

15300
00100
0055

20201072

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE WOODLANDS AT MCCRACKEN CREEK

The undersigned, The Woodlands at McCracken Creek, Section One, (by Reginald I. McCracken, Charles W. Johnson and Jeff Altman, the Owners, including their successors and assigns more particular Bowar Development, LLC.), an Indiana limited liability company (hereinafter referred to as the "Developer"), who is the Owner of the real estate shown and described herein, do hereby certify that they plated and subdivided said real estate in accordance with the approved and recorded Plat. The following Covenants, Conditions and Restrictions (hereinafter referred to as the "Covenants") are hereby imposed upon and shall run with the land contained in such Plat which was recorded on the 15 day of Jan., 2008, as Instrument No. 20201071 in the Office of the Recorder of Morgan County, Indiana.

This subdivision shall be known and designated as The Woodlands at McCracken Creek Subdivision in Morgan County, Indiana (hereinafter referred to as the "Development"). All streets shown and not heretofore dedicated are hereby dedicated to the public.

Definitions. The following are the definitions of the terms as they are used in the Covenants:

- A. "Committee" shall mean The Woodlands at McCracken Creek Architectural Control Committee, composed of and operated under the terms of Article II, Section 1 herein.
- B. "Association" shall mean The Woodlands at McCracken Creek Property Owners' Association, Inc., an Indiana not-for-profit corporation to be formed, the membership and powers of which are more fully described in Article IV herein.
- C. "Builder(s)" shall mean a person who acquires a Lot directly from Developer for the purpose of building a single family dwelling on it either for immediate resale of Lot and dwelling together or for their personal residence.

D. "Developer" shall mean Bowar Development, LLC, its heirs and assigns.

ARTICLE I

GENERAL RESTRICTIONS, OBLIGATIONS AND RIGHTS

Section 1.

Lot Use and Maintenance.

- A. All Lots in this Development are reserved for residential use and no building other than that of a one-family residence shall be erected per Lot thereon. All plans for such structures ("Committee") for written approval prior to any construction.
- B. Not more than one (1) primary building shall be erected or used for residential purposes on any Lot in this Development. One (1) additional detached building, not for a residence, such as a garage or storage building, may be constructed on each Lot. All such accessory building shall be of similar design, such and materials as the main dwelling. Placement of accessory buildings shall be in accordance with all building set back lines and the Committee shall approve plans for accessory buildings prior to commencement of construction. Accessory accessory buildings, such as gazebo and pool houses, are permitted on a case-by-case basis subject to prior approval of the Committee based upon impact to the Development. No tent, shack, attached shed, garage, barn or other out-building or temporary structure shall be used for a temporary or permanent residence on any Lot in this Development.
- C. No Lot in this Development shall be used or maintained as a dumping ground for rubbish, trash, grass clippings, garbage or other waste and such rubbish or trash shall not be kept, except in sanitary containers. It shall be the duty of the Lot Owner of each Lot in the Development to keep the grass on the Lot properly cut and to keep the Lot free from weeds and trash otherwise neat and attractive in appearance. Should any Lot Owner fail to do so, Developer and Association may take such action as it deems appropriate in order to make the Lot neat and attractive and the Lot Owner shall upon demand reimburse Developer and Association for the expense incurred in so doing. All such costs, including reasonable attorney fees and costs of collection, shall be charged as a lien against the land until paid in full. Each such cost, together with interest, cost and reasonable attorney fees shall also be the personal obligation

of the person who is the Owner of record, their successors and assigns.

Section 2. Property Lines and Lot Dimensions. Lot dimensions, easements and front, back and side yard setback lines for each Lot are as shown and delineated on the recorded Plat of the Development. No structure shall encroach onto the utility and drainage easements. No Lot shall be divided for the purpose of creating an additional building site.

