upon any such designation by Declarant, Declarant shall convey by quitclaim deed all of its right, title and interest in and to the Common Areas so designated to the Association and all such right, title and interest in and to the Common Areas so designated and conveyed shall then and thereupon be and become the property of the Association, whether or not the same constitutes, or may be located entirely or partially on, any one or more of the Lots or any Lot shown upon any recorded subdivision plat of the Real Estate, or parts thereof. As to any of such Common Areas so designated and conveyed pursuant to the foregoing provisions of this Section 3 which are located entirely or partially on any one or more of the Lots, the Owners of such Lots shall have only non-exclusive easement rights therein or thereto, as described in Article II, Section 2, of this Declaration.

**Section 3. Owner's Easement of Enjoyment.** Every Owner shall have a right and easement of ingress and egress in and to, and, use and enjoyment of the Common Area and the Community Facilities of the Community within which the Owner's Lot is located, which shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (i) the right of the Association or appropriate Community Association to charge reasonable admission and other fees for the use of any Common Area or Community Facilities and to impose reasonable limits on the number of guests who may use such facilities and/or open membership to use of portions of Common Areas to the public in return for membership fees or other charges;

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(ii) the right of the Association or appropriate Community Association to suspend or terminate a Member's voting rights in accordance with law and the Articles of Incorporation and Bylaws;

(iii) the right to suspend use of any such facilities for any period during which any assessment for Common Expenses or Community Assessments against that Owner's Lot remains unpaid, and for any violation by an Owner of the Association's or appropriate Community Association's rules and regulations, for the duration of the violation and for an additional period thereafter not to exceed thirty (30) days;

(iv) the Declarant's reserved easements as described herein and the right of the Declarant to grant easements in and to the Common Area and Community Facilities to any conservancy district, public agency, authority, or utility for such purposes as benefit only the Development or portions thereof and Owners or Lots contained therein;

(v) the right of the Association and of Community Association to borrow money for the purpose of improving the Common Area and Community Facilities, or any portion thereof, for acquiring additional Common Area or Community Facilities, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan, a mortgage conveying all or any portion of the Common Area or Community Facilities, provided two-thirds (2/3) of the Class A members, and, until the Applicable Date, all of the Class B members, must approve any mortgage of Common Area or Common Facilities; provided, however, the lien and encumbrance of any such mortgage given by the Association or Community Association shall be subject and subordinate to any and all rights, interests, options, easements and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner encumbering any Lot or other property located within the Development; and

(vi) the right of the Association and Community Association to dedicate or transfer all or any portion of the Common Area or Community Facilities to any conservancy district, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association or Community Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the Declarant prior to the Applicable Date and by at least two-thirds (2/3) of the Class A members.

**Section 4. 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, for the benefit of Declarant and its 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. The reserved easement

shall constitute a burden on the title to all or any portion of the Development and specifically includes, but is not limited to:

(i) 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, cable, 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;

(ii) 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; and

(iii) the right to maintain a sales and marketing office for the Development within the Common Area and/or Community Facilities without cost to Declarant until the Applicable Date.

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 from 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 home builder within the Development similar rights as granted to Declarant under (ii) and (iii) above.

**Section 5. Easements for Utilities.** There is hereby reserved to the Association blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, cable television, internet service provider and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Development. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or serve request a specific license or easement by separate recordable document, the Board or Declarant shall have the right to grant such easement.

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**Section 6. Construction and Sale.** Notwithstanding any provision contained in the Declaration to the contrary, until the Applicable Date, it shall be expressly permissible for Declarant, free of any and all charges therefore, to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant as models and sales offices.

**ARTICLE IV**  
**Association; Membership; Voting; Functions**

**Section 1. Membership in Association.** Declarant and each Owner of a Lot shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any Person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a member of the Association.

**Section 2. Voting Rights.** The Association shall have the following classes of membership, with the following voting rights:

(a) **Class A.** Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(b) **Class B.** Class B members shall be Declarant and all successors and assigns of Declarant designated by 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 to ten (10) votes for each Lot of which it is the Owner and ten (10) votes for each single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Real Estate of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, on all matters requiring a vote of the members of the Association. The Class B membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B members as such is delivered to the resident agent of the Association, or (ii) the date Declarant has sold in excess of seventy-five percent (75%) of the total Lots and proposed Lots, including any portion of any single numbered parcel of land shown



upon, and identified as a Lot on, any recorded subdivision plat of the Properties or any plan prescribed by Declarant for any property within or adjacent to the Properties intended to become a future section of the Parks at Prestwick (the applicable date being herein referred to as the "Applicable Date"). After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot owned and for each single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Properties of which it is then the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein. Prior to the termination of Class B membership, any merger or dissolution of the Association, any mortgaging of Common Areas, or any annexation of additional real estate as provided in Article XV of this Declaration or any amendment of the Declaration as provided in Section 1 of Article XVI of this Declaration which materially affects in an adverse manner any portion of the Properties which are eligible for Government Assisted Financing (and thus subject to its requirements) shall require the approval of the agency regulating such Government Assisted Financing, if such approval is required to maintain such eligibility.

**Section 3. Functions.** The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation and ownership of the Common Areas as and to the extent provided herein, to pay taxes assessed against and payable with respect to the Common Areas, to pay any other necessary expenses and costs in connection with the Common Areas, and to perform such other functions as may be designated for it to perform under this Declaration. Notwithstanding the foregoing, the Developer shall have the right, but not the obligation, to form a conservancy district or districts for the purpose of maintaining utilities or Common Areas, or portions thereof.

**ARTICLE V  
Board of Directors**

**Section 1. Management.** The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, or a person appointed by Declarant as provided in Section 2 of this Article V.

**Section 2. Initial Board of Directors.** Until otherwise determined by the Declarant, the initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: Andrew D. Pritchard, David R. Helm and Jerome R. Schafer (herein referred to as the "Initial Board"), who has been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a

Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Association).

**Section 3. Additional Qualifications.** Where an Owner consists of more than one Person or is a partnership, corporation, trust or other legal entity, then one of the Persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one Person at a time.

**Section 4. Term of Office and Vacancy.** Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Prior to the Applicable Date Developer shall have the right to determine a larger number of directors and stagger the terms thereof. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

**Section 5. Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners or until his successor is duly elected and qualified.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(a) protection, surveillance and replacement of the Common Areas, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(b) procuring of utilities used in connection with the Lots, Dwelling Units and Common Areas (to the extent the same are not provided and billed directly to Owners of Lots and Dwelling Units by utility companies);

(c) landscaping, painting, decorating, furnishing, and maintenance and upkeep of, the Common Areas;

(d) assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

(e) preparation of the proposed annual budget, a copy of which will be made available to each Owner at the same time as the notice of the annual or special meeting at which the same is to be acted upon is mailed or delivered;

(f) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Areas and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;

(g) procuring and maintaining for the benefit of the Association, the Owners, any Managing Agent and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(h) paying taxes and assessments assessed against and payable with respect to the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas; and

(i) all duties and obligations imposed upon the Association or the Board under this Declaration, the Articles, the Bylaws or the Act.

