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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WINDSONG ESTATES III

THIS DECLARATION OF COVENANTS, for Windsong Estates III ("Declaration"), made this 10th day of February, 1998, Keeneland Development, Inc., an Indiana Corporation (hereinafter referred to as "Declarant") and the Evelyn M. Johnston Family Trust U/A dtd 9/20/91, Sherri Tucker, Successor Trustee, as owner of a portion of the Real Estate made subject to this Declaration ("Trustee"),

WITNESSETH THAT:

WHEREAS, Declarant and Trustee collectively are the owners of certain real estate located in Johnson County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, Declarant intends to develop the Real Estate, by constructing residential facilities, which development shall be known as "Windsong Estates III"; and

WHEREAS, the Real Estate has been subdivided, platted and recorded by Declarant as the Windsong Estates III subdivision on the 10th day of February, 1998 as Instrument No. 98003478 in the Office of the Recorder of Johnson County, Indiana, in Book _____ Page _____; and

WHEREAS, Declarant intends to sell and convey the residential facilities and Lots within Windsong Estates III and desires to subject the Real Estate to certain terms, covenants, conditions and restrictions in order to ensure proper development use of the Real Estate and maintenance of the drainage system on the Real Estate; and

WHEREAS, Declarant desires to provide for maintenance of the Drainage System located on the Real Estate which is of common benefit to the Owners of the various Lots within said Windsong Estates III subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of the Drainage System;

NOW, THEREFORE, Declarant and Trustee hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following terms, covenants, conditions and restrictions. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.

1 GENERAL PURPOSE OF COVENANTS

The Real Estate is hereby subjected to the covenants, conditions and restrictions ("Covenants") herein to ensure proper development of the Real Estate and provide for adequate and proper maintenance of the Drainage System on the Real Estate so as to meet the requirements of certain governmental agencies, all for the purpose of benefitting all Lots within Windsong Estates III and to ensure the maintenance of the Drainage System on the Real Estate.

2 DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Section 2:

2.1 Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Windsong Estates III to be appointed in accordance with this Declaration.

2.2 Assessment. "Assessment" means the share of the Maintenance Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of this Declaration.

2.3 Association. "Association" means Windsong Estates III Owners' Association, Inc., a nonprofit Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

2.4 Board of Directors. "Board of Directors" means the Board of Directors of the Association elected pursuant to the Articles and Bylaws of the Association.

2.5 Declarant. "Declarant" means Keeneland Development, Inc., an Indiana Corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Keeneland Development, Inc. as Declarant of Windsong Estates III.

2.6 Covenants. "Covenants" means those covenants, conditions and restrictions affecting the Real Estate as established by Declarant in this Declaration.

2.7 Drainage Easements. "Drainage Easements" refer to those areas (referenced D. & U. E., A. E., Var. L. M. E., Temporary Construction Easement for Lake Maintenance) reserved as easements for drainage, the lake/Detention Area, lake/Detention Area maintenance, or for access to the Detention Area or other drainage facilities as shown on the Plat or Plats of Windsong Estates III, as the same may be recorded from time to time.

2.8 Drainage System. "Drainage System" means the storm sewers, subsurface drainage tiles, pipes and structures, the Lake Area and Drainage Easement areas, and/or all structures, fixtures, properties, equipment and facilities located in, upon, or under the Drainage Easements or Streets and associated with or related to the drainage of surface and subsurface waters from, over, and across Windsong Estates III.

2.9 **Detention Area.** "Detention Area" means the real property and improvements thereon, shown and designated on the Plat as Detention Area.

2.10 **Lot.** "Lot" means any of the separate parcels numbered and identified on the Plat or Plats of Windsong Estates III, as the same may be recorded from time to time.

2.11 **Maintenance Expense.** "Maintenance Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of the Drainage System and any other cost or expense incurred by the Association for the benefit and perpetuation of the Drainage System.

2.12 **Mortgagee.** The term "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

2.13 **Owner.** "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

2.14 **Plat.** "Plat" means the final Plat or Plats of Windsong Estates III as the same may be recorded from time to time in the Office of the Recorder of Johnson County, Indiana.