Section 3. Dwelling. The ground floor of the dwelling structure, exclusive of porches, basements and garages, shall not be less than one thousand eight hundred (1,800) square feet of floor space for single story homes or two thousand two hundred (2,200) square feet of floor space for two story homes. All construction of dwellings shall be new. Exteriors shall have a minimum seventy (70) percent brick facade. Other durable materials such as stone, E.I.F.S., masonry, etc. may be substituted for brick upon the approval of the Committee. The remaining facade shall be wood or wood equivalent. No vinyl or metal siding will be permitted. Roofing shall be of shingles made of fiberglass, asphalt, ceramic tile or architectural metal. Each residence shall have an attached garage for at least two (2) cars with a minimum of five hundred seventy-five (575) square feet. The main roof pitches for each residence shall be a minimum of eight (8) inches vertical for every twelve (12) inches horizontal (8:12). Roofs over porches will be considered on a case-by-case basis. Variances may be granted for period style homes by the Committee. (R)

Section 4. Structure Character and Appearance. All buildings shall be constructed in a substantial and good workmanlike manner and of new materials. All homes exterior colors, including but not limited to shingles, paint, siding color and brick must be approved by the Committee.

Section 5. Storage. A garage, outbuilding, storage building or other accessory structures erected or used as an accessory to a residence in this subdivision shall be of permanent foundation. Construction shall conform to the general architecture and appearance of such residence. All accessory structures or home additions must first receive prior written approval by the Committee as to architectural harmony and location before any construction begins.

Section 6. Drives. Each driveway on a Lot shall be of concrete, brick, paving stone or asphalt and be approved by the Committee.

Section 7. Swimming Pools. No above-ground swimming pools shall be permitted in the Development.

Section 8. Fences. No fence shall be erected on or along any Lot or Lot line with intent to obstruct vision, light or air. As defined by the Committee, environmental fences will be encouraged over fences consisting of man-made materials. No fence shall be erected which hinders or obstructs the reasonable use of any other property. Approved materials for stockade or privacy fences are exterior grade wood, masonry or wrought iron. Such fences shall not be permitted any closer to the front of the Lot than the front of the residence. Chain link fences are not permitted. All fences shall be maintained in good repair. Prior to construction of any fence, the Lot Owner must obtain the written approval of the Committee. Fences will not be allowed on or across drainage or utility easements (except along the side and rear Lot lines).

Section 9. Mail Boxes. All mail boxes shall be of uniform style, with the address identified on the mail box, and be approved by the Committee prior to installation.

Section 10. Erosion Control. Once a Lot is sold (a contract sale shall be included as a sold Lot) by Developer, the Lot Owner shall assume all liability for any erosion damage caused by sediment leaving the Lot. The Lot Owner shall be responsible for installing and maintaining adequate erosion control measures. If sold lots are not maintained, Developer shall notify the Lot Owner in writing of the failure to comply with this provision and if no action is made by Lot Owner to remedy the situation within two (2) weeks of the written notification, Developer shall have the option of installing adequate erosion control measures and charging Lot Owner a reasonable fee for providing this. Developer shall have the right to file the fees as a lien against the property.

Section 11. Satellite Dishes. Only satellite dishes less than eighteen (18) inches in diameter shall be allowed in the subdivision.

Section 12. Placement of Vehicles or Equipment. No boat, trailer or camper of any kind (including but not limited to house trailers, camping trailer, boat trailers, boats, yard

maintenance equipment or any disabled or vehicle without a current license plate) shall be kept or parked on any Lot except within a garage or other approved structure.

Section 13. Unacceptable Activities. No noxious, unlawful or other offensive activity shall be carried out on any Lot in this Development, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 14. Animals. No animals, livestock or poultry of any description shall be raised, bred or kept on any Lot. However, dogs, cats or other household pets may be kept on any Lot as long as they are properly kept and maintained and do not become a nuisance to other Lot Owners. Nuisance shall be defined as creating noise or any type of noxious smells across property lines. There shall be no chain link fence, dog pens or runs maintained on any property nor animals maintained outside after daylight hours. No animals will be allowed to roam off of Lot Owners Lot unless on a leash accompanied by Lot Owner. Lot Owner shall be held responsible for all actions of their pets.