No contract or agreement for professional management of the Association by Declaration nor any other contract between the Association and Declarant shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without any termination fee by written notice of ninety (90) days or less.

**Section 7. Powers of the Board of Directors and Association.** The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, snow removal, security, lawn and landscaping service and other common services to each lot. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These power include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;
- (e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations ("Regulations") with respect to use, occupancy, operation, construction activities and enjoyment of the Lots, the Real Estate and the Common Areas (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional Regulations so adopted by the Board shall be promptly delivered to all Owners. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Declarant prior to the Applicable Date and thereafter by Board of Directors of the Association by two-thirds (2/3) vote. The Board shall have the authority to impose reasonable monetary fines and other sanctions, and

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monetary fines may be collected by lien and foreclosure, as provided in Article XI. In addition, the Association, through its Board, may, by contract or other agreement, enforce county ordinances or permit Hendricks County to enforce ordinances affecting the Development for the benefit of the Association and its Members; and

(h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, Dwelling Units and Common Areas with facilities for utility and similar services, including but not limited to cable television and internet service provider facilities and service; provided that such easements are located within or are co-extensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, or Common Areas shown upon, and identified as such on, or provided for in, any subdivision plat of the Real Estate, whether such plat is heretofore or hereafter recorded.

**Section 8. Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 9. Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful, intentional, fraudulent or reckless misconduct. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

**Section 10. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for willful, intentional, fraudulent or reckless misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners

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that such Director was not guilty of willful, intentional, fraudulent or reckless misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for willful, intentional, fraudulent or reckless misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for willful, intentional, fraudulent or reckless misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 11. Bond.** The Board of Directors may provide at the expense of the Association surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

**Section 12. Initial Management.** Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Areas, and to perform all the functions of the Association, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

**ARTICLE VI**  
**Real Estate Taxes; Utilities**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Areas shall be paid by the Association and treated as a Common Expense.

**Section 2. Utilities.** Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**Section 3. Conservancy District.** Each Owner shall be required to pay to the West Central Conservancy District, its successors or assigns or applicable utility, the monthly availability fee for such utility's sewage collection system (currently \$15.00 per Lot) which shall

commence as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to an Owner and continue until the Lot is connected to such sewage collection system. Such monthly fees shall be paid in compliance with the utility's billing requirements, currently fifteen (15) days from the date of invoice. If any Owner fails to pay the monthly fee when due, the amount of the fee shall be considered a lien against the Owner's Lot to which the fee applies. Fees due to such utility shall be considered charge of a Conservancy District and may be collected in accordance with Indiana Code §14-33-1, *et seq.*

**ARTICLE VII  
Maintenance and Repair**

**Section 1. By the Owner.** Each Owner shall be responsible for, if the need therefor arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot, except for such portions thereof as may, in accordance with the terms of this Declaration, be designated as a part of the Common Areas for purposes of maintenance only. All fixtures and equipment installed within or as part of a Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling or any part of the Common Areas. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances and other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

**Section 2. By the Association.** Maintenance, repairs, replacements and upkeep of the Common Areas shall (except to the extent provided herein as the obligation of Owners) be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

In addition to the maintenance of the Common Areas, the Association, as part of its duties, and as a part of the Common Expenses, shall provide for maintenance for the following items, which shall be considered part of the Common Areas for purposes of maintenance only:

- (a) those portions of the Real Estate, whether or not said portions are part of any of the Lots, which are located outside any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate, but only to the extent that the same are not maintained by or the responsibility of a public authority; provided, however, that the Association shall have no obligation to maintain any public street, road or highway located within any public right-of-way on or abutting the Real Estate. For purposes of this subparagraph (a), "outside any perimeter fencing" means the areas between such fencing and the nearest property line of the Real Estate;

(b) any perimeter fencing (including walls) originally installed by Declarant as part of the perimeter treatment of the Real Estate; and

(c) any equipment, such as water wells or fountains, installed by Declarant to serve the entire project to be developed on the Real Estate, whether or not located on Lots.

(d) the storm water drainage system for the Real Estate, including but not limited to, the maintenance of all lakes, inlets, open ditches, pipes, swales, manholes and detention ponds. The costs and expenses of such maintenance of the storm water drainage system shall be assessed as part of the general assessment against the Owners as provided in the Declaration and shall be secured by a lien against all lots in this subdivision. Sump pumps, gravity drains and other drains serving individual residences on Lots shall outfall only into drainage swales included in the storm water drainage system for Parks at Prestwick.

(e) all fences, walls, landscaping, screening material, street directories and signs, water wells and irrigation systems and other improvements within landscape casements.

(f) all trails, stairs, steps, bridges, rails and sidewalks not part of any public street.

The Board of Directors may adopt such other Regulations concerning maintenance, repair, use and enjoyment of the Common Areas as it deems necessary, provided that the same are not inconsistent with the express provisions of this Declaration.

Notwithstanding any obligation or duty of the Association to repair or maintain any of the Common Areas (or items deemed Common Areas for purposes of maintenance), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas (or items deemed as such for purposes of maintenance), or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

In recognition of the fact that the costs of snow removal and landscaping maintenance for the Development may substantially exceed amounts budgeted therefor by the Association due to inordinate snow fall, an inordinate number of snow falls during any season, general weather conditions, agricultural conditions and amount of use, the cost of snow removal (if done by Association) and landscaping maintenance in excess of amounts budgeted therefor shall be paid by the Owners (on the same basis as assessments for Common Expenses are allocated to the Owners in accordance with Article XI) by a Special Assessment. Nothing contained herein shall be construed to require that the Association provide snow removal service for the Development. In the event snow removal service is to be provided for the Development an amount therefor shall be included in the annual budget and collected as a Common Expense with the



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understanding that a Special Assessment may be necessary in the event the amount budgeted therefor is insufficient to defray the actual snow removal costs.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Areas and items deemed as Common Areas for purposes of maintenance, including, but not limited to, access to any easements reserved, granted or created by any subdivision plat of any portion of the Real Estate for such purposes. Notwithstanding the foregoing, the Developer shall have the right, but not the obligation, to form a conservancy district or districts for the purpose of maintaining utilities or Common Areas, or portions thereof.

**ARTICLE VIII  
Lake Covenants**

**Section 1. Ownership of Lakes.** Each Lake area, if any, as shown on Declarant's plats of the subdivision shall be owned and controlled as tenants in common by the Owners of Lots proposed to abut the Lake subject to the restrictions set forth herein and on the Site Plan or Plat applicable to the Real Estate.

