

**Declaration of Covenants, Restrictions and Assessments**  
**of**

***Ashley Oakes***

THIS DECLARATION of Covenants, Restrictions, and Assessments, ("Declaration") is made this 2nd day of September, 1997 by The Mackenzie Corporation, an Indiana Corporation, ("Declarant");

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property in Hendricks County, Indiana, as described in Exhibit "A" attached hereto and hereby made a part hereof; and,

WHEREAS, Declarant subdivided said real property and designated said subdivision as Ashley Oakes, a parcel being more particularly described on said plat thereof recorded as Instrument No. 97-19659 on or near the same date as this Declaration in the Office of the Recorder of Hendricks County, Indiana, and hereby made a part hereof consisting of 39 lots.

WHEREAS, Declarant hereby further establishes a system of assessments to be borne by all Lot Owners to provide for maintenance of Common Property, Common Expenses of the Development, and mutual enforcement of this Declaration.

NOW, THEREFORE, Declarant hereby affirms that the Development shall hereafter be held, subdivided, sold, and conveyed subject to this Declaration which purports to protect the value and desirability of the Development, and which shall run with the Development and shall be binding on all parties having any right, title or interest in the Development or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 09-18-1997 At 01:45 pm.  
COVENANTS 39.00  
Vol. 26 Pg. 173 - 188

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**ARTICLE I**  
**DEFINITIONS**

A. The following are the definitions of terms used in this Declaration:

1. "Assessment" shall mean that share of the Common Expenses imposed upon each Lot, together with any interest or late charges thereon imposed for delinquency and any costs of collection thereof, including attorney fees, as determined and levied pursuant to the provisions herein.

"Association" shall mean Ashley Oakes Homeowners Association, Inc., its successors and assigns, which shall be created as an Indiana not-for-profit corporation. Its membership shall consist of all Owners.

"Builder" shall mean the contractor(s) constructing the first Dwelling Unit on each Lot.

"Committee" shall mean the Development Control Committee who shall be subject to removal by the Declarant as long as Declarant owns a Lot, at any time with or without cause. Any vacancies from time to time existing shall be filled by appointment by the Board of Directors.

"Common Expenses" shall mean the actual and estimated cost to the Association for maintenance, lighting, management, operation, repair, taxation, improvement or replacement of any Common Property. Such costs shall include but not be limited to maintenance of any easements, entry signs or landscaping, storm water retention lakes, and any other costs or expenses incurred by the Association for the benefit of the Common Property, including the cost of insurance as required herein. Common Expenses shall not include any construction costs incurred in connection with the initial installation of the streets, utility lines and mains, drainage systems, or other improvements constructed by Declarant or utility companies.

"Common Property" shall mean all real and/or personal property which is in the nature of common or public improvements, whether or not such property is located on or within any Common Area.

"Development" or "Property" shall mean Ashley Oakes subdivision, a 39-lot residential subdivision located in Hendricks County, Indiana.

"Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns any Lot or any other portion of the Property.

"Dwelling Unit" shall mean a detached single-family residence, including attached garage, situated upon a Lot in the Development.

"Lot" shall mean any residential parcel of real estate as shown on the Plat. No Lot may be subsequently subdivided for development purposes, except for Declarant's adjustment for infractions which may occur.

"Owner" shall mean a person or legal entity which acquires title or interest, in and to a Lot, but shall exclude those persons having such interest merely as security for the performance of an obligation.

"Plat" shall mean the subdivision plat(s) of the Development identified as the Plat of Ashley Oakes and recorded in the Office of the Recorder of Hendricks County, Indiana.

**ARTICLE II**  
**CHARACTER OF THE DEVELOPMENT**

Each Lot shall be used exclusively for single family residential purposes. No permanent structure shall be erected, placed or permitted to remain upon any Lot except a Dwelling Unit. No business buildings may be erected on any Lots thereof. No business may be conducted on any Lots thereof, other than those occupations permitted in the Zoning Ordinance of Hendricks County, Indiana or applicable ordinances affecting the Development. All Lots shall be subject to the easements, restrictions and limitations of record, and to all governmental zoning authority and regulations affecting the Development, all of which are incorporated herein by reference.