2.15 **Streets.** "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat or Plats of Windsong Estates III, as the same may be recorded from time to time, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

2.16 **Windsong Estates III.** The term "Windsong Estates III" means all sections of the Real Estate as platted and recorded by Declarant in accordance with the provisions of this Declaration.

3 **EXEMPTIONS APPLICABLE TO LOT ONE (1)**

3.1 **§s and Sub §s Containing Exemptions.** Lot one (1) shall be exempt from the provisions of sub§s 4.1 through 4.7; 4.11; 4.17; 4.18; and §s 6 and 7.

4 GENERAL LOT DEVELOPMENT AND USE RESTRICTIONS

4.1 Residential Use. No Lot shall be used except for residential purposes and no building shall be erected, altered, or placed on any Lot, other than one detached single family dwelling not to exceed two stories in height and a private attached garage for not less than two (2) cars or more than four (4) cars.

4.2 Minimum Floor Area. No dwelling shall be permitted on any Lot unless the ground floor area of the main structure, exclusive of one story open porches and garages, shall be not less than 1500 square feet for a one story dwelling, nor less than 900 square feet for a dwelling of more than one story. The minimum total floor area of a dwelling of more than one story shall be not less than 1900 square feet.

4.3 Set-Back Requirements. No building shall be located on any Lot nearer to the front Lot line or nearer the side street line than the minimum building set-back lines as shown on the recorded plat. No building shall be located nearer than 10 feet to a side yard line. The total aggregate side yards shall not be less than 25 feet. No building shall be erected closer than 20 feet to the rear Lot line. Unless otherwise approved by the Architectural Control Committee, as to use, location and harmonious design, no garage may be constructed separate and apart from the main dwelling.

4.4 Architectural Control Committee (ACC). The Architectural Control Committee ("ACC") is composed of three members, appointed by the Declarant. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then recorded owners of 99 percent of the Lots, including the Declarant, shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its power and duties.

4.5 ACC Approval Requirements. No building shall be erected, placed or altered, except for structures existing at the time of the execution of these Declarations, on any Lot until the construction plan and specification and a plan showing the locations of the structures have been approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design within existing structures, exterior paint and roof colors, and as to location with respect to topography and finish grade elevations. No fence or wall shall be erected, placed or altered on any Lot unless approved by the Architectural Control Committee. No fences or structure of any nature will be erected upon any Lot within this plat without prior written approval of the Architectural Control Committee. No building additions or remodeling involving exterior changes or additions shall be permitted without prior written approval of the Architectural Control Committee.

4.6 ACC Approval Procedure. The Architectural Control Committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee or its designated representative fails to approve or disapprove the plans as required herein within thirty

(30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

4.7 **Roof-Pitch.** No house shall be a roof pitch of less than 7/12 (7 inches rise to 12 inches horizontal) unless otherwise approved in advance by the Architectural Control Committee.

4.8 **Trash Disposal.** All builders shall provide for the trash generated during construction of the house by means of a dumpster, preferably maintained by a commercial trash disposal company. Failure to provide for such trash may cause the Architectural Control Committee to provide for such cleaning and disposal. If the Architectural Control Committee provides for the cleaning and disposal the builder will be billed for this service. This shall be at the sole discretion of the Architectural Control Committee.

4.9 **Construction Period.** All houses that are to be constructed, once started, must be completed within 180 days.

4.10 **Offensive Activity.** Noxious or offensive activity shall not be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

4.11 **Accessory Buildings.** Accessory buildings such as storage or mini barns are permitted, but must conform to the style and character of the homes. The plan for such sheds or mini barns shall have written approval by the Architectural Control Committee prior to construction. The exterior surface of all buildings shall have the written approval of the Architectural Control Committee. No structure of a temporary character trailer, tent, shack, garage, barn or other out-building shall be permitted on any Lot or used on any Lot at any time as residence--either temporarily or permanently. Structures existing at the time of the execution of these Declarations shall be exempt from the provisions of this sub-paragraph.

4.12 **Swimming Pools.** No above ground swimming pools shall be permitted within the subdivision. Any pool, pool house, or fencing for a pool shall have a written approval of the Architectural Control Committee.