**Section 2. Rights To Use Lakes.** Subject to the easement rights with respect to the Lakes described in the Plat or Site Plan applicable to the Real Estate, the Owners of said Lake Lots together with guests in their presence, shall have the exclusive rights to use and enjoyment of such Lake provided that they may not interfere with the drainage system of the subdivision of which the Lakes are a part.

**Section 3. Temporary Maintenance by Declarant.** Until all Lots abutting the Lakes are sold, it shall be the responsibility of the Declarant, its successors and assigns, for the maintenance, repair and upkeep of said Lakes.

**Section 4. Limitations on Use of Lakes.** No person shall do or permit to be done any action or activity which could result in pollution of the Lakes, diversion of water, elevation of Lake levels, earth disturbance resulting in silting or any conduct which could result in an adverse affect upon water quality, drainage of the subdivision or proper Lake management.

The Lakes are and will be an integral part of the storm water drainage system serving the Real Estate and are intended to be used for such purpose and primarily as visual and aesthetic amenities and not as recreational amenities. Accordingly, no use shall be made of any of the Lakes which in any way interferes with their proper functioning as part of such storm water drainage system.

The Lakes shall be kept free and clean of rubbish, debris and other unsightly materials. No structure of any kind shall be placed in the Lakes or on the Lake property without the prior written approval of the Committee.

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No boating, swimming, diving, skiing or ice skating shall be permitted in or on said Lakes except as permitted by the Board of Directors.

No sewage, garbage, refuse or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into said lakes, except the Board of Directors may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same.

Fishing from the shores of such lakes adjacent to an Owner's Lot by the Owner thereof and his invited guests and family shall be permitted subject to obedience and compliance with all applicable fishing and game laws, ordinances, rules and regulations.

**Section 5. Costs of Maintenance.** Estimated costs of maintenance and repair of the Lake property related to the storm water drainage system shall be included in the Common Expenses. Any other expenses for maintenance, upkeep and repair of the Lake property including the easement adjacent thereto shall be shared pro rata by each Lake Lot Owner based on the frontage owned by each respective Lake Lot Owner.

**ARTICLE IX  
Architectural Standards**

Nothing, including any fence, deck, recreational equipment (including basketball goals), or any structure, doghouse or other improvements, shall be erected on any Lot, and no construction, which term shall include within its definition staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Committee has been obtained pursuant to Section 1 below.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration.

**Section 1. Architectural Control Committee.** There shall be, and hereby is, created and established the "Parks at Prestwick Architectural Control Committee" ("Committee") which shall have exclusive jurisdiction over all construction on any portion of the Properties. Until 100% of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, the Declarant, or not more than five, nor less than three, persons designated by it, shall constitute the Committee and shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in

recordable form executed by the Declarant. After the sale of 100% of the Properties, the Committee shall be a standing committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

**Section 2. Approval Process.** The Committee shall have the right to unilaterally promulgate, modify, and amend at any time and from time to time, on behalf of the Board of Directors and the Association, architectural, development, design and site planning guidelines and standards, and application and approval procedures, which shall be binding on all Owners of Lots within the Development, as determined in the reasonable discretion of the Committee (the "Guidelines"). Copies are on file in the office of the Declarant (or the Association, as the case may be) which are incorporated into this Declaration by reference. The Guidelines shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them. It shall make the Guidelines available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

Prior to any construction on any Lot, the approval of the Committee must be obtained after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be made in the manner and form prescribed from time to time by the Committee in its guidelines and procedures which will contain requirements to promote the standard of quality of workmanship and design and harmony of external design with existing structures, location in relation to surrounding structures, topography and finish grade elevation as determined by the Committee, and shall include a tree preservation plan for any wooded lot.

**Section 3. Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

- (a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or Guidelines adopted by the Committee;
- (b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or
- (c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interest, welfare or rights of all or part of other Owners.

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**Section 4. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within twenty-one (21) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. In the event that the Committee fails to approve or disapprove such plans or to request additional information reasonably required within 45 days after submission of all required or requested information, the plans shall be deemed approved.

**Section 5. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**Section 6. Variance.** The Committee may authorize variances from compliance with any of its Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and applicable zoning laws, ordinances and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) modify zoning or governmental requirements, (b) be effective unless in writing, (c) be contrary to the restrictions set forth in the body of this Declaration, or (d) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the terms of any financing, or the initiation of work without the required approval of the Committee shall not be considered hardships warranting a variance.

**Section 7. Compliance with Guidelines.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Guidelines promulgated by the Committee may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing procedures contained in the Bylaws. Further, if any approval required by this Declaration is not granted in writing with respect to any item prior to its installation, the respective Owner thereof shall remove promptly the unapproved item or structure, upon request by Declarant or the Association.

**Section 8. Non-Liability of Declarant, Committee.** Neither the Declarant nor the Committee shall be responsible in any way for any defect in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee or the Declarant does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used or as to the compliance of any plans submitted for approval with these Restrictions, any recorded plat governing the Real Estate or any applicable code, regulation or law.

**Section 9. Inspection.** The Committee and the Declarant may, but shall not be obligated to, inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

**Section 10. No Compensation.** Neither the Committee nor any of its members shall be entitled to any compensation for performing its duties or obligations set forth in this Declaration.

**Section 11. Rules Governing Building on Several Contiguous Lots Having One Owner.** Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit; **provided, however,** that any dues, fees or other charges shall be assessed against each Lot individually.

**Section 12. Declarant Improvements.** The Committee shall have no powers with respect to any construction, improvements, or modifications undertaken by the Declarant (or any assignee of Declarant if the Declarant has approved the plans therefor) or any improvements approved by Declarant at any time.

**ARTICLE X**  
**Use Restrictions/Covenants and Regulations**

**Section 1. Residential Use.** Except for those Communities which provide for multi-family housing, the Properties shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Properties at any time owned by the Association which constitutes a part of the Common Areas and upon which no Dwelling Unit is located.

**Section 2. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited.** No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed and by required Certificate of Occupancy issued.

**Section 3. Signs.** Except as hereinafter provided for Declarant, no signs of any type whatsoever, billboards, unsightly objects, or nuisances shall be erected placed or permitted to remain on the Development other than signage provided by Declarant or by the Association and approved by the Committee and signs that are approved by the Committee and are erected by a

builder of multiple Lots in the Development, except that one sign of not more than six (6) square feet may be displayed for the purpose of advertising a Lot for sale. Violation of this sign restriction will result in Fifty Dollars (\$50.00) per day liquidated damages payable to the Declarant until such time as the Association owns and is responsible for the maintenance of the Common Areas, at which time such liquidated damages shall be payable to the Association.