Section 15. Storage Tanks. Any gas, oil, propane or other tanks used in connection with a Lot shall be either buried or located so that they are completely concealed from public view.

Section 16. Storage and Disposal of Refuse. No outside storage of equipment, materials, supplies or debris shall be permitted. Trash, garbage or other waste shall be kept only in sanitary containers. All equipment for the storage of such materials shall be kept in clean and sanitary condition out of public view except on collection days. No incinerators or open burning of yard waste or other material shall be allowed. All yard waste must be disposed of by means other than burning or dumping within the Lot.

Section 17. Porches and Decks. All porches and decks shall be approved by the Committee prior to construction. All porches and decks shall be constructed of new materials and be constructed in a good workmanlike manner.

Section 18. Landscaping Plan and Lot Maintenance.

A. Landscaping Plan. All Lots shall be graded and landscaped with shrubbery on the front and sides of the home at a maximum spacing of eight (8) feet apart.

B. Grading. Grading shall be done so as to provide positive drainage away from the dwelling house and other structures. In order to assure positive drainage the slope away from the dwelling shall be a minimum of one (1) inch per foot (8.33%) a distance of ten (10) feet outside of the foundation line. Lots shall be graded such that surface water will flow away from the dwelling and into adjacent drainage ways/swales. All finished grading and landscaping shall be completed within six (6) months of the date of completion of the dwelling or occupancy of the dwelling whichever is sooner.

C. Entryway and Common Areas. Landscaping in the Entryway and Common Areas shall be landscaped and maintained by Developer and thereafter maintained by the Association.

D. Yard Maintenance. All Lots shall be mowed and maintained by Developer or Lot Owner, if other than Developer. No grass area shall be allowed to grow more than twelve (12) inches on undeveloped Lot and no more than eight (8) inches in height for a Lot with a home on it.

Section 19. Common Area Ownership. Phase I of the Development will not have Common Areas, however, Common Areas shall be added in Phases II and III. Common Areas shall be the area so designated in the recorded Plat of the Development, and is sometimes herein, and in the By-Laws of the Association referred to as "Common Area". All deeds to Lots in the Development shall contain the following or similar language describing the Lot being conveyed:

"Lot _____ in The Woodlands at McCracken Creek Subdivision, together with all appurtenant rights in Common Area all as shown in the Plat thereof recorded on _____, as Instrument Number _____, in the Office of the Recorder of Morgan County, Indiana".

Any Common Area depicted on the recorded Plat of the Development shall remain private and neither the Developer's execution of, or recording of the Plat, nor the doing of any other act by Developer is, or is intended to be a dedication to the public or the Common Area. Ownership of the Common Area shall be conveyed to the Association in fee simple title, free of financial encumbrances to the Association upon their completion. Such conveyance shall be subject to easements and restrictions of record and such other conditions as Developer at the time of conveyance deems appropriate. Such conveyance shall be deemed

to have been accepted by the Association, and those persons who shall be members thereof from time to time, by this acceptance of their respective deeds and conveyance.

Developer shall be responsible for improving and/or maintaining all Common Areas until same shall be conveyed to the Association at which time the Association shall be responsible for the maintenance and repair of the Common Areas.

Section 20. Homeowner Association.

A. Homeowner Association. The Development shall have a Homeowner Association which shall consist initially of the Developer and each and every Lot Owner of a Lot in the Development. The Rules and Regulations of the Homeowner Association shall be prepared by the Developer and shall be in place prior to the sale of the first Lot in the Development.

B. Homeowner Association Responsibilities. The Homeowner Association is charged with the responsibility of maintenance of all Common Areas, street lighting including payment of the cost of street lighting, maintaining the Entryway and streets if the streets are not dedicated and accepted by the County for maintenance.

Section 21. Street Dedication. All areas shown and designated as streets, if not heretofore dedicated, are hereby dedicated to the public use.