4.13 **Signs.** No sign of any kind shall be displayed to the public view on any Lot, except signs used by a Builder, Realtor or Owner to advertise the property during the construction and sale period.

4.14 **Mining Operations.** No oil 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 or natural gas shall be erected, maintained or permitted on any Lot. All gas and oil tanks must be concealed.

4.15 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

4.16 Trash. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage.

4.17 Satellite Dishes. Antennas, satellite dishes over twenty inches in size, masts, or towers of any kind will not be permitted on any Lot or outside any dwelling, unless first approved by the Architectural Control Committee.

4.18 Siteline Obstructions. No fence, well hedge or shrub planting which obstructs the sitelines at elevations greater than two feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 35 feet from the intersection of the street property lines, or in the case of rounded property corner, for the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway pavement. No fence in excess of 48 inches shall be permitted on any Lot.

4.19 Recreational Facilities. Each Lot shall be kept in a neat and pleasing manner. All basketball backboards and other fixed games and play structures shall be located behind the front foundation line of the main structure and within Lot setback line. It is the intention of these restrictions to assure that Lots and surroundings present a park-like appearance.

4.20 Unimproved Lots. Lots and yards shall be kept mowed regardless of whether a house has been constructed on the Lot. Owners of Lots without houses shall be held responsible for the trash, weeds, and general condition of the Lots.

4.21 Water and Sewer Systems. No individual water supply system or sewage system, except those existing at the time of the execution of these Declarations, shall be permitted on any Lot, except for Geo-Thermal heating systems.

4.22 Inoperative or Unlicensed Vehicles. Any motor vehicle which is inoperative or unlicensed and not being used for normal transportation will not be permitted to remain on any Lot. Campers, recreational vehicles or boats of any kind may not be stored or parked on any Lot outside the main dwelling or garage.

4.23 Drainage Systems. Drainage swales (ditches along dedicated roadways and within the right-of-way, or on dedicated easements) are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the Windsong Estates III Homeowners Association. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by said Homeowners Association. Any property owner

altering, changing, damaging, or failing to maintain their drainage swales or ditches will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, the Windsong Estates III Homeowners Association will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for immediate payment. Failure to pay will result in a lien against the property.

4.24 No County Enforcement. Johnson County Board of Commissioners do not enforce subdivision covenants or restrictions.

4.25 Enforcement. Violation of any of the covenants or restrictions of this plat or of those contained in the Declaration of Covenants and Restrictions for the Windsong Estates III Association, referenced herein, shall be subject to liquidated damages in the sum of Fifty Dollars (\$50.00) Per day for each day the violation continues and to all other remedies, including injunction, provided by law or in equity and all costs and expenses incurred by the Declarant or property owners, including attorneys fees, in litigation or other procedures required to remedy such violations shall be paid by the owners(s) of the Lot or Lots found to be in violation. By acceptance of a deed for title to any Lot within this plat, the grantee acknowledges the provisions of this document and agrees to be bound thereby and to pay the costs and expenses described in this paragraph where applicable. The right to enforce these provisions by injunction, together with the right to cause the removal by due process if the law of any structure or part thereof, is hereby dedicated to public and reserved to the several owners of the several Lots in this subdivision and to their heirs and assigns. Enforcement shall be by proceedings at law or in equity against the person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. Invalidation of any one of these covenants by judgement 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 covenants shall not be considered as a waiver of the right to enforce any covenant herein, thereafter.

5 DRAINAGE SYSTEM/DETENTION AREA RESTRICTIONS.

5.1 Detention Area Use. Recreational use of the Detention Area is prohibited. The Detention Area is to be used for storm water detention and drainage purposes only. Docks and similar structures are prohibited on any portion of the Lots or Detention Area.

5.2 Interference with Detention Area. No Owner or third party shall do or permit another to do any act which could result in pollution of Detention Area, diversion of any water, raise or lower the elevation of the water, significantly disturb the earth or the embankment of a Detention Area, or any other conduct which could result in an adverse effect upon the water quality, embankment and adjacent property, drainage, or any other general condition of the Detention Area. Pumping water from the Detention Area is specifically prohibited.

