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DECLARATION OF COVENANTS AND RESTRICTIONS

OF *Flat D635*
WYNCREST "COMMUNITY" *Inst# 2006-006475*

This Declaration of Covenants and Restrictions of the **Wyncrest "Community"** ("Declaration") is made this 2 day of November, 2006, by M. Kenton Franklin Development, LLC (the "Declarant").

WITNESSETH:

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

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community with public streets, with identification signage, and with complimentary landscaping at the entranceway for the benefit of such residential community, to be known as "**Wyncrest**".

WHEREAS, Declarant desires to provide for the administration of community issues and matters in such community and the common maintenance areas therein contained, and, to this end, Declarant desires to subject the Real Estate and any "ADDITIONAL PROPERTY" which is hereafter made subject to this Declaration to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens according to the procedure set out in Article XV each and all to the extent herein provided, for the benefit of the Real Estate and each Owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the administration of community issues and matters in said community, to create an agency to which shall be delegated and assigned the powers of supervising, maintaining and administering any common maintenance areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

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

NOW THEREFORE, Declarant, as owner of the Real Estate hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth of the Real Estate as a whole and of each of the Lots situated therein.

RECITALS

The Recitals are incorporated herein as if set out in full.

ARTICLE I **Definitions**

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

(a) "Act" shall mean and refer to The Indiana Nonprofit Corporation Act of 1991, as amended;

(b) "Additional Property" refers to the real estate, or any part thereof, described in Article XV and legally described in its entirety as Exhibit B, attached hereto and made a part hereof.

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

(d) "Association" shall mean and refer to the **Wyncrest** Homeowners Association, Inc., an Indiana corporation organized under Indiana Code 23-17-13-1, et seq., which Declarant has caused, or will cause, to be incorporated under said name or a similar name, its successors and assigns;

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

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

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

(h) "Committee" shall mean and refer to the **Wyncrest** Architectural Control Committee, the same being the committee or entity established pursuant to Article VIII, of this Declaration for the purposes therein stated;

(i) "Common Areas" - reference is made to a Conceptual Plan for the **Wyncrest** subdivision attached hereto as Exhibit C and made a part hereof with the Exhibit A "Real Estate" referenced as Section 1 and with the "Additional Property" (Exhibit B) if any part of Exhibit B becomes recorded plat(s) referenced as subsequent sections of Wyncrest.

Reference to Exhibit C (conceptual plan) reveals three (3) ponds all of which are part of the surface water drainage system for Section 1 of Wyncrest. Each of these ponds and surrounding access areas are common areas with the maintenance, upkeep and repair being the obligation of the Association. Access to the ponds for such obligation is provided and extended to include appropriate governmental agencies concerned with drainage facilities.

The Ponds are designed to be wet and will be general common areas except for the pond entirely surrounded by lots which shall be limited common area for the lot owners surrounding said pond. (Lots 53, 54, 59-63, 82, 83, 108 and 109).

NEITHER THE DECLATANT NOR THE ASSOCIATION MAKE ANY REPRESENTATION THAT ANY CERTAIN LEVEL OF WATER WILL BE MAINTAINED IN ANY POND.

The Declarant and the Association, after the applicable date, reserve the right, but not the obligation, to install fountains and utility service thereto for one or more of the ponds. Both further reserve the right, but not the obligation to limit access to unauthorized parties to the ponds accessible from the dedicated streets of Alyshia Parkway and/or Lake Bend Drive or from adjoining realty by any means found suitable, including but not limited to gates, fencing, etc.

(j) "Limited Common Areas." refers specifically to the one pond, above referenced, that is totally surrounded by lots. This pond is for the exclusive use of these surrounding lot owners, their guests and invitees, subject to the Association's Rules and Regulations. The same restrictions of exclusive use are reserved for the rear of lots 13 thru 18 where their property lines are adjacent to the lake easement.

(k) "Common Expenses" shall mean and refer to expenses of administration of the Association, and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and the Common Maintenance Areas, and all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses. The Common Expenses arise out of and concern, but are not limited to, the Common Maintenance Areas described in subsection (i) and subsection (j) above, and;

(Reference to Exhibit C is assumed)

Road Features Common Maintenance Area

Re: Wyncrest Blvd.

Decorative stone walls on either side of Wyncrest Blvd. will be installed by Developer in Section 1 of Wyncrest from Whiteland Road to Woodruff Place.

Within these same length of road way is an Island located within dedicated right of way. Developer proposes, by permitted encroachment to install a subdivision identification sign at the Whiteland Road entrance and to landscape within the islands with an irrigation system for such plants along with some lighting for the sign. Utility usage in this area will be metered and is a common expense.

Re: Islands within the Cul De Sacs
At the East end of Exhibit B

If subsequent sections are developed in this Additional Property, Developer may create, by permitted encroachment within dedicated right of way islands of grass and/or low height landscape plantings.

Other Landscaping

The landscape easement at the rear of lots parallel to Whiteland Road shall, per zoning commitment of record, consisting of an earthen mound and/or buffering landscaped with evergreen trees, bushes and natural vegetation to the extent possible maintenance, upkeep and replacement of plantings shall be an Association common expense to assure a consistency of view along Whiteland Road.

Electric Street Lights

If the Developer, or after the applicable date, the Association desire to have street lights throughout Wyncrest, as developed, they will be installed under a lease agreement with the utility involved and the rental obligation there under will be a common expense.

Ponds:

Any costs associated with treatment of the ponds, including but not limited to fountain repairs, treatment of the water or repairs made to the associated storm water drainage system and it's piping.

Any auxiliary silt and erosion control fees or expenses associated with the detention ponds plus any government inspections fees as required.

Fifty percent (50%) of the cost of counsel expenses to create this Declaration and the **Wyncrest** Homeowners Association, including, but not limited to, Articles of Incorporation, By-Laws, Secretary of State file fee and initial minutes.