**Section 4. Parking and Prohibited Vehicles.**

(a) **Parking.** Vehicles shall be parked only in the garages or in the driveways, if any, serving the Lots. Parking (of automobiles only) is allowed on dedicated streets only when an Owner has a social function and the invited guests will not be able to park on such Owner's Lot. No overnight parking shall be permitted on any dedicated street.

(b) **Prohibited Vehicles.** Commercial vehicles, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks weighing in excess of three-quarters of a ton, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft and boat trailers shall be parked only in enclosed garages. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Bylaws.

(c) **Garages and Driveways.** No dwelling shall have less than a full size 2-car or more than a 4-car attached garage, unless otherwise approved by the Committee. All driveways and vehicle parking areas shall be hard surfaced with either concrete, or an acceptable alternate approved by the Committee and shall be so surfaced from their point of connection with the abutting street to their point of connection with the garage apron. No gravel or stone driveways will be permitted.

**Section 5. Sidewalks.** Sidewalks shall be constructed as required by the sidewalk plan approved by the Hendricks County Plan Commission, which construction shall be the responsibility of the lot owner upon whose lot the sidewalk is to be constructed, provided, however, that any Common Area sidewalks shall be constructed by the Developer as designated on the final development-sidewalk plan. All sidewalks to be constructed by lot owners shall be completed at such times as the driveway on the lot is constructed. All sidewalks shall be poured concrete, with expansion joints, such construction to be perpetual and continuous along the street frontages and across the driveway of each Lot. Maintenance of sidewalks shall be the responsibility of individual lot owners.

**Section 6: Occupants Bound.** All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct

of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.

**Section 7. Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats or other usual and common household pets may be permitted on a Lot. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed from the Properties upon request of the Board; if the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person, except as permitted by Guidelines.

**Section 8. Quiet Enjoyment.** No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of the Owners or allow any such noise or disturbance to be made on his or her Lot, including any noise by the use of musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other machines or equipment. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way obnoxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

**Section 9. Prohibition of Used Structures.** All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

**Section 10. Maintenance of Lots and Improvements.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkept condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the forgoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. No waste shall be committed in any Dwelling or on any Lot. Each Owner shall:

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(i) Mow the Lot at such times as may be reasonably required in order to keep the grass no longer than five inches and prevent the unsightly growth of vegetation and noxious weeds;

(ii) Remove all debris or rubbish;

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;

(iv) Cut down and remove dead trees (live trees on wooded lots may only be removed in accordance with the tree preservation plan approved by the Committee);

(v) Where applicable, prevent debris and foreign material from entering drainage areas; and

(vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**Section 11. Antennas.** No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Lot, without the prior written consent of the Board or its designee. Notwithstanding the foregoing, the Declarant, its nominees, successors or assigns shall have the right, without obligation, to erect an aerial or satellite dish, or install other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties and satellite dishes no greater in size than 18" in diameter are permitted on the Properties so long as they are on the side or rear of a Dwelling Unit or screened from street view.

**Section 12. Clothesline, Garbage Cans, Tanks, Etc.** All clothes, sheets, blankets, rugs, laundry clotheslines, garbage cans, mechanical equipment, and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All fuel storage tanks outside a Dwelling Unit shall be installed below the surface of the ground. All rubbish, trash, and garbage shall be stored in appropriate containers approved by the Committee hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon. No Owner shall burn or permit burning out-of-doors of garage or other refuse.

**Section 13. Firearms.** The discharge of firearms within the Properties is prohibited. The term "firearms" includes bows and arrows, slingshots "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.



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**Section 14. Tents, Trailers and Temporary Structures.** Except as may be permitted by the Declarant or the Committee during initial construction within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events for a period not longer than 48 hours unless otherwise consented to by the Board of Directors of the Declarant.

**Section 15. Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**Section 16. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes. No utility services will be installed under any paved areas in the Development, except by jacking, drilling or boring, unless specifically approved by the Committee.

**Section 17. Provisions Respecting Disposal of Sanitary Waste.**

A. **Nuisances.** No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

B. **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of West Central Conservancy District and these Restrictions.

C. **Connection Requirements for Sanitary Sewers.** All homes shall have sewers directly connected by way of gravity except by the use of lift pumps and/or check valves or connections shall be one foot above the lowest manhole in the Subdivision.

**Section 18. Lighting.** Except for seasonal winter holiday decorative lights, which may be displayed between November 15 and January 10 only, all exterior lights must be approved in accordance with Article IX of this Declaration.

**Section 19. Private Water Systems.** No private, or semi-private, water supply may be located upon any Lot which is not in compliance with regulations or procedures as provided by the applicable public health agencies, or other civil authority having jurisdiction, approved by the Committee and restricted to use in connection with a sprinkler system or geothermal heating and cooling system.

**Section 20. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior

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sculpture, fountains, flags, and similar items must be approved in accordance with Article IX of this Declaration.

**Section 21. Landscaping.** No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Board. Each Lot Owner shall provide reasonable landscaping on his Lot including, at a minimum, suitable foundation landscaping. All landscaping plans are subject to Committee approval in accordance with the Guidelines promulgated by the Committee. The Committee may, in its discretion, modify such plans to promote the integrity and the aesthetic appearances of this subdivision. Finished grading of all yards must be completed within 15 days after the dwelling is constructed, weather permitting, and all yards must be seeded or sodded with grass within ten days after the completion of finish grading, weather permitting. Trees provided by Declarant, if any, will be protected by Owner during construction and replaced within 30 days if damaged or if a tree dies on Owner Lot.

**Section 22. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Committee pursuant to Article IX of this Declaration.

**Section 23. Insurance Impact.** Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Areas, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

**Section 24. Ground Elevations and Erosion Control.** It shall be the Lot Owner's responsibility to maintain and comply with all building and site finish ground elevations and erosion control as finally required and approved by the Hendricks County Drainage Board and the Department of Planning and Zoning as evidenced upon the final construction plans for the development of this subdivision.

**Section 25. Swimming Pools.** Swimming pools must have the approval of the Committee before any work is undertaken. No above ground swimming pools shall be allowed, provided nothing herein shall preclude installation and use of hot tubs, spas, jacuzzis or similar apparatus with prior approval of the Committee. Permanent backyard pools will be approved by the Committee only after careful consideration of the potential effect of such a pool in neighboring properties. An application for the construction of a swimming pool will not be considered unless the application is accompanied by an application for acceptable fence or other safety protection and landscape design approval. The design of such fence shall conform to county or municipal regulations for such fencing. Use of plantings in the vicinity of the proposed pool may be required to soften the effect of sound and required pool fencing on adjacent properties.