5.3 Enforcement of Detention Area Restrictions. Any Owner, the Association or the appropriate Johnson County officials at their discretion, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any

damage caused to the Detention Area, together with any damages incurred, and upon recovery of judgment shall be entitled to cost, together with reasonable attorneys' fees.

5.4 Drainage Ditches. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the appropriate governmental authorities. Owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the appropriate governmental authorities. The driveway on Lot #1 may be maintained in the same condition and location as it exists on the date of the execution of these Declarations. Any Owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, the appropriate governmental authorities may cause said repairs to be accomplished and the bill for said repairs will be sent to the affected Owner for immediate payment. Failure to pay will result in a lien against the Owner's Lot.

5.5 Field Tiles. Any field tile or underground drain which is encountered in construction or any improvement within Windsong Estates III subdivision shall be perpetuated, and all Owners of Lots within this subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

5.6 Outdoor Storage. No vehicles, boats, materials, machinery, equipment or other such items shall be permitted to be kept or stored within the Drainage Easements.

5.7 Improvements or Outbuildings. No improvements or outbuildings of any kind, including detached garages, sheds, barns, storage buildings, shacks or tents shall be permitted within the Drainage Easement. Structures existing at the time of the execution of these Declarations shall be exempt from the provisions of this sub-paragraph.

5.8 Construction, Earth-Moving, Excavation. No significant construction, earth-moving, or excavating work of any nature may be conducted by Owner within the Drainage Easements.

6 COVENANTS FOR MAINTENANCE ASSESSMENTS

6.1 Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of maintenance of the Drainage System within Windsong Estates III, as the same may be platted from time to time, including, but not limited to, the payment of any necessary insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Drainage System; provided that the Association shall not be responsible for the replacement, repair or maintenance of any part of the Drainage System which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

6.1.1 A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.

6.1.2 A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

6.2 **Liability for Assessments.** Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

6.3 **Pro-rata Share.** The pro-rata share of each Owner for purposes of this section shall be the percentage obtained by dividing one by the total number of Lots shown on the Plat or Plats of Windsong Estates III, as the same may be recorded from time to time ("Pro-Rata Share").

6.4 **Basis of Annual Assessments.** The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Maintenance Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

6.5 **Basis of Special Assessments.** Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Maintenance Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special Assessments as it may deem necessary for meeting the Maintenance Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Maintenance Expense not provided for by the annual Assessments.

6.6 **Fiscal Year; Date of Commencement of Assessments; Due Dates.** The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual Assessments provided for herein shall commence as to all Lots in Windsong Estates III on the first day of the month following the Declarant's transfer of control of the Association to the Owners pursuant to Section 8.12 below. Declarant shall not be obligated to pay any assessments prior to said transfer, but shall be obligated to pay all maintenance expenses prior to said transfer. The first annual Assessment for each Lot shall be prorated for the balance of the fiscal year of the Association in which such

Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments.

6.7 Duties of the Association.

6.7.1 The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

6.7.2 The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

6.7.3 The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws of the Association or this Declaration which is not cured within sixty (60) days.

6.8 Non-payment of Assessments; Remedies of Association.

6.8.1 If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

6.8.2 If any Assessment upon any Lot is not paid within fifteen (15) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall

bear interest from the date of delinquency until paid at the annual interest rate allowable on judgments rendered in the State of Indiana at the time such Assessment is due, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

6.9 Adjustments. In the event that the amounts actually expended by the Association for Maintenance Expenses in any fiscal year exceed the amounts budgeted and assessed for Maintenance 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. 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 Maintenance Expenses in any fiscal year exceed the amount actually expended by the Association for Maintenance Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal year(s).

7 ORGANIZATION AND DUTIES OF ASSOCIATION

7.1 Organization of Association. The Declarant shall establish the Association to be organized as a mutual benefit and nonprofit corporation under the laws of the State of Indiana, to be operated in accordance with The Articles of Incorporation which have been filed or will be filed by Declarant.

7.2 Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Windsong Estates III as the same may be platted from time to time, provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

✓ The Association shall have two classes of voting membership:

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

Class B. The Class B members shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On January 1, 2001.