(l) "Declarant"/"Developer" shall mean and refer to M.Kenton Franklin Development, LLC, an Indiana limited liability company, and any successors and assigns of M. Kenton Franklin Development, LLC whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title, to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;

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

(n) "Lot" shall mean and refer to any and each portion of the Real Estate designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such

Dwelling Unit), as designated by Declarant by its deed of the same to another Person. A Lot will not necessarily be the same as any single numbered parcel of land shown upon, and identified as a Lot on, any recorded subdivision plat of the Real Estate or any part thereof. For purposes of this Declaration, a "Lot" may be (i) any single numbered parcel of land identified as a Lot on such subdivision plat, (ii) part of such a numbered parcel of land, (iii) such a numbered parcel of land combined with part or all of another such numbered parcel of land, or (iv) parts or all of two (2) or more of such numbered parcels of land combined. The determination of what portion of the Real Estate constitutes a "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, each tract of land conveyed by Declarant to another Person for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit). Notwithstanding the foregoing, if after the initial conveyance of a portion of the Real Estate by Declarant to another Person it is agreed between Declarant and such Person to enlarge or reduce or otherwise change the portion of the Real Estate so originally conveyed to such Person as a "Lot", then the determination of what portion of the Real Estate constitutes such "Lot" for purposes of this Declaration shall be made by reference to, and shall mean, such "Lot" initially so conveyed by Declarant, as the same has been adjusted or changed at any time by conveyances by and between Declarant and such Person. Any deed or other instrument of conveyance so adjusting or changing the description of a "Lot" shall state on its face that it is made for such purpose. Any part of a "Lot" reconveyed to Declarant shall, upon such reconveyance, lose its character as part of a "Lot" and may thereafter be conveyed by Declarant as part of another "Lot". The foregoing procedures may be used to correct errors in descriptions, to adjust boundary lines of "Lots" or for any other reason;

(o) "Member" means a member of the Association.

(p) "Applicable Date or Declarant Turnover Date" refers to the time at which the Declarant relinquishes control of the governance of the Association as detailed on Article IV.

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

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

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

(t) "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such Additional Property as is hereafter made subject to this Declaration by recorded plats of all or part of the Exhibit B realty;

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

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

(w) "Rules and Regulations" – rules and regulations relative to the use, occupancy, operation and enjoyment of the Common Areas and the Common Maintenance Areas, and the Wyncrest Subdivision.

(x) "Community or Project" refers to the **Wyncrest** project as it is developed and as it continues to exist after the Applicable Date.

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

ARTICLE II Declaration

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

Section 2 Easement to Lot Owners

Declarant hereby grants a non-exclusive easement in favor of each owner for the use, enjoyment and benefit of the common areas (except as limited in use as being a limited common area) subject to all of the restrictions of this Declaration including Rules and Regulations. This easement shall run with and be appurtenant to each lot.

ARTICLE III Obligations of Declarant

Section 1. Agreement to Construct. Declarant has constructed or provided for, or will prior to the Applicable Date construct or provide for, the following:

- (a) a storm drainage system for the Real Estate (Exhibit A and Exhibit B realty), which will include a Detention Area heretofore described, inlet pipes, open ditches, swales, pipes and other structures and drainage courses.
- (b) the installation, in the Common Maintenance Areas of the subdivision identification signage and landscaping at the single entranceway and water and electric service to accommodate same;
- (c) the mounding and landscaping in the easement paralleling Whiteland Road.
- (d) the walls, identification signage and landscaping along and within Wyncrest Blvd.
- (e) Declarant proposes to convey title to the common area to the Association but reserves the sole discretion as to when this occurs taking into account whether improvements thereon are substantially complete and whether they exist in platted or unplatted areas of the subdivision.

Declarant shall have the absolute right to make this conveyance if the transfer is free and clear of liens except for real estate taxes not yet due. If however a first mortgage lien exists on the conveyance the transfer shall nevertheless occur if Declarant remain liable for such mortgage payments.

ARTICLE IV Association; Membership; Voting; Functions

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

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

(a) **Class A.** Class A members shall be all Owners except Class B members. Each Class A member shall be entitled to one (1) vote for each Lot of which such member is the Owner with respect to each matter submitted to a vote of members upon which the Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. Otherwise, in the absence of a determination of multiple owners, the vote shall be equally split between the multiple owners. Attendance at properly called Association meetings by one member of a jointly titled Lot shall vest in such sole attending member the entire one (1) vote.

(b) **Class B.** Class B members shall be Declarant and all successors and assigns of Declarant. Class B members shall be entitled to four (4) votes for each Lot depicted on the conceptual plan (Exhibit C) (which is for 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) THIRTY (30) DAYS AFTER THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS IS DELIVERED TO THE RESIDENT AGENT OF THE ASSOCIATION, OR

(ii) THIRTY (30) DAYS AFTER THE DATE WHEN THE CLASS A VOTES EQUAL THE CLASS B VOTES.

(iii) TEN (10) YEARS AFTER THE DATE OF RECORDATION OF THIS DECLARATION.

The Date applicable to the above is hereinafter referred to as the Applicable Date.

After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one, (1) Class A membership for each Lot owned.

Section 3. Functions. The Association has been (or will be) formed for the purpose of providing for the maintenance, repair, replacement, administration, operation of the Article III Section 1 matters and, to pay any other necessary expenses and costs related thereto, and to perform such other functions as may be designated for it to perform under this Declaration.

ARTICLE V

Board of Directors

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

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated or to be designated, in the Articles, to-wit: M. Kenton Franklin, Steven D. Shaul and Hershel Atkinson (herein referred to as the "Initial Board"), who has been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provision of, this Declaration, the Articles, the Bylaws or the Act (a) the Initial Board shall hold office until the first annual meeting of the members of the Association occurring on or after the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to such first annual meeting occurring on or after the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Association are entitled to vote under the Declaration, the Articles, the Bylaws, the Act or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Special member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a member of the Association).

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

Section 4. Term of Office, Vacancy and Number of Directors After the Applicable Date.

(a) **Term.** Subject to the provisions of Section 2 of this Article V, the entire membership of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the first annual meeting of the members occurring on or after the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified.

(b) **Number of Directors After Applicable Date.** The number of Directors to serve on the Board after the Applicable Date shall be a minimum of five (5) with a maximum of seven (7).