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**Section 26. Tennis Courts, Racquetball Courts, Paddle Ball Courts, Basketball Goals, Etc.** Tennis courts, racquetball courts, paddle ball courts, squash courts, and other recreational or sporting facilities may be approved by the Committee only after thorough consideration of the potential effect of such a structure or use in neighboring properties. The Committee will not approve non-baffled lighted courts or facilities. An application for the construction of any such facility will not be considered unless the application is accompanied by an application for an acceptable fence and landscape design approval. It is recommended by the Committee that any such fencing be of an open composition in order to blend in with the surrounding properties and soften the effect on adjacent properties.

All basketball backboards or any other fixed games and play structures shall be located behind the Lot setback lines unless otherwise approved by the Committee. The Committee reserves the right to approve or disapprove the location and type of basketball goals.

**Section 27. Playground.** Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof. No playground equipment, tree houses, or similar structures shall be erected on any Lot without prior approval pursuant to Article IX hereof; provided, however, children's play equipment such as sandboxes, swing and slide, and tents shall not require approval by the Committee provided such equipment is not more than six (6) feet high, maintained by the lot owner in good repair (including painting) and every reasonable effort has been made by the lot owner to screen or shield such equipment from view of adjacent lot owners. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee.

**Section 28. Fences.** No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Lot except as approved in accordance with Article IX of this Declaration.

**Section 29. Heating Plant.** Every Dwelling Unit must contain a heating plant installed in compliance with the applicable codes and capable of providing adequate heat for year-round human habitation of the Dwelling Unit.

**Section 30. Air Cooling Units.** Air cooling units or other like utilities that are outside of the residential structure must be located at the side or rear of the home and except as may be permitted by the Committee. No window air conditioning units may be installed on any Lot.

**Section 31. Model Homes.** No Owner of any Lot shall build or permit the building upon his Lot or any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

**Section 32. Ditches and Swales and Erosion Control.** It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such

culverts upon said Lot as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

**Section 33. Business Use.** Except as permitted in the Regulations, no garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot.

**Section 34. Sales Office.** To the extent deemed necessary or desirable by Developer, Developer or Builders approved by Declarant shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision until 180 days following the sale, closing and deed transfer to a lot owner other than Developer of the last lot in the subdivision.

**Section 35. Drilling.** No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

**Section 36. Non-applicability to Association.** Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Article X shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Areas.

**Section 37. Diligence in Construction.** Every building whose construction on any Lot is begun shall be completed within one year after the beginning of such construction unless circumstances beyond the reasonable control of the builder and/or Owner prevent such completion. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. The Declarant and/or Homeowners Association shall have standing and authority to seek an injunction or order for the removal of any materials and partially completed structures in violation of this covenant.

**Section 38. Declarant's and the Association's Right to Perform Certain Maintenance and Removal.** In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure, situated thereon in accordance with the provisions of these Restrictions, the Guidelines, the Regulations and the provisions of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost

thereof to the Declarant or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Association, nor any of its agents, employees or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

**Section 39. Regulations.** The foregoing restrictions in this Article X may be modified, limited and clarified in the Regulations or Guidelines with the Declarant's consent being required prior to the Applicable Date. Any conduct, use or structure expressly permitted in such Regulations or Guidelines shall be permitted notwithstanding a general restriction herein to the contrary.

**ARTICLE XI  
Assessments**

**Section 1. Purpose of Assessment.** The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. The word 'assessments' as used herein shall mean all assessments referred to herein for Common Expenses, including Special Assessments.

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**Section 2. Creation of Assessments.**

(a) There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. Assessments for Common Expenses shall be allocated among all Owners within the Association as described in Section 3 hereof and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

(b) Each such assessment, together with interest, costs, and reasonable attorney's fees and paraprofessional fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessment for delinquents. Unless the Board otherwise provides, all assessments shall be paid annually.

**Section 3. Computation of Assessment.**

(a) It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the meeting at which the budget shall be presented to the Membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and shall list Common Expenses. Each Owner of any Lot in the Development hereby covenants and agrees to pay to the Association its allocated share (the "Allocated Share") of the annual assessments for Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Allocated Share of each Owner in the Development shall be determined by the Declarant and shall be based upon a combination of the following factors: (i) the projected number of Lots in the Development; (ii) the actual or projected purchase price and/or value of each Lot and any residence thereon; (iii) the square footage of each Lot; (iv) the number of Lots owned by Owners other than the Declarant; and (v) any other factor which the Declarant may determine, from time to time, is in the best interest of Declarant and the Development. The method by which the Declarant allocates the Common Expenses among Owners may be changed from time to time prior to the Applicable Date as changes occur in the five- (5) factors set forth above. The method of computing each Owner's Allocated Share that is used by the Declarant on the Applicable Date shall be the method used by the Board subsequent to the Applicable Date unless a change in method is approved by two-thirds (2/3) of votes of the Members. The Board

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shall cause a copy of the budget, the amount of the assessments to be levied against each Lot for the following year and a description of the method used in determining the assessments to be delivered to each Owner at least fifteen (15) days prior to the meeting. Each segment of the budget including, without limitation, the assessments for Common Expenses shall become effective unless disapproved at the meeting by a vote of at least two-thirds (2/3) of a Quorum of the Members.

(b) Notwithstanding the foregoing, however, in the event that (i) the proposed budget or the assessments for Common Expenses are disapproved in accordance with Section 3(a), or (ii) the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget (or such portion thereof or assessments as shall have been disapproved in accordance with the foregoing) shall have been determined as provided herein, the budget (or applicable portion thereof or assessments) in effect for the then current year shall continue for the succeeding year.

(c) In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year, except that so long as the Declarant controls the Association, Declarant may, but shall be under no obligation, to fund such deficit; provided, however, that Declarant shall be reimbursed by the Association for any deficits so funded, together with interest at ten percent (10%) per annum until so reimbursed, from available surpluses in later years or through Special Assessments. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more Special Assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) shall be a credit against the assessments due from each Owner for the next fiscal year(s); provided, that Declarant shall first be reimbursed for deficits previously paid, with interest, as required above before such excess shall be so credited to Owners.

(d) During the first year following the date of recordation of this Declaration, the total assessments per Lot per year for Common Expenses shall not exceed \$500.

**Section 4. Special Assessments.** In addition to the other assessments authorized herein, the Association may levy Special Assessments in any year. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

**Section 5. Lien for Assessments.**

(a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees and paraprofessional fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association.

Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes; or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Hendricks County, Indiana, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

(b) All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 6. Effect of Nonpayment of Assessments: Remedies of the Association.**

(a) Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any Member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys fees and paraprofessional fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

(b) All payments shall be applied first to costs and attorney and paraprofessional fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or Special Assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or Special Assessments which are the subject matter of suit in the order of their coming due.