7.3 **Board Of Directors.** The members shall elect a Board of Directors of the Association as prescribed by the Association By-Laws. The Board of Directors shall manage the affairs of the Association.

7.4 **General Duties of the Association.** The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Drainage System, the determination of Maintenance Expenses, the collection of annual and special Assessments, for the perpetuation of the Drainage System and common benefit of all such Owners. 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 Covenants 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 or 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.

7.5 **Amendment of Declaration.** The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least two-thirds of the Lots and the Mortgagees of at least two-thirds of the Mortgagees requesting notice of such actions provided, however, that any such amendment of this Declaration shall not bring about any inequitable Assessments on any particular Owner(s). Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County. No such amendment shall substantially alter the Drainage System or effect a modification of any covenants or commitments undertaken in connection with any platting approvals or zoning without the prior approval of the appropriate government authorities.

7.6 **Insurance.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with the Drainage System. The Association shall also maintain in force adequate casualty and extended coverage insurance, insuring the Drainage System against casualty, vandalism and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full replacement value of such Drainage System improvements. The Association shall notify all Mortgagees which have

requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' Assessments on all Lots in Windsong Estates III, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

7.7 Condemnation; Destruction. In the event that any of the Drainage System shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any part of the Drainage System condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Drainage System or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Drainage System; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any part of the Drainage System.

7.8 Mortgagees' Rights. The mortgagees shall have the right, at their option, jointly or severally, to pay charges which are in default or which may or have become a charge against the Drainage System, to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Drainage System, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

8 GENERAL PROVISIONS

8.1 Covenants Run With the Land. The Covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

8.2 Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the Covenants contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the Covenants contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

8.3 Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of this Declaration, or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

8.4 Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such Covenant.

8.5 Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. Other provisions herein notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

8.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

8.7 Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

8.8 Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to hereinabove; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

8.9 Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Covenants For Windsong Estates III Drainage System pertaining to the real estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana", and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

8.10 Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

8.11 Reservations of Declarant. Other provisions herein notwithstanding, Declarant hereby reserves the right to make such amendments, except as to any exemptions that apply Lot # 1, to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least three (3) Lots within Windsong Estates III without the approval or consent of the Owners or Mortgagees of the Lots provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

8.12 Transfer of Control of Owner's Association. Declarant shall transfer control of the Owner's Association to the Lot Owners no later than the earlier of (a) four months after three-fourths (3/4) of the Lots have been conveyed to Lot purchasers or (b) seven (7) years after the first Lot is conveyed.

In Witness Whereof, the Declarant and Trustee has caused this Declaration to be executed on the date first above written.

KEENELAND DEVELOPMENT, INC., an
Indiana Corporation

By:


Judith A. Hoeping, President

"TRUSTEE"

**Evelyn M. Johnston Family Trust U/A dtd
9/20/91**

By: Sherri Tucker, Successor Trustee
Sherri Tucker, Successor Trustee

STATE OF INDIANA)
)
COUNTY OF JOHNSON)
) SS:

On this 16 day of Sept., 1994, before me, a Notary Public, personally appeared **Judith A. Hoeping, President**, on behalf of **Keeneland Development, Inc.**, an Indiana Corporation, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that she executed the same.

My Commission Expires:
6-17-2001

Angela G Reynolds
Notary Public, ANGELA G REYNOLDS
Resident of Johnson County, IN

STATE OF INDIANA)
)
COUNTY OF JOHNSON)
) SS:

On this 2 day of November 1994, before me, a Notary Public, personally appeared **Sherri Tucker, Successor Trustee**, on behalf of **Evelyn M. Johnston Family Trust U/A dtd 9/20/91**, personally known to me to be the same person described in and who executed the within instrument, and the same person duly acknowledged to me that she executed the same.