(c) Vacancies. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

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

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to providing for the administration of the Real Estate, the management, maintenance, repair, upkeep and replacement of the Common Maintenance Areas (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. No individual on the Board of Directors shall be responsible for both ordering materials or contracting for services and being authorized to pay for such. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

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

(b) Assessment and collection from the Owners of the Owners' respective shares of the Common Expenses;

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

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

(e) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Maintenance Areas and the business and affairs of the Association,

specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner by reasonable pre-arrangement;

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

(g) Paying any other necessary expenses and costs in connection with the Common Maintenance Areas; and

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

Section 7. 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 Maintenance Areas, and to perform all other maintenance, upkeep, repair and replacement duties of the Association and the Board;

(e) to include the costs of performing all of its functions, duties and obligations as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Association;

(g) to promulgate, adopt, revise, amend and alter from time to time such additional Rules and Regulations with respect to use, occupancy, operation and enjoyment of the Real Estate and the Common Maintenance 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 Owners; and

(h) to grant to such public or private companies, entities or bodies as the Board may approve, such easements as may be necessary to provide the Lots, and Dwelling Units and Common Maintenance Areas with facilities for utility and similar services, including but not limited to cable television facilities and service, provided that such easements are located within or are coextensive with any one or more utility easements, maintenance and access easement, landscape and maintenance easements, 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) to borrow funds to perform its duties for the benefit of the Association and Owners and use the assessments as collateral, if collateral is required, to secure such financing.

Section 8. Limitation on Board Action. After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$10,000.00 per year without obtaining the prior approval of a majority of the cumulative vote of the Owners, except that in the following cases such approval shall not be necessary;

(a) contracts for replacing or restoring portions of the Common Maintenance 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 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 Owners.

Section 9. Compensation. No Director shall receive any compensation, either directly or indirectly in connection with his or her services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 10. Non-Liability of Directors. The Directors shall not be liable to the Owners or any other Persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

Section 11. Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him

in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for 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 12. Bond. The Board of Directors may provide surety bonds and may require the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary, to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful, abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

Section 13. Initial Management. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Managing Agent for the Real Estate and Common Maintenance Areas, and to perform all the functions of the Association, until the Applicable Date. Declarant may, at its option, engage a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

ARTICLE VI Real Estate Taxes; Utilities

Section 1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot.

Section 2. Utilities. Each Owner shall pay for his own utilities which, to the extent possible, shall be separately metered to each Lot and Dwelling Unit. Utilities which are not

separately metered to an Owner's Lot or Dwelling Unit shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

ARTICLE VII Maintenance, Repair and Replacement

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

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

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

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

repairing such damage, any reasonable attorneys fees, and collection fees shall be added to and become a part of the assessment to which such Owner's Lot is subject.

The authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance, repairs or replacements of or to the Common Maintenance Areas and items, including, but not limited to, access to any easements reserved, granted or created by any **Wyncrest** subdivision plat or of any portion of the Real Estate for such purposes.

ARTICLE VIII Architectural Standards

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

THIS ARTICLE SHALL NOT APPLY TO THE ACTIVITIES OF THE DECLARANT, NOR TO CONSTRUCTION OR IMPROVEMENTS OR MODIFICATIONS TO THE COMMON MAINTENANCE AREAS BY OR ON BEHALF OF THE ASSOCIATION.

THIS ARTICLE MAY NOT BE AMENDED WITHOUT THE DECLARANT'S WRITTEN CONSENT SO LONG AS THE DECLARANT OWNS ANY LAND SUBJECT TO THIS DECLARATION.

Section 1. Architectural Control Committee. There shall be, and hereby is, created and established the "**Wyncrest** Architectural Control Committee" ("Committee") which shall have exclusive jurisdiction over all construction on any portion of the Properties. UNTIL 100% OF THE PROPERTIES HAVE BEEN DEVELOPED, CONVEYED TO PURCHASERS AND CONSTRUCTION HAS STARTED ON EACH LOT ; The DECLARANT, or not more than five, nor less than three, persons designated by it, SHALL CONSTITUTE THE COMMITTEE AND SHALL SERVE AT THE DISCRETION OF THE DECLARANT. THERE SHALL BE NO SURRENDER OF THIS RIGHT PRIOR TO THAT TIME EXCEPT IN A WRITTEN INSTRUMENT IN RECORDABLE FORM EXECUTED BY THE DECLARANT. After the, transfer from The DECLARANT the Committee shall become a standing committee of the Association, consisting of not more than five, nor less than three, persons as may, from time to time, be provided in the Bylaws. If the Bylaws do not at any time provide for the Committee, then the Board shall be and constitute the Committee.

Section 2. Approval Process. The Committee has prepared and promulgated, on behalf of the Board of Directors, design and development guidelines and application and review procedures. Copies are on file in the office of the Declarant (or the Association, as the case may be) which are incorporated into this Declaration by reference. The guidelines and procedures shall be those of the Association, and the Committee shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction, modification, addition or alteration made on or to any existing structure, upon all or any portion of the Properties and such Owners and builders shall conduct their operations strictly in accordance therewith. The Committee, or its designee, must give written approval for any building contractor selected by the Lot Owner for construction.

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

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

(a) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Declarations, the plat restrictions or any rules, regulations or guidelines adopted by the Committee:

(b) the design or color scheme of a proposed improvement or the materials proposed to be used are not in harmony with the general surroundings of the Lot or with adjacent buildings or structures in the sole opinion of the Committee; or

(c) the proposed improvement, or any part thereof, would, in the sole opinion of the Committee, be contrary to the interest, welfare or rights of all or part of other Owners.

Section 4. Duties of Committee. The Committee shall approve or disapprove proposed improvements within fifteen (15) calendar days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and in the event that such notification is one of disapproval, it shall specify the reason or reasons therefor. In the event that the Committee fails to approve or disapprove such plans or to request additional information reasonably required within 45 days after submission of all required or requested information, the plans shall be deemed approved.