**ARTICLE III**

**RESTRICTIONS CONCERNING SIZE, PLACEMENT, AND MAINTENANCE OF DWELLING UNITS AND OTHER STRUCTURES**

A. Type, Size, and Nature of Construction Permitted and Approvals Required: Declarant shall approve all Builder plans including plot plans, elevations, specifications, and exterior colors for paint, brick, shingles, etc. No exterior improvement such as a greenhouse, porch, garage, swimming pool, hot tub, deck, fence, basketball goal, tennis court or other exterior improvement or addition shall be erected, placed, stored, or altered on any Lot without the prior written approval of the Committee. Each Owner or Builder shall request such approval in writing to the Committee and shall take into account restrictions including, but not limited to, the type of materials, exterior facade, exterior paint colors, design, layout, location, landscaping and finished grade elevations.

Declarant may, at the option of Declarant, impose higher standards of construction to the Development than those required herein throughout the Development Period.

1. Minimum Areas: Any Dwelling Unit shall have the following minimum areas, exclusive of open porches, basements, and garages:
  - a. The minimum floor area of a one-story Dwelling Unit shall be 1,400 square feet.
  - b. The minimum floor area of a Dwelling Unit of more than one story shall be 1,750 s.f.

All garages shall be a minimum of a 2-car garage.

2. **Driveways and Off-Street Parking Spaces:** There shall be a minimum of two (2) off-street, off-sidewalk parking spaces in each driveway. All driveways shall be constructed upon initial construction and completed prior to occupancy, weather permitting, with concrete. A driveway shall not exceed in width, the side boundaries of the garage it serves and must be a minimum width equal to the interior width of the garage door it serves, unless specifically approved by the Declarant or the Committee. No driveway shall extend into the side yard(s). No additional parking shall be permitted on a Lot other than in the existing driveway.
4. **Prohibition of Relocated or Moveable Structures:** No Dwelling Unit, garage, trailer, or other structure of any kind may be moved onto any Lot for use as either a temporary or permanent residence or for any other purpose, except as reasonably required in connection with the construction of a Dwelling Unit on a Lot.
5. **Maintenance of Lots During Construction:** All Lots shall be kept and maintained in a sightly and orderly manner during the period of construction of any structures on said Lots. It is understood by all parties to this Declaration that due to the construction nature of the Development throughout the Development Period, a certain level of rubbish and erosion will exist until all Lots have been improved. Declarant shall not be responsible for the removal of debris, construction materials, etc. on any streets or Lots owned by Declarant due to the construction of the Development.
6. **Security Light, Mailbox, and Address Plate:** Prior to completion of construction, Builders shall install one (1) photoelectric ("dusk to dawn") security light in the front yard of each Dwelling Unit. Each Owner shall subsequently maintain their security light as to condition and bulb replacement. Also, a mailbox and stone address plate shall be installed in a location approved by Declarant and/or Post Office, etc. Declarant shall approve the style, color, and location of each security light, mailbox, and address plate prior to installation.
7. **Fences:** All fences shall be approved by the Committee prior to construction, and, except those installed by Declarant, must meet the following standards, unless approved otherwise by the Committee:
  - a. The design of the fence shall be shadow box, vinyl-clad chain link, or black wrought-iron style, unless another design is approved by the Committee.
  - b. If wooden fences are painted or stained, they shall be in a color approved by the Committee. Chain link vinyl color shall be black only.
  - c. For corner lots, no fence shall encroach into the side yard as determined by the building setback line unless approved by the Committee. For non-corner lots, no fence shall be installed between the street and the rear face of the house unless approved by the Committee.
  - d. All corner lot fences shall meet the requirements of Article III.B of this Declaration regarding sight distances.

- e. The heights of shadow box or similar privacy or pool fences may not exceed six (6) feet. The heights of any other type of fence may not exceed four (4) feet. Every fence shall be installed in a sturdy, workmanlike manner, and must be maintained in good condition by the Owner. Fence care includes but is not limited to repaint/restain, rust removal, and repair of structural damage, defects, or deterioration of fencing, posts, and gates.
- f. Any deviation from the above requirements must have written approval of the Committee.

9. **Unapproved Structures:** The following structures shall not be allowed in the Development.

Outside fuel storage tanks;  
Pet kennels, dog houses, or dog runs;  
Awnings and patio covers made of metal, fiberglass or similar type materials;  
Above-ground (or mid-grade or similar) swimming pools;  
Solar heat panels;  
Outbuildings, including storage sheds, detached garages, mini-barns, tool sheds or any temporary or permanent building other than the Dwelling Unit.