Section 22. Nuisance. No noxious or offensive activity shall be suffered or permitted to continue which may annoy or become a nuisance to a neighbor or the neighborhood, nor shall any unlawful act or activity be allowed whatsoever.

Section 23. Businesses. No commercial enterprises shall be operated on any Lot. Exceptions may be granted on a case-by-case basis by the Association for business conducted within a home office, where there is no associated ingress/egress of customers or suppliers and no other outwardly visible signs of business activity.

Section 24. Auto Mechanics. Except for minor or routine repair and maintenance of Owner's personal vehicles, no welding, restoration, reconstruction, overhauling, painting or other type of auto mechanics, whether for hire or otherwise, shall be permitted except inside a -losed garage.

Section 25. Sanitary System Requirements. All dwellings shall be served by approved (Morgan County Board of Health) septic or private sewer system. Lot Owners shall join any available sewer system.

Section 26. Potable Water Requirements. Each residence is required to connect onto the central potable water system and pay the necessary tap on fee.

Section 27. Construction Period. The main dwelling shall be completed within one (1) year from the time construction begins.

ARTICLE II

ARCHITECTURAL CONTROLS

Section 1. The Architectural Control Committee. Until the Applicable Date, there shall be three (3) additional special members of the Association, being the persons from time to time appointed by Developer to serve on the Architectural Control Committee ("Committee"). Persons who are special members shall not be deemed or considered members of the Association nor Lot Owners of Lots for any purpose other than to be qualified to act as members of the Committee. Special members shall have no voting rights on any matters submitted to a vote of the members (unless such special member is also a Class A member in which event his voting rights shall be governed by Sub-Section (a) of this Section. After the Applicable Date, the members of the Committee shall be appointed by the Board of Directors.

Section 2. Purpose. The Committee shall regulate size, type, external design, appearance, use, location and maintenance of any lands subject to these Covenants and Restrictions and improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

No building, fence, wall or other construction or improvement of any kind shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the Lot Owner of the Lot.

The manner of application shall be in the form as prescribed from time to time by the Committee and shall be accompanied by

20201071

two (2) sets of plans and specifications. Such plans shall include a Lot plan showing location of proposed improvements, specification of all exterior materials and colors and any proposed landscaping. In the event said Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required as long as said design meets all other requirements of the covenants and restrictions herein and this Article will be deemed to have been fully complied with.

ARTICLE III

OTHER RESTRICTIONS, GUIDELINES AND RIGHTS

Section 1. Easements. There are strips of ground shown on this Plat and marked Drainage and Utility Easement which are reserved for the use of public utilities for the installation of water and any public utility to use upon granting proper authorization to serve the area. No permanent or other structures are to be erected or maintained upon said strips of land, but Lot Owners of Lots in this Development shall take their titles subject to the rights of public utilities and easements. Unless otherwise noted in the recorded Plat, each Lot shall have a fifteen (15) foot underground utility and drainage easement along the street side, ten (10) foot underground utility and drainage easement along the side Lot line and a fifteen (15) foot underground utility and drainage easement along the rear Lot line. The utility easements shown on the Plat are reserved for Developer and his assignees for the installation of electric and communication lines, ducts, gas and water mains, sanitary sewers and laterals for same. Any drainage easements shown on the Plat are reserved as drainage ways/swales for water runoff and the installation and maintenance of storm water structures. Drainage ways/swales or structures are to be maintained by the adjoining Lot Owner such that water runoff from adjacent land is not obstructed or hindered in its flow into or through said drainage ways/swales or structures. In order to facilitate the flow of storm water, trees or shrubs cannot be planted within drainage easements. No permanent structure shall be maintained upon utility of drainage easements. All Lot Owners shall take their titles subject to the rights of the public utilities and subject to the rights of the Lot Owners of the other Lots in this Development. Owners of each Lot shall keep the grass mowed within all utility and drainage easements. Developer retains unto himself and his assignees the right to use all utility and drainage easements.