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

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

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

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

Section 9. Inspection. The Committee and the Declarant may inspect work being performed to assure compliance with these Restrictions, the plat restrictions and applicable regulations. However, neither the Committee, nor any member thereof, nor the Declarant, nor any agent or contractor employed or engaged by the Committee or the Declarant, shall be liable or responsible for defects, nonconformity or deficiencies in any work inspected or approved by it or them, or on its or their behalf. Further, no such inspection or approval given by or on behalf of the Committee or the Declarant shall be taken or deemed to be or constitute a warranty or guaranty of the work so inspected or approved.

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

Section 11. Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single Dwelling Unit, he shall apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Dwelling Unit; **provided, however,** that any dues, fees or other charges shall be assessed against each Lot individually. If an owner keeps title of two contiguous lots for more than 365 days and occupies a dwelling unit located on one of the lots the Committee reserves the right to request that owner finish grade and seed the balance of the two lots so as to maintain same in a reasonably manicured manner and install all sidewalks as shown on the county approved development plans.

ARTICLE IX Use Restrictions/Covenants and Regulations

The following covenants and restrictions contained in Exhibit D attached and made a part hereof concerning the use and enjoyment of the Lots, Dwelling Units, Common Areas and Common Maintenance Areas which are in addition to any other covenants or restrictions contained herein and in the Final Plat(s) of **Wyncrest**. All such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and are enforceable by an Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees, but there shall be no right or reversion or forfeiture resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the Articles or Bylaws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant in and on the Real Estate (other than individual Dwelling Units and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. Declarant shall have the right to remove the same from the Real Estate and Additional Property at any time.

ARTICLE X **Assessments**

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnish the Owners with a financial statement of operations by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget. Annually, on or before the date of the annual or special meeting of the Association at which the budget is to be acted upon, the Board of Directors shall cause to be prepared a proposed annual budget for the next ensuing fiscal year estimating the total amount of the Common Expenses for such next ensuing fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual or special meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual or special meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next ensuing fiscal year. At such annual or special meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the eligible Owners represented at such meeting; provided, however, that in no event shall such annual or special meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Maintenance Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Maintenance Areas. Such replacement reserve fund for capital expenditures and replacement repair of the Common Maintenance Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks, or savings and loan associations authorized to conduct business in Johnson County or Marion County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual or special meeting of the Association at which the budget is to be acted upon, there is no annual budget approved by the Owners as herein provided for the current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110 %) of such last approved budget, as a temporary budget.

Section 3. Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the fiscal year covered thereby as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot, provided, immediately following the adoption of the annual budget, each Owner shall be given written notice of the assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, each Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in full, in advance by a date specified by the Board which date shall not be earlier than fifteen (15) days after the written notice of such Regular Assessment is given to the Owners. However, at the option of the Board, the Regular Assessment against each Lot may be paid in advance in equal quarterly installments commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the Regular Assessment, whether in one payment or in quarterly installments, shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

(a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether annual or quarterly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether annual or quarterly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment in full in advance, then the adjustments set forth under (a) above or (b) shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners. The Regular Assessment for each fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfer his Lot or any

interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for the Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 2 of Article X hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year with respect to which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same. The initial Regular Assessment is \$275.00 per lot payable in advance.

(c) Notwithstanding anything to the contrary herein concerning Declarant not being obligated for Regular Assessment, the Declarant after the Applicable Date will contribute twenty-five percent (25%) of the Regular Assessment for unimproved Lots in Declarant's name, in areas involving the Exhibit A and Exhibit B realty that appear in recorded plats for the Wyncrest Community.

FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT SPECIFICALLY AGREES OTHERWISE IN WRITING.

Section 4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in this Declaration, the Articles, the Bylaws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, but not on Lots owned by Declarant, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration. THE DECLARANT SHALL ONLY BE RESPONSIBLE FOR SPECIAL ASSESSMENTS AFTER THE "APPLICABLE DATE" OCCASIONED BY EXTRAORDINARY REPAIRS TO ORIGINALLY INSTALLED INFRASTRUCTURE, BUT SHALL NOT BE RESPONSIBLE FOR NEW INFRASTRUCTURE OR AMENITIES DESIRED BY OTHER OWNERS UNLESS DECLARANT SPECIFICALLY AGREES OTHERWISE IN WRITING.

Section 5. Failure of Owner to Pay Assessments.

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Maintenance Areas and items deemed Common Maintenance Areas for purposes of maintenance, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Maintenance Areas or by abandonment of the Lot belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments against his Lot. Where the Owner constitutes or consists of more than one Person, the liability of such Persons shall be joint and several. Regular and special assessments should constitute a lien against the Lots and Dwelling Units thereon. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments against his Lot when due, the lien for such Assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mechanic's lien on real property or as otherwise provided or permitted by law. Upon the failure of an Owner to make timely payments of any such Regular Assessments or Special Assessments, when due, the Board may, in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing (and without thereby waiving) the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, or any other charges due the Association, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit all of the costs and expenses of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such Assessments or charges were due, until paid, at a rate equal to the "prime interest rate" then in effect as publicly announced or published by Bank One or its successors (or if said Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana selected by the Board) plus 4% but in no event more than the maximum rate allowable under applicable usury laws.

(b) Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or the Bylaws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment or other charges as to such installments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments or other charges thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments or other charges, the lien for which has been divested as aforesaid, shall, if not collected from the party personally liable therefor, be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which it arose).

(c) In addition to the remedies above stated for failure to pay assessments, the Association may disqualify a delinquent Owner from his right to vote and to hold office or committee membership in the Association while Assessment are delinquent in addition to charging \$10.00 per day of delinquency to cover the administrative expense of addressing the delinquency.

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the Bylaws, in the Act or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Owners. The agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 2 of Article V hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Further, until the Applicable Date and notwithstanding the foregoing or anything else contained herein, no Regular Assessments, Special Assessments or other charges shall be owed or payable by Declarant with respect to any Lot or other portion of the Real Estate owned by Declarant while the same is owned by Declarant, nor shall any such Assessments or Charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, nor shall any such Assessments or charges become a lien on any such Lot or other portion of the Real Estate owned by Declarant, except as specifically detailed in the last paragraph of subsection 3 herein. Assessments against a Lot shall commence to accrue from the date each Lot is conveyed by Declarant to another Person, and a prorated portion of the Regular Assessment for the balance of the fiscal year of the Association against each Lot so conveyed by Declarant shall be paid by each purchaser upon such conveyance.