- 10. **Satellite Dishes and Antennas:** A satellite dish which does not exceed eighteen inches (18") in diameter may be installed in the Development if it is located so as not to be visible from the street, in the Committee's opinion. The maximum height of exposed antennas shall not exceed five (5) feet above the respective roof peak. As with any exterior improvement, the location of satellite dishes and antennas must also be approved by the Committee prior to installation.
- 11. **Brick, Roof, and Exterior color Requirement:** All Dwelling Units shall be improved with all-brick exterior on all sides of the first floor elevation. Declarant may approve of minor deviations of this requirement including porches, gables, etc. upon plan approval.

All Dwelling Units shall be improved with a minimum roof pitch of 8/12, except minor areas approved by Declarant. Declarant shall approve and determine compliance of shingle, brick, paint colors, etc. of all Dwelling Units throughout the Development Period. The Committee shall approve exterior colors after the Development Period.

- B. **Sight Distance at Intersections:** No fence, wall, hedge or planting which obstructs sight lines shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. No landscaping shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height sufficient to prevent obstruction of such sight lines.
- C. **Building Setback Lines:** Front, side and rear building setback lines are established as shown on the Plat. Between said lines and the right-of-way lines of the streets and the side and rear lot lines, no structures may be erected or maintained.

- D. **Damaged Structures:** No Dwelling Unit which has been partially or totally destroyed by fire or other catastrophic event shall be allowed to remain in such state without commencement of reconstruction for more than sixty (60) days from the date of such occurrence.
- E. **Maintenance of Lots and Improvements:** The Owner of any Lot shall at all times maintain the Lot and any improvements thereon in such a manner to prevent the Lot or improvements from becoming unsightly, in the opinion of the Committee. These requirements shall not apply to Lots owned by the Declarant during the Development Period or during the initial construction period of a Dwelling Unit.

Specifically, the Owner shall: 1) establish the original lawn and mow the grass with reasonable frequency to prevent its growth from exceeding four (4) inches in height; 2) keep Lot free of debris, equipment, stored building materials, and rubbish including any outside storage of trash containers; 3) prevent the existence of any other conditions which may detract from or diminish the aesthetic appearance of the Development in the opinion of the Committee; 4) remove dead or unsightly trees or other plants; and, 5) maintain the exterior of all improvements in good repair to avoid any unsightly appearance, in the opinion of the Committee.

The Committee shall establish a list of approved vendors ("Vendors") who shall be responsible for maintaining the Lots as to certain services in order to create a professional and consistent appearance throughout the Development. These services include, but are not limited to, lawn mowing, fertilization, leaf removal, snow removal, etc. Except for trash removal, these services shall be optional. If the Lot Owner wishes to use these Vendors, the Committee may require the Vendor to contract these services with each Lot Owner and not the Association. All Lots shall use the same Vendor for trash removal.

- F. **Requirement to Mow Grass in Public Right-of-Way:** All Owners shall be required to mow and maintain the grass in public rights-of-way of their Lot.

#### **ARTICLE IV** **EASEMENTS**

The strips of ground shown on the Plat which are marked "D.& U.E." (Drainage and Utility Easement) are reserved for the use of public utility companies, including cable television companies and municipal agencies for the purpose of installing and maintaining swales, ducts, poles, lines, wires, sewers, drains and appurtenances thereto. Said easements shall be perpetual from the date of the Plat by the Declarant, its successors and assigns. No permanent structures may be erected in said easements except for temporary structures, fences, driveways and walkways and subject to the applicable easement(s). Owners shall take title to said Lots subject to the rights of said companies, agencies, and other Owners for purposes of ingress and egress in, along and through said easements so reserved.

Several Lots are improved with a retention pond at the rear of the Lot. The Owner of each of these Lots shall allow adjacent Lot Owners access through their Lot (within designated easements) so that each Lot Owner can maintain the rear of their respective Lots, which has been separated by the pond.