**Section 7. Capital Budget and Contribution.** The Board of Directors shall annually prepare a capital budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost for the Common Area. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget,



with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment for Common Expenses as provided in Section 3. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

**Section 8. Subordination of the Lien to First Deeds of Trust and First Mortgages.**

The lien of the assessments, including interest, late charges, costs (including attorney's fees and paraprofessional fees) provided for herein, shall be subordinate to the lien of any first mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of the Association to payment out of available foreclosure sale proceeds). No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee of a first mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses shall be deemed to be Common Expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

**Section 9. Capitalization of Association.** Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to \$100. All such amounts shall be set aside as capital replacement/working capital reserve, and shall not be utilized by Declarant or the Association until after the Applicable Date.

**Section 10. Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to a particular Lot on the first day of the month following the conveyance of such Lot by the Declarant to an Owner (who is not a commercial builder), or by an Owner who is a commercial builder to an Owner who is an end-user and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. Unimproved Lots owned by commercial builders shall be assessed at a rate of \$200 per year. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which such Lot is transferred by Declarant to an Owner; provided, however, that Declarant may, in its sole and absolute discretion delay the starting date for assessments for as long as Declarant shall deem appropriate in its sole and absolute discretion but assessments shall in all events be payable commencing on the first day of the first month following the date the Lot is occupied for the residential purposes or is suitable for such occupancy as evidenced, for example, by the appropriate official of Hendricks County, Indiana, or an architect issuing a certificate of occupancy or its equivalent stating that the residential structure on such Lot is substantially complete and available for occupancy.

**Section 11. Assessments by Declarant.**

(a) Declarant covenants and agrees to pay the full amount of the annual assessment for each Lot occupied for residential purposes that it owns; notwithstanding anything contained herein to the contrary, the Declarant shall not be required to pay any assessments for any Lots not occupied for residential purposes that it owns, including but not limited to model homes.

(b) Notwithstanding anything to the contrary herein, the Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called in-kind contribution). The amount by which monetary assessments shall be decreased as a result of any in-kind contribution shall be the fair market value of the contribution. If the Declarant and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant cannot agree as to the value of any contribution, the Declarant shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors approved by the Declarant who are in the business of providing such services and materials. If the Association and the Declarant are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

**Section 12. Ownership of Multiple Continuous Lots for One Single-Family Residence.** Any Owner of contiguous Lots in the Development, including one Lot and a portion of another Lot, who desires to use more than one of such Lots as the site for one single-family residence, must apply for approval of the same in writing to the Committee, which approval shall be given or withheld by the Committee in the Committee's sole discretion. If the Committee approves such request (a "Multiple Lot Approval"), the multiple Lots constituting the site for such single-family residence shall, for so long as the multiple Lots remain improved with only one single-family residence, be treated as a single Lot for purposes of this Declaration, including without limitation, for purposes of the voting rights set forth in Section 3.2 of this Declaration. In connection with the Owner's desire to use multiple contiguous Lots for one single-family residence, each such Owner shall be responsible for obtaining, at its sole expense, all required government approvals, including any required platting or re-platting of the affected property. In addition, each Owner shall comply with all applicable laws, regulations and zoning ordinances, including without limitation, all yard setback requirements, in connection with the use of multiple contiguous Lots for one single-family residence.

**ARTICLE XII  
Mortgages**

**Section 1. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, may notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of each such first mortgage, and name and address of the Mortgagee, shall be maintained by the Secretary and any notice required to be given to the

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Mortgagee pursuant to the terms of this Declaration, the Bylaws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the Bylaws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the Bylaws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the Bylaws which is not cured within sixty (60) days.

**Section 2. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement except as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 3 of Article IV hereof.

### **ARTICLE XIII Insurance**

**Section 1. Casualty Insurance.** The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Common Areas in an amount consonant with the full replacement value of the improvements, if any, which, in whole or in part, comprise the Common Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall name the Association as the insured, for the benefit of each Owner (to the extent, if any, that individual Owners have an independent interest in the property covered thereby).

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will

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come into its hands, and there is damage to a part or all of the Common Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty on the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

**Section 2. Public Liability Insurance.** The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Areas and shall insure the Association, the Board of Directors, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

**Section 3. Other Insurance.** The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors may from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. Upon request of any Owner or Mortgagee whose interest may be affected thereby, the Association shall provide such Owner or mortgagee with a description of the insurance coverage maintained by the Association.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Areas. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

**Section 5. Insurance by Owners.** Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable, at his own expense, affording coverage upon his personal property, his Lot, his Dwelling Unit, the contents of his Dwelling Unit, his personal property stored anywhere on the Real Estate, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association.

**ARTICLE XIV  
Casualty and Restoration**

In the event of damage to or destruction of any of the Common Areas due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Areas, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Areas so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Areas to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same architecture and materials.

Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair hereunder, the Board shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires or deems necessary.

Encroachments upon any Lot which may be created as a result of such reconstruction or repair of any of the Common Areas shall not constitute a claim or basis of a proceeding or action by the Owner upon whose Lot such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Common Areas were originally constructed.

#### **ARTICLE XV** **Annexation**

Subject to Section 2(b) of Article IV hereof, Declarant hereby reserves the right, from time to time and at any time, to annex any portion of adjacent real estate into Parks at Prestwick. As of the date on which Declarant annexes any portion of adjacent real estate into the subdivision (the "Annexed Real Estate"), the Annexed Real Estate shall be deemed to be (for all purposes) included within Parks at Prestwick; all references in these covenants and restrictions or in the Declaration to the "subdivision" or to the "Parks at Prestwick" shall be deemed to include the Annexed Real Estate; all references in these covenants and restrictions or in the Declaration to "Real Estate" shall be deemed to include all parcels of land within the Annexed Real Estate; all references in these covenants and restrictions or in the Declaration to "Lots" shall be deemed to include all Lots or parcels within the Annexed Real Estate; and all easements created by these covenants and restrictions or in the Declaration shall bind, benefit, burden and run with the Annexed Real Estate. As of the date on which Declarant annexes any portion of the adjacent real estate into the subdivision, the owners of the Annexed Real Estate shall be deemed to be (for all purposes) owners of lots within the Parks at Prestwick; all references in these covenants and restrictions or the Declaration to "Owner(s)" shall be deemed to include all owners of Lots within the annexed Real Estate; and all easements created herein shall bind, benefit and burden the owners of Lots within the Annexed Real Estate and the mortgages, grantees, heirs, assigns and successors of such owners, as provided herein. Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of said real property to be so annexed and that such transfer is memorialized in a written, recorded instrument. The rights reserved unto Declarant to subject additional real estate to the Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional real estate to this Declaration or to

the jurisdiction of the Association nor any obligation, if subjected, to build housing of the same type, design or materials. If such additional real estate is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose covenants and restrictions similar to those contained herein upon such additional real estate, nor shall such rights in any manner limit or restrict the use to which such additional real estate may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**ARTICLE XVI**  
**Amendment of Declaration**

**Section I. Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(b) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.