Section 7. Initial Working Capital and Start-Up Fund. Upon the closing of the initial conveyance of each Lot by Declarant to another Person, the purchaser of such Lot shall pay to the Association, in addition to any other amount then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount Two Hundred Dollars (\$200) which payment shall be nonrefundable and shall not be considered as an advance payment of any Assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay expenses of the Association for its early period of operation of the Real Estate, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

ARTICLE XI

Mortgages

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

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

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

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

ARTICLE XII

Insurance

Preface

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ARTICLE (INSURANCE), THE ASSOCIATION WILL SEEK TO OBTAIN THE COVERAGES INDICATED SUBJECT HOWEVER TO THE LIMITATION OF WHAT'S AVAILABLE FROM INSURANCE CARRIERS FOR **WYNCREST** COUPLED WITH CONSIDERATION AS TO EXCEPTIONS AND EXCLUSIONS OF COVERAGE, AND DEDUCTIBLES TO MAINTAIN CONTROL OF THIS ITEM OF COMMON EXPENSE.

THE ASSOCIATION WELCOMES THE OWNERS' INPUT REGARDING THE BEST COVERAGE FOR THE BEST PRICE AND WILL SUPPLY OWNERS WITH A SUMMARY FROM THE ASSOCIATION'S INSURANCE PROFESSIONAL WHICH WE URGE OWNERS TO SHARE AND CHALLENGE THEIR OWN INSURANCE PROFESSIONAL FOR RECOMMENDATIONS AS TO THEIR REQUIRED INSURANCE AND ANY

ADVISABLE ADDITIONAL COVERAGE (GAP OR OTHERWISE) FOR DIRECT PURCHASE BY OWNERS.

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

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such Directors or if such bonds do not exceed the funds which will come into its hands, and there is damage to a part or all of the Common Maintenance Areas resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties in an amount to be determined by the Board, but not less than 150% of the loss, before the Board shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty on the Board in connection with any such insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or distributed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration.

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

Section 2. Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time, but in any event with a minimum combined limit of \$1,000,000.00 per occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Maintenance Areas and shall insure the Association, the Board of

Directors, Officers, any committee or organization of the Association or Board, any Managing Agent appointed or employed by the Association, the Declarant and all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

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

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

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

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

ARTICLE XIII Casualty and Restoration

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

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

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

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

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

ARTICLE XIV Amendment of Declaration

Section 1. Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

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

(d) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than seventy percent (70% in the aggregate of the votes of all Owners). In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

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

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

Section 2. Amendments by Declarant Only. Notwithstanding the foregoing or anything else contained herein, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if Declarant records the modification in the Office of the Recorder of Johnson County, Indiana, and if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (c) to bring this Declaration into compliance with any governmental requirements, (d) to comply with or satisfy the requirements of any insurance underwriters, insurance rating bureaus or organizations which perform (or may in the future perform) function similar to those performed by such agencies or entities, to subject additional property to these

restrictions, (f) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto, (g) to clarify, further define or limit any easement, or otherwise exercise any rights reserved herein, or (h) change the substance of one or more covenants, conditions, terms or provisions hereof but (A) does not materially increase the obligation(s) of any owner under any covenant, condition, term or provision without such owner's consent or (B) is necessary to comply with a bona fide governmental requirement, including applicable laws, ordinances, regulations or orders of any municipality or court having jurisdiction. In furtherance of the foregoing, a power coupled with an interest is hereby reserved by (and granted by each Owner to) the Declarant to vote in favor of, make, or consent to any amendments described in this Section 2 or behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 2 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

ARTICLE XV Annexation

Declarant hereby reserves the right, from time to time and at any time, to annex any portion of "Additional Property" into the Wyncrest Community. As of the date on which Declarant annexes any portion of the "Additional Property" into the subdivision, the owners of the Annexed Real Estate shall be deemed to be (for all purposes) owners of lots within the Wyncrest Community; all references in these covenants and restrictions or the Declaration to "Owner(s)" shall be deemed to include all owners of Lots within the annexed Real Estate; and all easements created herein shall bind, benefit and burden the owners of Lots within the Annexed Real Estate and the mortgages, grantees, heirs, assigns and successors of such owners, as provided. THE ABOVE SHALL BE ACCOMPLISHED BY FILING OF A RECORDED PLAT LABELED "WYNCREST" WITH THE JOHNSON COUNTY RECORDER'S OFFICE WHICH MAKES REFERENCE TO THIS DECLARATION AND LEGALLY DESCRIBES THE PORTION OF THE ADDITIONAL PROPERTY BEING SUBJECTED TO THE TERMS, OBLIGATION, AND CONDITIONS OF THIS DECLARATION. NO ANNEXATION OF ADDITIONAL PROPERTY MAY BE MADE AFTER THE EXPIRATION OF FIFTEEN (15) YEARS FROM THE DATE OF RECORDING THIS DECLARATION. CONSEQUENTLY, ANY PORTION OF THE ADDITIONAL PROPERTY NOT SO PLATTED WILL NOT BE SUBJECT TO THIS DECLARATION AND WILL NOT BE PART OF THE WYNCREST COMMUNITY.

ARTICLE XVI
Acceptance and Ratification

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

ARTICLE XVII
Negligence

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

ARTICLE XVIII
Benefit and Enforcement

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

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

The Association may as respects an Owner who violates these restrictions, after written notice to the Owner detailing the nature of the violation with a time period established by the Association to cure or conform, disqualify the voting rights and right to hold office while the violation continues and may further in the Board's sole discretion, additionally charge \$10.00 per day or in part, with each day after the cure period being a separate violation at a chargeable rate per violation to cover administration expenses. This fine, if not paid when required, will be processed in the same manner as assessments.

**ARTICLE XIX
Non-Liability of Johnson County Drainage Board**

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

**ARTICLE XX
Miscellaneous**

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

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

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, a Notary Public in and for said County and State, personally appeared M. Kenton Franklin, the Manager of M. Kenton Franklin Development LLC, who acknowledged the execution of the above and foregoing instrument for and on behalf of said limited liability company, and, who having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 2nd day of November, 2006.