Section 2. Drainage of Storm or Other Water. In the event storm water drainage from any Lot flows across another Lot, provision shall be made to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, even though no specific drainage easement for such flow of water is provided on said Plat.

No rain or storm water runoff or such things as roof water, street pavement or surface water caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sewer System. No sewage shall at any time be discharged or permitted to flow into the above-mentioned Storm Water and Surface Water Runoff System.

Section 3. Enforcement of Restrictions and Conditions. The Developer, and any Lot Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants and restrictions.

Failure by Developer or by any Lot Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event Developer or Lot Owner shall be successful in any proceeding, whether at law or in equity, brought to enforce any Restriction, Covenant, limitation, easement, condition, reservation, lien or charge now or hereinafter imposed by the provisions of the Restrictions, Covenants, limitations, easements and approvals appended to and made a part of the Plat of the Development, it shall be entitled to recover from the party against whom the proceeding was brought all of the attorneys' fees and related costs and expenses it incurred in such proceeding.

The right to enforce these provisions by injunction, together with the right to cause the removal by due process of law, or any structure or part thereof erected or maintained in violation hereof, is hereby dedicated to the public and reserved to the several Lot Owners of the several Lots in this Development and to their heirs and assigns.

Section 4. Invalidation of Covenant. Invalidation of any one (1) of these Covenants or Restrictions by Judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Term of Covenants and Restrictions. The foregoing Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of fifteen (15) years from the date of this Plat, at which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless changed by a vote of fifty-one (51) percent of the then Lot Owners of the building covered by these Covenants and Restrictions in whole or in part. These Covenants and Restrictions can be amended at any time by written consent of fifty-one (51) percent of the Lot Owners as defined in Paragraph B of the Definitions Section "Association" and further defined in Article IV By-Laws of The Woodlands at McCracken Creek, Section 2 Voting Rights.

Section 6. Waiver of Rights to Remonstrate. It is understood that this Development will be done in three (3) phases and the initial platted phase is Phase I. Lot Owners, upon taking title, agree to waive all rights to oppose future zoning changes, Plat approval and special permits necessary to complete the three (3) phases of the Development.

Section 7. Development and Sale Period. Nothing contained in Articles I, II and III shall be construed or interpreted to restrict the activities of Developer and Builders in connection with the development and sale of the Development and the construction and sale of homes in said Development. The above shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Development at any time owned or leased by Developer or Builder as, in the sole opinion of Developer or Builder, may be reasonably required, or convenient or incidental to, the development of the Development and sale of the Lots and homes on said Lots, such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sale offices and business offices.

Section 8. Common Area Easements. Developer reserves the right to grant easements for utilities and other reasonable purposes within the Common Areas. When Developer no longer owns any Lot and no longer has the right to annex adjacent land, whichever shall occur later, the right of Developer under this declaration shall terminate.

BY-LAWS

OF

THE WOODLANDS AT MCCRACKEN CREEK

There has been or will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "THE WOODLANDS AT MCCRACKEN CREEK HOMEOWNER ASSOCIATION, INC."

Section 1. Membership in Association. Each Lot Owner shall automatically be a member of the Association. Membership in the Association shall terminate when such Lot Owner ceases to be a Lot Owner and will be transferred to the new Lot Owner of the Lot. No person who holds merely a lien upon a Lot in this subdivision shall be considered a member until acquiring full legal and equitable title to such Lot, at which time he shall automatically be and become a Lot Owner and a member of the Association. It is further understood that the real property described as The Woodlands at McCracken Creek will be developed in three (3) phases, the initial phase which is platted as of the date of the execution of this Agreement is Phase I and Phases II and III will follow with each Lot Owner in all three (3) phases being a required member in the Association subject to the terms set out herein.

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

A. Class A. Class A members shall be all Lot Owners except as Class B members are herein defined. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Lot Owner with respect to each matter submitted to a vote of the members upon which the Class A members are entitled to vote. When more than one (1) person constitutes the Lot 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. A membership in the Association shall only be transferred by the transfer of the record title of a Lot.