My Commission Expires:
3-9-98

Leslie J Young
Notary Public, Leslie J Young
Resident of Marion County, IN

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This document prepared by:
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 Johnson County-Recorded as Presented
 Jill L. Jackson County Recorder

File **2013-026927**

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Cross-Reference:

Windsong Estates III (Plat), Instrument # 98003478 (Plat Book D, Page 101 ABC)
 Windsong Estates III, Declaration of Covenants, Instrument # 98003479

AMENDMENTS

to the

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

for

WINDSONG ESTATES III

COMES NOW the Windsong Estates III Owners Association, Inc., by its Board of Directors, on this 27 day of October, 2013, and states as follows:

WITNESSETH THAT:

WHEREAS, the residential community in Johnson County, Indiana commonly known as Windsong Estates III was established upon the recording of certain documents with the Office of the Recorder of Johnson County, Indiana; and

WHEREAS, the Plat for Windsong Estates III was recorded with the Office of the Recorder of Johnson County, Indiana, on February 10, 1998, as **Instrument #98003478**; and

WHEREAS, the foregoing Plat contains covenants which run with the land, namely the Declaration of Covenants, Conditions and Restrictions for Windsong Estates III ("Declaration"), recorded in the Office of the Recorder of Johnson County, Indiana, on February 10, 1998, as **Instrument #98003479**; and any amendments thereto, which state that by taking a deed to any Lot as set forth on the Plat for the Windsong Estates III development, each owner will become a mandatory member of the Windsong Estates III Owners Association, Inc., an Indiana nonprofit corporation ("Association"); and

WHEREAS, the Association was incorporated pursuant to the above listed Declaration as a non-profit corporation pursuant to Articles of Incorporation ("Articles") filed with, and approved by, the Indiana Secretary of State on December 29, 1997; and

WHEREAS, the Declaration, Section 7.5, states that the Association has the authority to amend the Declaration at any time if the amendment(s) were approved by the owners of two-thirds (2/3) of the lots; and

WHEREAS, the Windsong Estates III subdivision has a total number of forty-six (46) voting lots; hence, two-thirds (2/3) of the members would constitute thirty-one (31) members; and

WHEREAS, at least thirty-one (31) members, or owners, in the Windsong Estates III subdivision have approved the following amendments to the Declaration (see voting ballots attached as "Exhibit A" for exact vote count on each amendment); and

WHEREFORE, in accordance with the Declaration, the Owners of Windsong Estates III Owners Association, Inc. now amend the Declaration to read as follows:

Section 4.6 of the Declaration is hereby amended to read as follows:

4.6 ACC Approval Procedure. Once the owner has turned in all of the required information to the Architectural Control Committee for its review, the Architectural Control Committee will approve or disapprove the request in writing. The written decision of the Architectural Control Committee may be mailed, hand delivered or emailed to the owner.

If the Architectural Control Committee does NOT approve the project, the notification will state the reason(s) why the Architectural Control Committee rejected the submission. If the Architectural Control Committee does not make a decision on a request within thirty (30) calendar days of the request being turned in by the owner, then the request, by default, will be considered to be automatically **DENIED**.

If an owner fails to turn in a written request for architectural approval to the ARB before he begins the lot modification project, a lawsuit to enjoin (stop) or force the removal of the lot modification may be filed at any time by the Association, even after the construction or installation of the lot modification is completed.

Section 4.19 of the Declaration is hereby amended to read as follows:

4.19 Recreational Equipment. Each lot shall be kept in a neat and pleasing manner. Basketball goals must be located beside a home's driveway or an approved basketball court. However, no basketball goals may be attached to the exterior of any home in Windsong Estates III. In addition, no basketball goals, including temporary or moveable basketball goals, may be located on or next to any sidewalk, curb or street in the subdivision or in any other location on a lot that will allow or require play to occur in the street, or that will hinder or interfere with any street use, sidewalk use, bus stop, or mailbox delivery. No buckets, bricks, sandbags, rocks, blocks, or other weighted items can be stacked or placed on the base of any portable basketball goal.

Play sets, trampolines, and other play structures must be located behind the front foundation line of the main structure and within the lot setback lines. Trampolines must be properly anchored to the ground to prevent tipping, moving or blowing in the wind.