My Commission Expires:
2/6/08

Kathleen M. Pruitt
Notary Public
Printed Kathleen M. Pruitt
Resident of Johnson County



This instrument was prepared by:

This document was prepared by Raymond Good, of LEWIS AND KAPPES, One American Square, Suite 2500, Indianapolis, IN 46282-0008 Phone 317- 639-1210 Fax 317-639-4882 who affirms under penalty of perjury that he has taken reasonable care to redact each Social Security Number in this document unless required by law.

Raymond Good

Return this document to:

M. Kenton Franklin Development, LLC
4095 Mountbatton Drive
Greenwood, In 46143

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

Section 4. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

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

IN WITNESS WHEREOF, M. Kenton Franklin Development, LLC, by its duly authorized Manager, Declarant herein, has executed this Declaration on the day and year first hereinabove set forth.



M. Kenton Franklin Development, LLC

By: *M. Kenton Franklin*
M. Kenton Franklin, Manager

Exhibit "A"

LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 23, Township 13 North, Range 3 East of the Second Principle Meridian, in White River Township, Johnson County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Southwest Quarter; thence North 88 degrees 36 minutes 13 seconds East (bearing based on a deed recorded in Deed Book 273, Page 731 in the Office of the Recorder of Johnson County, Indiana) on and along the South line of said Quarter Section a distance of 500.04 feet to the Point of Beginning; thence North 00 degrees 00 minutes 00 seconds East and parallel to the West line of said Quarter Section a distance of 899.07 feet; thence North 88 degrees 47 minutes 20 seconds East a distance of 826.70 feet; thence North 00 degrees 00 minutes 00 seconds East and parallel to the West line of said Quarter Section a distance of 235.25 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 300.35 feet; thence South 53 degrees 02 minutes 01 seconds East a distance of 284.63 feet to a non-tangent curve to the left having a radius of 125.00 feet; thence on and along said curve a distance of 18.33 feet, said curve having a chord bearing of South 32 degrees 45 minutes 55 seconds West and a chord distance of 18.31 feet; thence South 72 degrees 46 minutes 42 seconds East a distance of 169.55 feet; thence South 15 degrees 43 minutes 44 seconds West a distance of 134.23 feet; thence South 00 degrees 00 minutes 55 seconds West a distance of 750.01 feet to the South line of said Quarter Section; thence South 88 degrees 36 minutes 13 seconds West on and along said South line a distance of 1470.17 feet to the Point of Beginning, containing 32.69 acres more or less.

Subject to all legal rights-of-ways, easements and restrictions of record.

LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 23, Township 13 North, Range 3 East of the Second Principle Meridian, in White River Township, Johnson County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Southwest Quarter; thence North 88 degrees 36 minutes 13 seconds East (bearings based on a deed recorded in Deed Book 273, Page 731 as recorded in the Office of Johnson County Recorder) a distance of 500.04 feet to the Point of Beginning; thence North 00 degrees 00 minutes 00 seconds East and parallel to the West line of said Quarter Section a distance of 899.07 feet; thence North 88 degrees 47 minutes 20 seconds East a distance of 826.70 feet; thence North 00 degrees 00 minutes 00 seconds East and parallel to the West line of said Quarter Section a distance of 1775.25 feet to the North line of said Quarter Section; thence North 88 degrees 33 minutes 03 seconds East on and along said North line a distance of 1326.83 feet to the Northeast corner of said Southwest Quarter; thence South 00 degrees 00 minutes 01 seconds East on and along the east line of said Southwest Quarter a distance of 1922.86 feet; thence South 88 degrees 36 minutes 13 seconds West and parallel to the South line of said Quarter Section a distance of 294.09 feet; thence South 00 degrees 00 minutes 27 seconds West a distance of 750.00 feet to a point on the South line of said Quarter Section; thence on and along said South line South 88 degrees 36 minutes 13 seconds West a distance of 75.01 feet; thence North 00 degrees 00 minutes 27 seconds East a distance of 750.00 feet; thence South 88 degrees 36 minutes 13 seconds West and parallel to the South line a distance of 314.09 feet; thence South 00 degrees 00 minutes 55 seconds West a distance of 750.01 feet to a point on the South line of said Quarter Section; thence on and along said South line South 88 degrees 36 minutes 13 seconds West a distance of 1470.17 feet to the Point of Beginning, containing 86.643 acres more or less.

Subject to all legal rights-of-way, easements and restrictions of record.

Excluding

LEGAL DESCRIPTION

A part of the Southwest Quarter of Section 23, Township 13 North, Range 3 East of the Second Principle Meridian, in White River Township, Johnson County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Southwest Quarter; thence North 88 degrees 36 minutes 13 seconds East (bearing based on a deed recorded in Deed Book 273, Page 731 in the Office of the Recorder of Johnson County, Indiana) on and along the South line of said Quarter Section a distance of 500.04 feet to the Point of Beginning; thence North 00 degrees 00 minutes 00 seconds East and parallel to the West line of said Quarter Section a distance of 899.07 feet; thence North 88 degrees 47 minutes 20 seconds East a distance of 826.70 feet; thence North 00 degrees 00 minutes 00 seconds East and parallel to the West line of said Quarter Section a distance of 235.25 feet; thence North 90 degrees 00 minutes 00 seconds East a distance of 300.35 feet; thence South 53 degrees 02 minutes 01 seconds East a distance of 284.63 feet to a non-tangent curve to the left having a radius of 125.00 feet; thence on and along said curve a distance of 18.33 feet, said curve having a chord bearing of South 32 degrees 45 minutes 55 seconds West and a chord distance of 18.31 feet; thence South 72 degrees 46 minutes 42 seconds East a distance of 169.55 feet; thence South 15 degrees 43 minutes 44 seconds West a distance of 134.23 feet; thence South 00 degrees 00 minutes 55 seconds West a distance of 750.01 feet to the South line of said Quarter Section; thence South 88 degrees 36 minutes 13 seconds West on and along said South line a distance of 1470.17 feet to the Point of Beginning, containing 32.69 acres more or less.