B. Class B. Class B members shall be the Developer and all successors and assigns of Developer designated by Developer as

Class B members in a written notice mailed or delivered to the President of the Association. Each Class B member shall be entitled to five (5) votes for each individually numbered parcel of land shown upon, and identified as a Lot on, any recorded Subdivision Plat of the Development, or any part thereof, of which it is the Lot Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration of Covenants, Conditions and Restrictions, 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 President of the Association, (ii) the date Developer no longer owns any Lots or any portion of any individually numbered parcels of land shown upon and identified as a Lot on any recorded Subdivision Plat of the Development, or any part thereof, or (iii) January 1, 2012 (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 individually numbered parcel of land shown upon, and identified as a Lot on, any recorded Subdivision Plat of the Development, or any part thereof, which is not a "Lot" as defined herein.

Section 3. Functions.

- A. The Association shall maintain the entrance landscaping, signage and the landscape easements, if any, shown on the Plat and shall keep such area in a neat, mowed, clean and presentable condition at all times.
- B. The Association shall maintain and repair all Common Areas shown on the Plat including improvements thereon.
- C. The Association shall procure and maintain casualty and liability insurance for the Common Areas and such other insurance as it deems necessary or advisable.
- D. The Association may contract for such service as management, snow removal, security control, trash removal and such other services as the Association deems necessary or advisable.
- E. Owning all Common Areas (if any) when decided to and paying taxes and assessments levied and assessed against, and payable

with respect to, the Common Areas and paying any other necessary expenses and costs in connection with the Common Areas.

F. The Association shall be responsible for the cost of street lighting and maintaining all street lighting.

Section 4. Assessments.

A. Creation of the Lien and Personal Obligation of Assessments. Each Lot Owner of any Lot in the Development, except Developer and/or Builder (other than a Lot Owner building for himself), by acceptance of a deed or other conveyance therefore, whether or not it shall be expressed in such a deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements and operating deficits, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land until paid in full and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Lot Owner of such property at the time when the assessment was due.

The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them or unless, prior to such transfer, a written notice of the lien for such assessments shall have been recorded in the Office of the Recorder of Morgan County, Indiana. No charge or assessment shall ever be levied by the Association against Developer.

B. Date of Commencement of Annual Assessment. Annual assessments shall be due and payable in advance on the first day of March of each calendar year or, if so determined by the Association, in such other periodic installments as may be specified by the Association. If a Lot is conveyed after the first of March the annual assessment provided for herein shall be pro-rated as of the date of closing. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of annual assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Lot Owner subject hereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, at any time, furnish

a condition is within scope of an officer of the Association that the assessments on a specific lot have been paid or that certain assessments against said lot have not been paid, as the case may be.

C. Special Assessments. In addition to the annual operating assessment, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. Written notices for such meetings shall be sent at least thirty (30) days in advance of the meeting and at least sixty percent (60%) of all possible votes must be cast to constitute a quorum.

D. Remedies for Non-Payment. Any charge assessed against any Lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that Lot(s) until paid in full and shall also be a personal obligation of the Lot Owner/member(s) at the time the charge fell due. Such charge shall bear interest at the rate of twelve (12) percent per annum until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonable period of time, the Board may, on behalf of the Association, institute such Court procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing. The Owner of the Lot(s) shall, in addition to charges owed, be obligated to pay all costs incurred by the Association, including attorney's fees, in collecting the charges due. Every Owner of a Lot in the Development and any person who may acquire any interest in any Lot in the Development, whether as Lot Owner or otherwise, is hereby notified, and by acquisition of such interest agrees, that any such liens which may exist upon said Lot at the time of acquisition of such interest are valid liens and shall be paid.

Every person who becomes an Owner of a Lot in the Development shall be deemed to have covenanted to pay the Association all charges that the Association shall make pursuant to these By-Laws.