(c) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the Bylaws.

(d) **Adoption.** Subject to Section 2(b) of Article IV hereof, any proposed amendment to this Declaration must be (i) approved by a vote of not less than seventy-five percent (75%) of the Class A voting rights set forth in Article IV, Section 2(a), and (ii) approved by the Declarant until the Applicable Date.

(e) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Article XI of this Declaration with respect to casualty insurance to be maintained by the Association, or (3) the provisions of Article XII of this Declaration with respect to reconstruction or repair of the Common Areas in the event of fire or any other casualty or disaster, or (4) the provisions of this Declaration establishing the Committee and providing for its functions, without, in each or any of such circumstances, the unanimous approval of all Owners.

(f) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Hendricks County, Indiana, and such amendment shall not become effective until so recorded.

**Section 2. Amendments by Declarant Only.** Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if Declarant records the modification in the Office of the Recorder of Hendricks County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of Government Assisted Financing, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) function similar to those performed by such agencies or entities, (e) to subject additional property to these restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any owner under any covenant, condition, term or provision without such owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 or behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

**ARTICLE XVII**  
**Acceptance and Ratification**

All present and future Owners, Mortgagees, tenants and occupants of the Lots and Dwelling Units, and other Persons claiming by, through or under them, shall be subject to and shall comply with the provisions of this Declaration, the Articles, the Bylaws and the rules, regulations and guidelines as adopted by the Board of Directors and (to the extent of its jurisdiction) the Committee, as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance of the act of occupancy of any Lot or Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles, the Bylaws and rules, regulations and guidelines, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any Person having at any time any interest or estate in an Lot or Dwelling Unit or the Real Estate, all as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All



Persons who may own, occupy, use, enjoy or control a Lot or Dwelling Unit or any part of the Real Estate in any manner shall be subject to this Declaration, the Articles, the Bylaws, and the rules, regulations and guidelines applicable thereto as each may be amended or supplemented from time to time.

**ARTICLE XVIII  
Negligence**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family his or their guests, employees, agents, invitees or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his violation of any of the Restrictions or any violation thereof by any member of his family or his or their guests, employees, agents, invitees or tenants.

**ARTICLE XIX  
Benefit and Enforcement**

**Section 1. Covenants Appurtenant to Land.** These covenants are to run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless at any time after fifteen (15) years a majority of the then owners of the lots in this subdivision agree to change (or terminate) said covenants in whole or in part and on the condition that an instrument to that effect signed by the lot owners voting in favor of such change has been recorded; provided, however, that no change or termination of said covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

**Section 2. Prosecution of Violations.** It shall be lawful for the Declarant, the Association, the Committee (as to matters for which it has responsibility) or any Owner to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any covenant, conditions, provisions or restrictions contained herein either to prevent such person or persons from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. All costs of litigation and attorneys' fees resulting from violation of these covenants and restrictions shall be the financial responsibility of the Lot Owner or Owners found to be in violation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect. Failure to enforce any specific requirement of the covenant shall not be considered as a waiver of the right to enforce any covenant herein, thereafter. Notwithstanding the foregoing, any violation of these covenants or the Declaration may be waived by a majority of the then owners of the Lots in this subdivision.

**ARTICLE XX**  
**Non-Liability**

**Section 1. Drainage Board.** The Hendricks County Drainage Board shall not be responsible in any way for, and disclaims any liability for, any defect in any plans, specifications or other materials approved by it in connection with the storm drainage system for the subdivision, or for any defects in the construction thereof.

**Section 2. Limitation on Declarant's Liability.** Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any director, officer or shareholder of Declarant (or any partner, officer, director or shareholder in any such assignee) shall have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association. If any judgment is ever levied against Declarant (or its assignee), the same is hereby agreed to be limited to the extent of Declarant's (or such assignee's) interest in the Development; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon any other assets of Declarant (or its assignee).

**ARTICLE XXI**  
**Miscellaneous**

**Section 1. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the Bylaws, or to comply with any provision of this Declaration, the Articles, the Bylaws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

**Section 2. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or by abandonment of his Lot or Dwelling Unit.

**Section 3. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles or the Bylaws and each shall be enforceable to the greatest extent permitted by law.

**Section 4. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all

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genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

**Section 5. Interpretation.** The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

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IN WITNESS WHEREOF, Prestwick Development, its duly authorized officer, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.

**PRESTWICK DEVELOPMENT, LLC**

By: *David R. Helm* as Manager  
Printed: DAVID R. HELM  
Title: MANAGER

Member of: Prestwick Development, LLC  
and Indiana Limited Liability Co

STATE OF INDIANA )  
) SS:  
COUNTY OF Hendricks )

Member of: Oxford Place, LLC  
an Indiana Liability Co.

Member of: Oakleaf Homes, Inc.

Before me, a Notary Public in and for said County and State, personally appeared David R. Helm, the Manager of Prestwick Development, LLC, who acknowledged the execution of the above and foregoing instrument on behalf of said Company, as his voluntary act and deed for the purposes and uses therein set forth.

WITNESS my hand and Notarial Seal this 28th day of January, ~~2002~~ 2008

My Commission Expires:

December 14, 2008

*Kimberly A. Ross-Jacob*  
Notary Public  
Resident of Hendricks County

This instrument was prepared by

Christopher D. Long  
HENDERSON, DAILY, WITHROW & DEVOE  
2600 One Indiana Square  
Indianapolis, Indiana 46204  
(317) 639-4121

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"EXHIBIT A"

A part of the West Half of the Northwest Quarter of Section 16, also a part of the Northeast Quarter of the Northeast Quarter of Section 17, also a part of the Southeast Quarter of Section 8 and a part of the West Half of the Southwest Quarter of Section 9, all in Township 15 North, Range 1 East in Washington Township, Hendricks County, Indiana, being more particularly described as follows:

Beginning at the Northeast corner of the West Half of the Northwest Quarter of said Section 16; thence South 00 degrees 18 minutes 23 seconds East on and along the East line of said Half Quarter Section 703.40 feet; thence South 88 degrees 51 minutes 51 seconds West parallel with the North line of said Half Quarter Section 138.97 feet; thence North 44 degrees 56 minutes 29 seconds West 442.15 feet to a point on a curve concave Northwesterly having a central angle of 38 degrees 37 minutes 41 seconds and a radius of 530.00 feet; thence Southwesterly on and along said curve an arc distance of 357.32 feet (said arc being subtended by a chord having a bearing of South 64 degrees 22 minutes 17 seconds West and a length of 350.59 feet); thence South 83 degrees 41 minutes 07 seconds West 77.75 feet to the point of curvature of a curve concave Northeasterly having a central angle of 48 degrees 23 minutes 21 seconds and a radius of 430.00 feet; thence Northwesterly on and along said curve an arc distance of 363.16 feet (said arc being subtended by a chord having a bearing of North 72 degrees 07 minutes 13 seconds West and a length of 352.46 feet); thence South 62 degrees 24 minutes 12 seconds West 188.88 feet; thence North 00 degrees 14 minutes 49 seconds West 82.36 feet; thence North 42 degrees 45 minutes 34 seconds West 344.85 feet; thence North 72 degrees 13 minutes 26 seconds West 271.85 feet; thence North 00 degrees 00 minutes 00 seconds West 79.13 feet; thence North 42 degrees 45 minutes 34 seconds West 317.09 feet; thence North 49 degrees 24 minutes 08 seconds West 79.89 feet; thence North 61 degrees 59 minutes 37 seconds West 80.28 feet; thence North 74 degrees 17 minutes 51 seconds West 78.89 feet; thence North 82 degrees 52 minutes 47 seconds West 567.38 feet; thence North 52 degrees 44 minutes 29 seconds West 357.74 feet; thence North 37 degrees 15 minutes 31 seconds East 205.00 feet; thence North 52 degrees 44 minutes 29 seconds West 34.40 feet; thence North 46 degrees 54 minutes 26 seconds East 325.44 feet; thence South 40 degrees 33 minutes 06 seconds East 87.28 feet; thence South 64 degrees 22 minutes 35 seconds East 295.47 feet; thence North 68 degrees 56 minutes 35 seconds East 283.56 feet; thence South 61 degrees 45 minutes 36 seconds East 518.18 feet; thence South 30 degrees 18 minutes 54 seconds East 802.36 feet to a concrete post found representing the Southeast corner of the Southeast Quarter of said Section 8; thence North 88 degrees 51 minutes 51 seconds East on and along the North line of the West Half of the Northwest Quarter of said Section 16 a distance of 817.54 feet; thence North 63 degrees 29 minutes 58 seconds East 397.60 feet; thence North 80 degrees 28 minutes 01 second East 172.34 feet to a point on the East line of the West Half of the Southwest Quarter of said Section 9; thence South 00 degrees 20 minutes 31 seconds East 195.51 feet to the Point of Beginning and containing 39.89 acres, more or less. Subject to all restrictions, rights-of-way and easements of record.

**FIRST SUPPLEMENT TO THE DECLARATION  
OF COVENANTS AND RESTRICTIONS OF  
PARKS AT PARKS AT PRESTWICK SUBDIVISION**

PRESTWICK DEVELOPMENT, LLC, is the Declarant with respect to a certain Declaration of Covenants and Restrictions of Parks at Prestwick Subdivision dated \_\_\_\_\_, and recorded in the Office of the Recorder of Hendricks County, Indiana on February 3, 2003, as Instrument No. 2003-000004751 ("Master Declaration").

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**Recitals**

A. The Master Declaration provides for the establishment of Communities, including multi-family Communities, within the Properties which may be subject to Community Assessments in addition to the overall assessments for Common Expenses.

B. Declarant has transferred certain property to Portrait Homes - Oxford Park, LLC, an Indiana limited liability company (the "Community Developer"), which real estate is more specifically described on Exhibit "A" attached hereto and made a part hereof, to be known as Oxford Park Condominiums ("Oxford Park").

C. Declarant desires to designate Oxford Park as a Community subject to the Declaration, as hereinafter provided. All terms used herein with their initial letters capitalized shall have the meanings ascribed to them in the Master Declaration, except to the extent otherwise defined herein.

**Declaration**

NOW, THEREFORE, pursuant to Section 1 of Article X of the Master Declaration, Oxford Park is hereby designated as a Community which provides for multi-family housing, subject to the following terms and provisions:

1. In addition to the assessments for Common Expenses, Oxford Park shall be subject to Community Assessments as set forth in that certain Oxford Park Condominium Declaration created by the Community Developer recorded in the Office of the Recorder of Hendricks County, Indiana, on \_\_\_\_\_, 2002, as Instrument No. \_\_\_\_\_ (the "Community Declaration").

2. Oxford Park shall be subject to a separate Community Association, as provided or contemplated in the Community Declaration.

3. Oxford Park shall remain subject to, and entitled to the benefits from, the Master Declaration, including without limitation, membership interest in the Association and subject to architectural standards, use restrictions/covenants and regulations and assessments. Notwithstanding the foregoing, the common areas and facilities established by the Community Developer under the Community Declaration or any plat thereunder, including, but not limited to, mailboxes, master television antenna, private walks, private roads and streets, water

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distribution systems, sanitary sewer systems and storm water systems, if any, shall not be part of the Common Area or Common Expenses under the Master Declaration to be maintained and controlled by the Association, but instead shall be maintained under the control of the Community Association or other entity as provided in the Community Declaration.

4. The Community Developer shall not be considered an "Owner" for purposes of Article VI, Section 3, of the Master Declaration so that the monthly availability fee for the sewage collection system shall not commence until the conveyance of a Lot or unit by the Community Developer to an Owner, except as may be otherwise provided in any contract between the applicable utility and Community Developer. Further, the Community Developer shall not be treated as an Owner for purposes of Article XI, Section 9, and the \$100 initial Lot capitalization shall be due from each Owner upon his or her acquisition of record title to a unit from the Community Developer. In addition, the Community Developer shall not be treated as an Owner for purposes of Article XI, Section 10, but instead shall be treated as a commercial builder to be assessed at the rate of \$200 per unit per year commencing with the date of recording of the final plat for each unit and continuing until conveyance to an Owner.

IN WITNESS WHEREOF, Declarant has executed this First Supplement this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

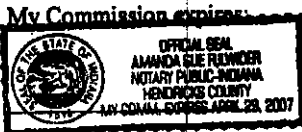
PRESTWICK DEVELOPMENT, LLC

By: David R. Helm  
David R. Helm, Manager

STATE OF INDIANA )  
COUNTY OF Hendricks ) SS:

Before me, a Notary Public in and for said County and State, personally appeared David R. Helm, the Manager of Prestwick Development, LLC, who acknowledged the execution of the foregoing First Supplement, for and on behalf of said Company, and who, having been duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 14 day of February, 2003.



Amanda Sue DeLuca  
Notary Public  
Printed: \_\_\_\_\_  
Resident of \_\_\_\_\_ County

This Instrument prepared by Christopher D. Long  
HENDERSON, DAILY, WITHROW & DEVOE  
One Indiana Square, Suite 2600  
Indianapolis, Indiana 46204  
(317) 639-4121