Subject to all legal rights-of-ways, easements and restrictions of record.

Exhibit "B"

Wyncrest Subdivision

White River Township, Johnson County, Indiana

Exhibit "C"



SCALE: 1" = 300'

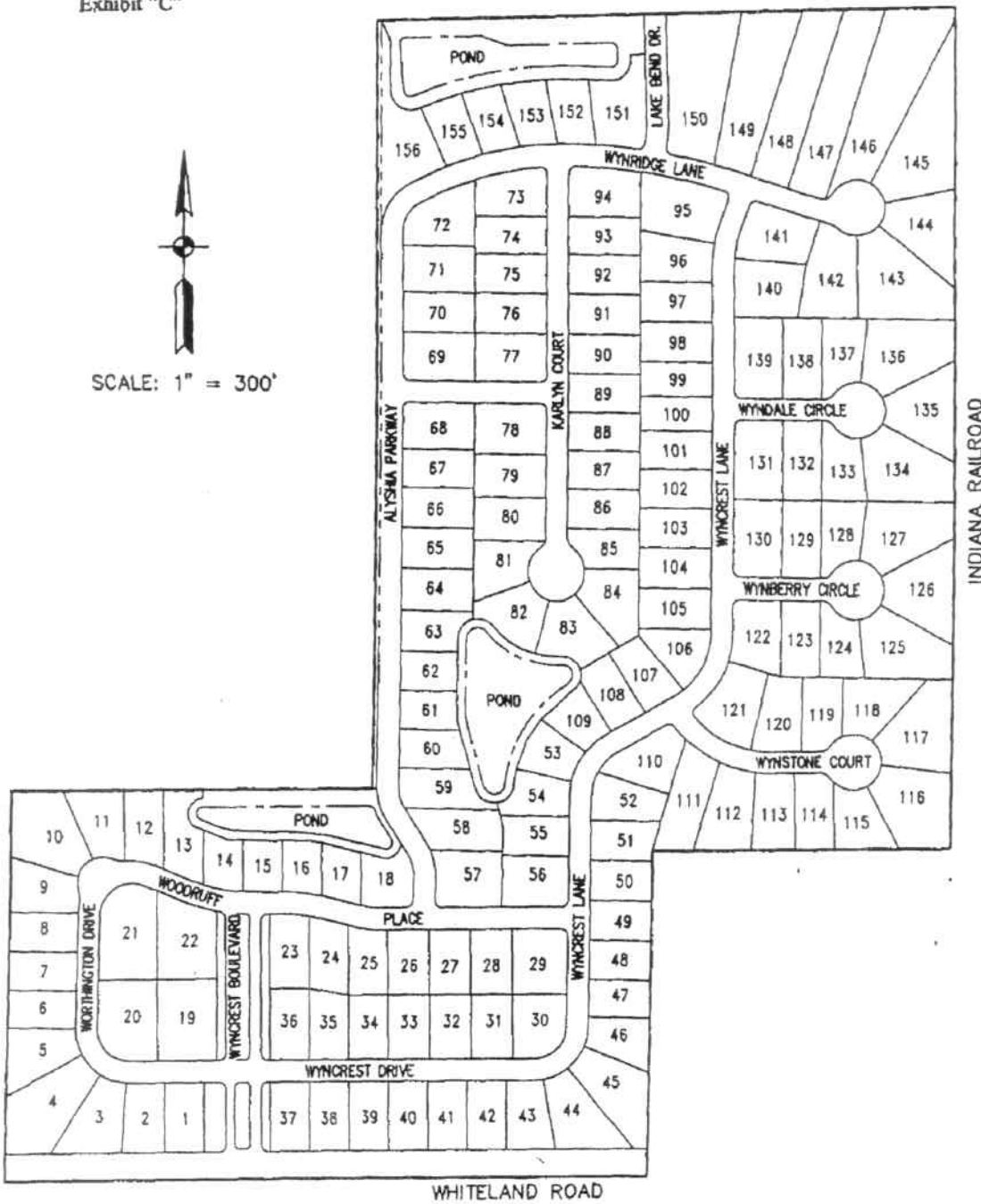


EXHIBIT D

Wyncrest Covenants and Restrictions

Section 1. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties except as approved by the Architectural Control Committee. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article VIII of this Declaration.

Section 2. Business Use. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant of a Lot may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent to detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties, (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

Section 3. Maintenance of Lots and Improvements along with Declarant and the Association's Right to Perform Certain Maintenance and Removal.

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

- (i) Mow the Lot at such times as may be reasonably required in order to keep the grass no longer than five inches and prevent the unsightly growth of vegetation and noxious weeds;
- (ii) Remove all debris or rubbish;
- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iv) Cut down and remove dead trees;
- (v) Where applicable, prevent debris and foreign material from entering drainage areas; and

- (vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (vii) Remove any and all dead and dying limbs from any still living tree which overhang the 50' street right of way or common areas.

In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements, or remove any unauthorized item or structure, situated thereon in accordance with the provisions of these Restrictions and the provisions of any recorded plat of the Real Estate, the Declarant, until the Applicable Date, and, thereafter, the Association through its agents and employees or contractors, should have the right to enter upon said Lot and repair, mow, clean, remove or perform such other acts as may be reasonably necessary, to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions and the provisions contained in any such plat. The cost thereof to the Declarant or the Association shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Common Expenses. Neither the Declarant nor the Association, nor any of its agents, employees or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

Section 4. Ditches and Swales and Erosion Control. It shall be the duty of the Owner of any Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary. It shall be the duty of the Owner of any Lot to establish as needed and to maintain all erosion control on his or her respective Lot.

Section 5. Drilling. No oil or water drillings, oil development operations, oil refining, quarries or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted on any Lot.

Section 6. Firearms. The discharge of firearms within the Properties is prohibited. The term "Firearms" includes bows and arrows, slingshots, "B-B" guns, pellet guns, paint-ball guns and other firearms of all types, regardless of size. Notwithstanding anything to the contrary, contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

Section 7. Ground Elevations and Erosion Control. It shall be the Lot Owner's and or Contractor's responsibility to construct, maintain and comply with all building, and lot finish grade and swale elevations. Builder /owner acknowledge that a minimum bottom of footing elevation is shown on the recorded plat. This minimum elevation must be maintained and have the elevation certified by a firm selected by the Developer before Johnson County will do the county's footing inspection. This certification must be done BEFORE requesting county inspections and

any placing of concrete. This inspection will only be required on the "Short wall" footings. Basement wall footings will not require the inspection and certification.