E. Subordination of the Lien to Mortgage. The lien of the assessments provided herein shall be subordinate to the lien of

any first mortgage; sale or transfer of any Lot shall not affect the assessment lien.

Section 5. Management of Board of Directors/Officers. 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, a Lot Owner, including a person appointed by Declaration as provided in Section 2 of this Article VI:

A. Officers. The Board of Directors may designate persons to act as President, Secretary and/or Treasurer from among its members;

B. The Board of Directors shall consist of not less than three (3) members after the Applicable Date.

Section 6. Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated or to be designated by the Developer notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration of these By-Laws, (a) the Initial Board shall hold office until the first 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 meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by the Developer, who shall thereafter be deemed a member of the Initial Board. Each Lot Owner, by acceptance of a deed to a Lot with, or by acquisition of any interest in a dwelling house by any type of juridical acts *inter vivos* or *causa mortis*, or otherwise, shall be deemed to have appointed Developer as such Lot 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 Lot Owner's right to vote, and to vote as the Developer determines, on all matters as to which members of the Association are entitled to vote under the Declaration, these Articles or otherwise. This appointment of Developer as such Lot Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of Lot Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Developer to fill a vacancy, shall be deemed a special member of the Corporation and an Lot 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 for thereby a member of the Association).

Section 7. Additional Qualifications of Board of Directors.

Where a Lot Owner consists of more than one (1) person or is a partnership, corporation, trust or other legal entity, then one (1) of the persons constituting the multiple Lot Owner, then one partner or an officer or trustee, shall be eligible to serve on the Board of Directors, except that no single Lot or dwelling house may be represented on the Board of Directors by more than one (1) person at a time.

Section 8. Term of Office and Vacancy of Board of Directors.

Subject to the provisions of Section 5 of this Article VI, 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 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. 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 5 of this Article VI 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 a vote of the Lot Owners if a Director is removed in accordance with Section 9. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified.

Section 9. 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 Lot Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Lot Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Lot Owners and until his successor is duly elected and qualified.

Section 10. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Lot Owners and being responsible for the functions and duties of the Association. After the Applicable Date, the Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "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 included, but are not limited to:

A. assessment and collection from the Lot Owners of the Lot Owner's respective shares of the expenses necessary to carry out all the functions of the Association Board of Directors shall notify all Lot Owners of any increase in the amount of the monthly assessment a minimum of thirty (30) days before the increase is in effect;

B. preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Lot 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;

C. preparing and delivering annually to Lot Owners a full accounting of all receipts and expenses incurred in the prior year, if possible, such accounting shall be delivered to each Lot Owner simultaneously with delivery of the proposed annual budget for the current year; and,

D. 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 Lot Owner at any time during normal business hours.

Section 11. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers 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 Board;

E. to include the cost of performing all of its functions, duties and obligations as Common Expense 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 with respect to use, occupancy, operation and enjoyment of 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 rules and regulations so adopted by the Board shall be promptly delivered to all Lot Owners; and,

H. to grant to such public or private companies, entities or bodies as the Board shall approve, such easements as may be necessary to provide the Lots, dwelling houses and Common Areas with facilities for utility and similar services, including but not limited to cable television facilities and services, provided that such easements are located within or are co-extensive with any one (1) or more 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.

I. the Board of Directors shall have the right to amend these By-Laws upon approval and consent of fifty-one (51) percent of the members of the Association. This process shall be done in written form.

Section 12. Limitation of Board Action. After the

Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Two Thousand Five Hundred Dollars (\$2,500.00) without obtaining the prior approval of a majority of the cumulative vote of Lot Owners, except that in the following cases such approval shall not be necessary:

- A. contracts for replacing or restoring portions of the Common Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received or for which the insurance carrier has acknowledged coverage;
- B. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Lot Owners at the annual meeting; and,
- C. expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Lot Owners.

Section 13. Compensation of Board of Directors.

Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of Lot 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 14. Non-Liability of Directors and Officers.