**ARTICLE V**  
**MISCELLANEOUS PROVISIONS AND PROHIBITIONS**

- A. **Nuisances:** No noxious or offensive activities shall be conducted on any Lot, nor shall anything be done on any Lot which shall be or shall become an unreasonable annoyance or nuisance to Owners of other Lots, in the opinion of the Committee.
- B. **Signs:** No signs or advertisements shall be displayed or placed on any Lot or structure in the Development without the prior written approval of the Committee, except for the sale of a Lot or Dwelling Unit (limited to one sign per Lot); however, Declarant and designated Builders may use signs for advertising during the initial sale of Lots and the initial construction of Dwelling Units in the Development.
- C. **Animals:** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs or cats may be kept, provided that they: 1) are not kept, bred, or maintained for any commercial purpose; 2) do not become a nuisance to other Owners, in the opinion of the Committee, such as excessive barking or number or type of pets, and; 3) they be leashed upon leaving Owner's property, and their waste be promptly disposed of by the Owner.
- D. **Vehicle Parking:** Unless otherwise provided herein, motor homes, mobile homes, any motor vehicle which is inoperative and not being used for normal transportation, trailers, boats, campers, commercial delivery trucks and similar vehicles shall not be parked or stored upon a Lot unless within a closed garage. All passenger vehicles shall be parked in garages or in driveways and shall not be parked upon grassy or landscaped areas. Only guest passenger vehicles may be parked on the street for a period not exceeding forty-eight (48) hours; however, this does not include vehicles parked on the streets on a frequent (in excess of 48 hours per month) basis. No vehicles shall be placed on blocks or jacks for purposes of repair, except for repairs made in closed garages.
- E. **Ditches and Swales:** Owners shall keep unobstructed and in good repair, all open storm water drainage ditches and swales located on their respective Lots. Owners shall comply at all times with the provisions of the Development Grading Plan as approved for this Plat by the Hendricks County Drainage Board, and the requirements of all drainage permits issued for any Lot within the Development. Any field tile or underground drain encountered during construction of any improvements within the Development shall be perpetuated. All Owners, their successors and assigns, shall comply with the Indiana Drainage Code and all amendments thereto. Any damage or change from Declarant's original grade(s) caused by Owners, Builders or their contractors shall be restored to proper grades at Owner's expense.
- F. **Open Burning:** No debris or trash shall be burned in the Development, except in the Autumn months for the purpose of leaf destruction. Any burning of leaves shall be as allowed by local restrictions, and, if allowed, shall be limited to the hours of 11:00 a.m. and 4:00 p.m. and without creating a nuisance.
- G. **Sump Pumps:** No sump pump may be discharged into any street after a Dwelling Unit is completed. Only storm sewers shall be used for such discharge. The sump pump must be installed underground with plastic pipe or tile to such designated areas.

**ARTICLE VI**  
**SUBMITTAL AND APPROVAL OF PLANS**

- A. **Submittal of Plans:** No Dwelling Unit, or improvement thereof, shall be erected in the Development until the plans and specifications (including plot plans, exterior colors, elevations or other information requested by the Committee) for said improvements are submitted to and approved in writing by the Committee as to harmony of design and location in relation to surrounding structures and topography.
- B. **Approval of Plans:** Approvals or consents for plans required herein shall be deemed given if they are given in writing and signed, with respect to Declarant, by an authorized representative or agent thereof, or with respect to the Committee by a Committee member(s) authorized by the Board of Directors for granting said approval thereof. The failure of Declarant or Committee approval within twenty (20) calendar days of submission shall be deemed a denial of such request.

**ARTICLE VII**  
**BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER**

Whenever two or more contiguous Lots in the Development are owned by the same Owner, and said Owner proposes to use two or more of said Lots as a site for one (1) Dwelling Unit, said Owner shall apply in writing to the Committee for permission to use said Lots for this purpose. If permission is granted by the Committee and any other necessary governmental authority, the Lots constituting the site for said Dwelling Unit shall be treated as a single Lot for the purpose of applying these restrictions so long as the Lots remain improved with one (1) Dwelling Unit.

**ARTICLE VIII**  
**REMEDIES**

- A. **Available Remedies:** In the event of a violation, or threatened violation, of any of the provisions of this Declaration, Declarant, Owners, and all other parties claiming under them ("Interested Parties"), individually or through the Association, shall have the right to enforce the Declaration contained herein, and may pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, and including the right to secure injunctive relief or to secure removal by due process of any structure not in compliance with this Declaration, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.
- B. **Government Enforcement:** The Hendricks County Plan Commission or similar Town of Avon agency ("Commission"), its successors and assigns, shall have no right, power or authority to enforce this Declaration other than those terms which expressly run in favor of the Commission; provided further, that nothing herein shall be construed to prevent the Commission from enforcing any provisions of the Subdivision Control Ordinance, or any conditions attached to approval of the Plat and any subsequent sections approved thereafter.