Builder is to comply with all State of Indiana and Johnson County erosion control requirements.

Section 8. Heating Plant. Every Dwelling Unit must contain a heating plant installed in compliance with the applicable codes and capable of providing adequate heat for year-round human habitation of the Dwelling Unit.

Section 9. Insurance Impact. Nothing shall be done or kept by an Owner in any Dwelling Unit, or on any Lot, or on any of the Common Maintenance Areas, which will cause an increase in the rate of insurance on any Common Maintenance Areas. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any part of the Common Maintenance Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

Section 10. Landscape Easements. There are strips and areas of ground shown titled as various easements on the Final Plat for the Real Estate which are hereby reserved for the use of owners of lots to the extent and limited for the purposes set forth in the Declaration and for the use of Declarant and Association for the installation, maintenance, repair and replacement of the matters detailed in Item (1) (h) requiring maintenance. Except as installed and maintained by lot owners, pursuant to the requirements of the Declarations, or by Declarant and the Association, no permanent or other structure (except walls, sidewalks and fences otherwise permitted hereby or by the Declarant and approved by the Committee) shall be erected or maintained on said strips and areas by the owner of any lot subject to any such "Landscape Easement", and the owners of such lots affected by any such "Landscape Easement" shall take and hold title to their lots subject to the foregoing rights of the Declarant and the Association and shall not do or permit to be done anything which will obstruct or interfere with or remove any installations or landscaping made by the Declarant or Association in any such "Landscape Easement". The foregoing grant of rights to the Declarant shall not impose an obligation on the Declarant to undertake such maintenance unless it elects to do so.

Section 11. Maintenance of Lots and Improvements. It shall be the responsibility of each Owner to prevent the occurrence of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the forgoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. No waste shall be committed in any Dwelling or on any Lot. Each Owner shall:

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

- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Real Estate;
- (iv) Cut down and remove dead trees;
- (v) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (viii) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.
- (ix) Remove any and all dead and dying limbs from any still living tree which overhang the 50' street right of way or common areas.

Section 12. Model Homes. No Owner of any Lot shall build or permit the building upon his Lot or any dwelling house that is to be used as a model home or exhibit house without permission to do so from the Declarant.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which such entity owns within the Properties.

Section 13. Non-applicability to Association. Notwithstanding anything to the contrary contained herein, the covenants and restrictions set forth in this Article IX shall not apply to or be binding upon the Association in its ownership, management, administration, operation, maintenance, repair, replacement and upkeep of the Common Maintenance Areas to the extent the application thereof could or might hinder, delay or otherwise adversely affect the Association in the performance of its duties, obligations and responsibilities as to the Common Maintenance Areas.

Section 14. Occupancy and Residential Use of Partially Completed Dwelling House Prohibited. No Dwelling Unit constructed on any of the Lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether the Dwelling Unit shall have been substantially completed shall be made by the Committee and such decision shall be binding on all parties, however, if an Occupancy Permit from government is involved the issuance thereof shall be deemed substantial completion.

Section 15. Occupants Bound. All provisions of the Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Owner. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Maintenance Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws and rules and regulations adopted pursuant thereto.

Section 16. Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trucks denominated as being bigger than a one ton truck, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft and boat trailers shall be parked only in enclosed garages. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks.

Section 17. Residential Use. The Properties shall be used only for single family residential purposes; provided, however, that such restriction shall not apply to any Lot or part thereof or any other part of the Properties at any time owned by the Association which constitutes a part of the Common Maintenance Areas and upon which no Dwelling Unit is located.

Section 18. Sales Office. To the extent deemed necessary or desirable by Developer, Developer shall be permitted to place sales offices and construction and storage facilities for uses attributable to the construction, development, marketing and maintenance of the subdivision on any unsold lot or on any Common Area in the subdivision until 180 days following the sale, closing and deed transfer to a lot owner other than Developer of the last lot in the subdivision. Developer reserves the right to allow other builder's in the Development to maintain Models in the community.

Section 19. Sanitary Waste Disposal.

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

B. **Construction of Sanitary Sewage Lines.** All sanitary sewage lines on the Lots shall be designed, constructed and installed in accordance with the provisions and requirements of Johnson County, Greenwood Sanitation Department, and these Restrictions.

C. **Connection Requirements for Sanitary Sewers.** All homes shall have sewers directly connected to the Greenwood Sanitation System.

Section 20. Sidewalks. Sidewalks shall be constructed as required by the sidewalk plan approved by the Johnson County Plan Commission, which construction shall be the responsibility of the lot owner upon whose lot the sidewalk is to be constructed, provided, however, that any Common Area sidewalks shall be constructed by the Developer as designated on the final development sidewalk plan. All sidewalks to be constructed by lot owners shall be completed at such times as the driveway on the lot is constructed. All sidewalks shall be poured concrete, with expansion joints, such construction to be perpetual and continuous along the street frontages and across the driveway of each Lot. In the event any Owner or parties with whom Owner contracts for work on the Owner's Lot, causes damage to a sidewalk or street curb such Owner shall be responsible for repairing said damage.

Section 21. Signs. No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors, except entry and directional signs installed by Declarant and such signs, as may be required by legal proceedings. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Signs advertising property for rent are specifically prohibited. Violation of this sign restriction will result in Fifty Dollars (\$50.00) per day as an administrative fee, payable to the Association.

To maintain a common appearance within the subdivision replacement of the decorative street sign blades, stop signs, speed limit signs or informational signs due to damage of any sort shall be an expense of the Association.

Section 22. Tents, Trailers and Temporary Structures. Except as may be permitted by the Declarant or the Committee during initial construction within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Lot or the Common Maintenance Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events for a period not longer than 48 hours unless otherwise consented to by the Board of Directors of the Declarant.

Section 23. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.