Section 4.24 of the Declaration is hereby amended to read as follows:

4.24 Rentals. For the purpose of maintaining the congenial and residential character of Windsong Estates III, for the protection and maintenance of property values by encouraging the maintenance, improvement and updating of the Lots within the Windsong Estates III community, and in an effort to limit investment purchasers, institutional buyers, and others from buying properties within the Windsong Estates III subdivision solely for the purpose of leasing or renting the properties in the subdivision, all homes in the Windsong Estates III development must be OWNER-OCCUPIED ONLY for a minimum of five (5) years from the date the Owner takes title to a property within the Development. The term "Owner Occupied" means that the home must be occupied by the titled Owner, the titled Owner's spouse or significant other, the titled Owner's dependent children, the titled Owner's live-in caretaker, and any temporary visitors and guests of the titled Owner (so long as the titled Owner also lives in the home).

During this period of required Owner Occupancy, a home may NOT be occupied by anyone renting, leasing, leasing to own, or purchasing on contract the home unless the Owner also resides at the home.

The Board may approve a hardship exception to this restriction in writing when deemed reasonably appropriate by the Board under the particular circumstances. A decision of whether to grant a hardship exception is strictly within the discretion of the Board, and may not be overturned by any court unless shown to violate federal or state law.

This rental restriction takes effect on the date this covenant is recorded with the Johnson County Recorder's Office. This rental restriction will apply to all Owners taking deeded title to a property in Windsong Estates III after this covenant is recorded. Any Owner taking deeded title to a property within Windsong Estates III before this covenant is recorded will not be subject to the five (5) year owner-occupancy restriction.

Section 4.25 of the Declaration is hereby amended to read as follows:

4.25 Enforcement. Any party subject to the Declaration or these Bylaws, including the Association, any committee, or any individual owner, may proceed at law or in equity to prevent the occurrence, recurrence or continuation of any violation of the Declaration, these Bylaws, or any properly adopted rules, regulations, policies, procedures or guideline of the Association. However, neither the Association nor any committee may be held liable for damages of any kind, including legal fees and costs, to any owner or person for failing to enforce or carry out any of the provisions of the Declaration or these Bylaws.

No delay or failure on the part of the Association or any owner to seek any available remedy regarding a violation of any provision of the Declaration or adopted rule of the Association will be a waiver by the Association or any owner (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of a violation of the Declaration or rule adopted by the Association. Likewise, no delay or failure of the

Association or any owner to enforce any particular provision of the Declaration or rule adopted by the Association will be a waiver or estoppel of the Association or owner to enforce any other provision of the Declaration or rule adopted by the Association.

If an owner fails to maintain his lot or any improvements on the lot according to the terms of this Declaration or the rules adopted by the Association, or if an owner has a violation of the Declaration or the Rules on his lot, the Association may enter the lot and provide the necessary maintenance or remove or correct the violation after giving the owner at least ten (10) days prior written notice before doing so. This is called "self-help" by the Association.

Any owner that is violating the parking restrictions set forth in the Declaration or the rules adopted by the Association may have their vehicle towed, but only after the Association gives the owner at least ten (10) days prior written notice before doing so. After an owner has been sent at least one (1) warning letter regarding a parking violation, the Association does not have to send the owner any further notices but may simply have any vehicle parked in violation of the Declaration or the rules towed.

If the Association uses self-help or tows a vehicle, the Association and its employees, agents, and contractors are not liable for any damage that might occur or result from the work, and all expenses paid by the Association to mow, trim, prune, stop, repair, tow or remove the violation must be reimbursed to the Association by the lot owner and may be collected in the same fashion as assessments under Section 6.8 of the Declaration.

Section 7.5 of the Declaration is hereby amended to read as follows:

7.5 Amendment of Declaration. This Declaration may be amended at any time by a vote of at least a majority of the owners cast at a duly called meeting, by electronic voting, or by a ballot mailed or delivered to each owner at their last known address. The Amendment must be evidenced by a written instrument signed and acknowledged by the appropriate officers of the Corporation and recorded in the Office of the Recorder of Johnson County, Indiana, before becoming effective. No such amendment shall substantially alter the Drainage System of effect a modification of any covenants or commitments undertaken in connection with any platting approvals or zoning without the prior approval of the appropriate government authorities.

All other provisions of the Declaration of Covenants, Conditions and Restrictions for Windsong Estates III remain unchanged;

The foregoing amendments will run with the land and will be binding upon all owners and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to these covenants.

[End of Amendment]