- C. **Delay or Failure to Enforce:** No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the terms of this Declaration shall be held to be a waiver by that party of any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Declaration.

**ARTICLE IX**  
**EFFECT OF BECOMING AN OWNER**

Any Owner, by the acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner, shall accept said deed and execute said contract subject to this Declaration and the Plat. By acceptance of said deed or the execution of said contract, the Owner acknowledges the rights and powers of interested parties with respect to the Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns. Said Owner shall covenant and agree with and consent to Declarant and with and to the Owners and subsequent Owners of each of the Lots to keep, observe, comply with and perform said agreements.

**ARTICLE X**  
**TITLES**

The underlined titles of the various Articles and Sections of these Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter, and vice versa.

**ARTICLE XI**  
**DURATION AND AMENDMENT**

- A. **Duration of Declaration:** This Declaration shall be effective for an initial term until December 31, 2017 and shall automatically renew for additional terms of ten (10) years each, in perpetuity, unless at the end of any term the Owners of two-thirds (2/3) of the Lots vote to terminate this Declaration, in which case this Declaration shall terminate as of the end of the term during which such vote was taken. Notwithstanding the preceding sentence, all easements created or reserved by this Declaration shall be perpetual unless otherwise expressly indicated herein.
- B. **Amendment of Declaration:** Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant without the approval of any other person or entity, so long as Declarant owns any Lots within the Development or subsequent phases thereto.

The Declaration may be amended upon the approval of a majority of both (if applicable) classes of members of the Association.

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**ARTICLE XII  
SEVERABILITY**

This Declaration shall run with the land and shall be binding on all parties claiming under them. Invalidation or unenforcement of any of the provisions of this Declaration by Judgment, Court Order, or the Board of Directors shall in no way affect any of the other provisions which shall remain in full force and effect.

**ARTICLE XIII  
DEDICATION OF STREET RIGHTS-OF-WAY**

All street rights-of-way shown on the plat and not heretofore dedicated to the public are hereby dedicated to the public.

**ARTICLE XIV  
HOMEOWNERS ASSOCIATION**

The Association shall be an Indiana not-for-profit corporation and shall operate in accordance with Articles XV through XVII of this Declaration.

**ARTICLE XV  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

- A. **Membership:** Every Owner, except the Owner of Lot 1 whose membership is voluntary, shall be a member of the Association ("Member"). Membership shall be appurtenant to and may not be separated from the ownership of any Lot. In addition, the Association, and/or its Members therein, may be members in any one or more umbrella or joint homeowners' associations, if any, composed of associations and/or members from surrounding areas or community.
- B. **Classes of Membership:** The Association shall have two (2) classes of voting Members:
  - 1. **Class A:** Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.
  - 2. **Class B:** The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned, including Lots owned in subsequent phases to the Development, if any. Unless Declarant chooses to convert its class earlier, the Class B membership shall cease and be converted to Class A membership upon the occurrence of either of the following events, whichever occurs earlier:
    - a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
    - b. on December 31, 2002.

- C. **Board of Directors:** The Members shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association.
- D. **Responsibility of the Association:** The Association is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the determination of Common Expenses, the collection of annual and special Assessments, if any, and the granting of any approvals whenever and to the extent called for by the Declaration for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners seeking enforcement of the Declaration. Neither the Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of the Declaration or for any failure to take any action called for by the Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association shall procure and maintain casualty insurance, liability insurance, and such other insurance as it deems necessary or advisable. The Association by its Board of Directors may contract for management services and such other services as the Association deems necessary or advisable.

**ARTICLE XVI**  
**INSURANCE**

- A. **Public Liability Insurance for Common Property:** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury occurring on or in connection with any and all of the Common Property, if any, as the Board of Directors shall deem appropriate.
- B. **Owner's Responsibility for Loss:** Each Owner shall be solely responsible for liability and loss of or damage to his personal and real property located on his Lot, however caused.

**ARTICLE XVII**  
**ASSESSMENTS**

- A. **Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively for payment of Common Expenses. Each Owner covenants and agrees to pay the Association:
1. A Pro Rata Share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided.
  2. A Pro Rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.
- B. **Pro Rata Share:** The pro rata share of each Owner for purposes of this paragraph shall be the percentage obtained by the fraction of one divided by the total number of Lots (1 / Total no. of Lots), except Lot 1.