Directors and Officers of the Association shall not be liable to Lot Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors and Officers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors and Officers 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 and Officers shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 15. Additional Indemnity of Directors and Officers.

Except as otherwise specifically provided herein, the Association shall indemnify, hold harmless and defend any

person, his heirs, assigns and legal representatives, who may be
made a party to any claim, action, lawsuit or proceeding by reason of the fact that he is or was a Director or Officer of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such lawsuit, or proceeding, or in connection with any appeal taken, and shall reimburse such Director for the reasonable costs of settlement or payment of any judgment against him/her.

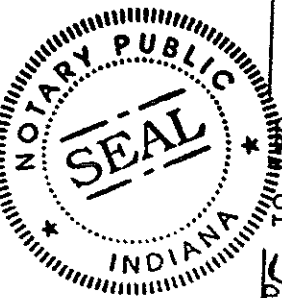
Notwithstanding the adjudication in any action, suit or proceeding against a Director or officer, if such Director or Officer acted reasonably in good faith or relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any), or any other Officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service, unless such Director or Officer had actual knowledge of falsity or incorrectness thereof, then such Director of Officer shall not be deemed guilty of or liable for negligence or misconduct, nor shall a Director or Officer shall be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 16. Bond of Board of Directors. The Board of Directors may provide Surety Bonds and may require the Managing Agent (if any), the Treasurer of the Association and any other Officers as the Board deems necessary to provide Surety Bonds, indemnifying the Association against larceny, 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 the Common Expense.

Section 17. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Developer shall have, and Developer 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. Developer may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Developer or such Managing Agent shall be entitled to reasonable compensation

for its services. Developer may, at its option, assess Lot Owners a fee for maintenance of the Common Areas.

These Covenants, Conditions and Restrictions are executed this 15th day of January, 2002.



Reginald L. McCracken
REGINALD L. MCCRACKEN,
Individually

Subscribed and sworn to before me, a Notary Public, in and for the County of Morgan, State of Indiana, this 15 day of January, 2002.

Debbie K. Robinson
Notary Public
Printed: Debbie K. Robinson
My Commission Expires: 7/20/06
My County of Residence: Morgan

Charles W. Johnson
CHARLES W. JOHNSON, individually

Subscribed and sworn to before me, a Notary Public, in and for the County of Morgan, State of Indiana, this 15 day of January, 2002.

CHICAGO TITLE



Debbie K. Robinson
Notary Public
Printed: Debbie K. Robinson
My Commission Expires: 7/20/06
My County of Residence: Morgan
Jeff Altman
POA Reginald L. McCracken
JEFF ALTMAN, Individually
Reginald L. McCracken
P.O.A. # 202010

Subscribed and sworn to before me, a Notary Public, in and for the County of Morgan, State of Indiana, this 15 day of January, 2002.

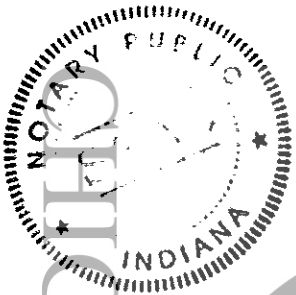


Debrae K. Robinson
Notary Public
Printed: DEBRAE K. ROBINSON
My Commission Expires: 7/30/06
My County of Residence: Morgan

BOWAR DEVELOPMENT, LLC, DEVELOPER

Charles W. Johnson
Printed: CHARLES W. JOHNSON

Subscribed and sworn to before me, a Notary Public, in and for the County of Morgan, State of Indiana, this 15 day of January, 2002.



Debrae K. Robinson
Notary Public
Printed: DEBRAE K. ROBINSON
My Commission Expires: 7/30/06
My County of Residence: Morgan

CHICAGO TITLE

RECEIVED
FOR RECORD

02 JAN 15 PM 2:44

Tara Burnette
MORGAN CO RECORDER

This Instrument Prepared By: Timothy C. Currens, 3475-55,
Harris & Currens, 9 W. Main St., Mooresville, IN 46158.

20201072

23