- C. **Liability for Assessments:** The Assessment on each Lot shall be a charge on each Lot and shall constitute a lien upon each Lot from and after the due date thereof in favor of the Association and shall also be the personal obligation of the Owner of each Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. The lien for any Assessment shall for all purposes be subordinate to the lien of any first mortgage recorded prior to the date such Assessment first became due and payable. No sale or transfer of a Lot shall relieve such Lot from liability for any Assessments, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed.
- D. **Basis of Annual Assessments:** The Board of Directors of the Association shall establish an annual budget for each fiscal year, setting forth all anticipated Common Expenses for the coming fiscal year, together with a reasonable allowance for reserves for future repair and replacement of the Common Property or unexpected expenses. The Members of the Association, at a regular or special meeting of the Members with proper notice, shall approve the budget or revised budget by a vote of a majority of a quorum of Members present in person or by proxy. A copy of the approved budget shall be delivered to any Owner requesting same within a reasonable time.
- E. **Basis of Special Assessments:** Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied for such year may be insufficient to pay the Common Expenses for such year, the Board of Directors shall call a special meeting of the Association to consider imposing such special Assessments as may be necessary for meeting the Common Expenses for such year. Upon the approval of the Board of Directors and at Declarant's option, the Association may instead borrow up to \$1,000 from Declarant for such unplanned deficits during the Development Period, with or without interest. Any such loan shall be immediately repaid to Declarant upon the Association's ability to repay such amount. If necessary, the Board of Directors may impose a Special Assessment upon the approval of a majority of a quorum of Members present in person or by proxy, and such Special Assessment shall be due and payable on the date(s) determined by the Board of Directors.
- F. **Fiscal Year, Date of Commencement of Assessments, Due Date:** The fiscal year of the Association shall be the calendar year and may be changed from time to time by action of the Board. The annual Assessment on each Lot may commence at any time following the month in which Declarant first conveys any Lot to an Owner.

Annual Assessments shall be due and payable, in full, as of the date which the Board of Directors determine, except that the Board of Directors may, from time to time, authorize the payment of such Assessments in quarterly or semi-annual installments. The Declarant shall not be required to pay an assessment on any vacant Lot which it owns.

In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following year, except that so long as the Declarant controls the Association, Declarant may, at its sole discretion, make up such deficit; provided, however, that Declarant shall be reimbursed by the Association for such funded deficits, together with interest until so reimbursed, from available surpluses in later years or through a Special Assessment.

G. Duties of the Association:

1. Books and Records: The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and Special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot, which books and records shall be kept by the Association and shall be available for the inspection and copying by each Owner, at Owner's expense (or duly authorized representative of any Owner) at all reasonable times. Except as may be otherwise provided in the Association's By-Laws, the Association shall cause necessary tax returns to be prepared and filed annually for each fiscal year of the Association, and shall furnish copies of the same to any Owner or Mortgagee upon request. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association upon the Lots and upon the Owners to be delivered to the Owners or their designated representatives. Notices of the amounts of Special Assessments shall be sent promptly and, in any event, not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.
2. Certificate of Assessments: Upon request, the Association shall promptly furnish to any Owner, prospective purchaser, title insurance company, or Mortgagee, a certificate in writing signed by an authorized representative of the Association, setting forth the extent to which Assessments have been levied and paid with respect to any Lot in which the requesting party has a legitimate interest. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

H. Association Remedies for Non-Payment of Assessments:

1. Lien for Non-Payment of Assessment: If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent.
2. Initiation of Action by Association for Non-Payment of Assessment. If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment may be increased by a late fee imposed as determined by the Board of Directors. The Association may bring an action against the delinquent Owner in any court having jurisdiction to enforce payment of the same and/or to foreclose the lien against Owner's Lot, and there shall be added to the amount of such Assessment all costs of

such action, including the Association's attorneys' fees, and, in the event a judgment is obtained, such judgement shall include such late fee, costs, and attorneys' fees.

3. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, regardless of the recording date of said mortgage. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of any assessments or pro-rated assessment becoming due prior to the date of such sale or transfer. If and to the extent this paragraph is inconsistent with any other paragraph in the Declaration, then this paragraph shall prevail.
- I. **Initial Assessments.** Upon the recording of this Declaration, the annual Assessment per Lot may be imposed on each Lot. Future annual Assessments shall be based on an annual budget.
- J. **Quorum and Notice Required For Association Meeting.** Written notice of any Association meeting called for the purpose of approving annual or Special Assessments, amending this Declaration, election of the Board of Directors, or transacting other business for the benefit of the Association shall be sent to all Owners not less than twenty (20) calendar days in advance of the anticipated meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast one-tenth of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called without notice other than announcement at the meeting, until such later time or date that a quorum shall be present in person or by proxy.

**ARTICLE XVIII**  
**LOT NUMBERED ONE**

Lot Numbered One (1) as designated on the Plat shall be subject to the following modifications of this Declaration. Membership in the Association shall be at the option of the Owner of Lot 1, on an annual basis.

- |            |          |                                                                                                                                                                                           |
|------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Paragraphs | III.A.1. | <b><u>Minimum Areas.</u></b> The minimum floor area of a one-story Dwelling Unit shall be 1,800 s.f. The minimum floor area of a Dwelling Unit of more than one story shall be 2,000 s.f. |
|            | III.A.6. | <b><u>Security Light, Mailbox, and Address Plate.</u></b> Lot 1 is exempt from this paragraph.                                                                                            |
|            | III.A.9. | <b><u>Unapproved Structures.</u></b> One (1) outbuilding shall be allowed, however Committee approval is required.                                                                        |
|            | III.E.   | <b><u>Maintenance of Lots and Improvements.</u></b> Lot 1 may use any Vendor for trash removal, lawn care, snow removal, etc.                                                             |

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IN WITNESS WHEREOF, the undersigned has hereunto caused its name to be subscribed this 2nd day of September, 1997.

The Mackenzie Corporation

BY: *Gregory A. Bruzas*  
Gregory A. Bruzas, President

STATE OF INDIANA           )  
                                      ) SS:  
COUNTY OF HENDRICKS    )

Before me, a Notary Public in and for said County and State, personally appeared Gregory A. Bruzas, president of The Mackenzie Corporation, who acknowledged the execution of the foregoing Declaration of Covenants, Restrictions, and Assessments acting for and on behalf of Declarant, and who, having been duly sworn, stated that any representations herein contained are true.

Witness my hand and Notarial Seal this 2nd day of September, 1997.

*Donna L. Wheeler*  
Notary Public -Signature

\_\_\_\_\_  
Name Printed

County of Residence: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**DONNA L. WHEELER, Notary Public**  
My Commission Expires: 11-19-97  
Residing in Marion County

**EXHIBIT "A"**

**Ashley Oakes  
LAND DESCRIPTION**

The record Plat will consist of the 39 lots numbered 1 through 39 known as Ashley Oakes, a subdivision in Washington Township, Hendricks County, Indiana, as per plat thereof recorded in the office of the Recorder of Hendricks County, Indiana and described as follows:

A part of the North Half of the Northeast Quarter of Section 3, Township 15 North, Range 1 East in Hendricks County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of said Half Quarter Section; thence South 88 degrees 32 minutes 39 seconds West (assumed bearing) along the North line of said Half Quarter Section 1288.49 feet to the POINT OF BEGINNING of this description; thence South 00 degrees 00 minutes 00 seconds East parallel with the East line of said Quarter Section 693.00 feet; thence South 88 degrees 32 minutes 39 seconds West parallel with the North line of said Quarter Section 1281.17 feet to the East line of a tract of land recorded in Deed Book 298, page 740 in the Office of the Recorder of Hendricks County; thence North 00 degrees 02 minutes 16 seconds West 692.99 feet along the East line of said tract of land to the North line of said Quarter Section, said point being the Northeast corner of a tract of land recorded in Deed Book 293, page 539 in the Office of the Recorder of Hendricks County, Indiana; thence North 88 degrees 32 minutes 39 seconds East along said North line 810.34 feet; thence South 00 degrees 02 minutes 39 seconds West 295.17 feet; thence North 88 degrees 32 minutes 39 seconds East parallel with the North line of said Quarter Section; thence North 00 degrees 02 minutes 39 seconds East 295.17 feet to the North line of said Quarter Section; thence North 88 degrees 32 minutes 39 seconds East along said North line 176.12 feet to the Point of Beginning and containing 18.38 acres more or less.

This instrument prepared by: William T. Rees, Attorney, P.O. Box 34297, Indianapolis, IN 46234-0297

August 18, 1997