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DECLARATION OF COVENANTS AND RESTRICTIONS

CHAPELWOOD CREEK

This Declaration (hereafter "Declaration"), made as of the 24th day of NOVEMBER 1997, by Chapelwood Creek, LLC, an Indiana limited liability company ("Declarant"), Sandra Sue Pettitt ("Pettitt") and Davis Homes, LLC ("Davis");

WITNESSETH:

WHEREAS, the following facts are true:

WHEREAS, Declarant, Pettitt and Davis are the owners of the real estate located in Marion County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which Declarant intends to develop a residential subdivision to be known as Chapelwood Creek.

WHEREAS, Declarant is the owner of part of that real estate which is more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (hereinafter referred to as the "Additional Real Estate"), and may become the owner of more or all of the Additional Real Estate;

WHEREAS, Declarant has or will construct certain improvements and amenities which shall constitute Community Area;

WHEREAS, Declarant desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at any time subject to this Declaration;

WHEREAS, Declarant, Pettitt and Davis desire to provide for the preservation and enhancement of the property values, amenities and opportunities in Chapelwood Creek and for the maintenance of the Property and the improvements thereon, and to this end desire to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future owners thereof;

WHEREAS, Declarant, Pettitt and Davis deem it desirable, for the efficient preservation of the values and amenities in Chapelwood Creek, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a not-for-profit corporation known as Chapelwood Creek Homeowners Association, Inc. for the purpose of exercising such functions.

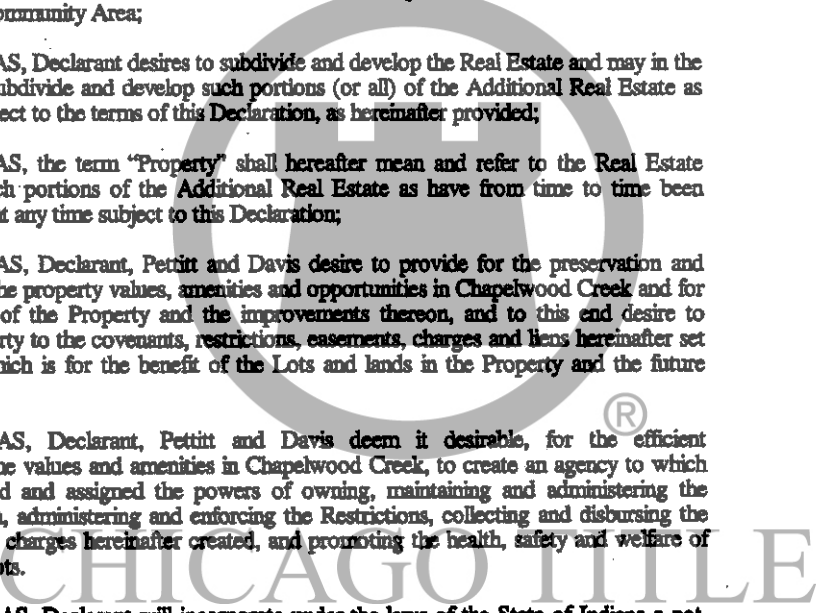
NOW, THEREFORE, Declarant, Pettitt and Davis, each as to their respective interests, hereby declare that all of the Lots and lands in the Property, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan

JOHN R. VON ARX
MARION COUNTY CLERK

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SUBJECT TO COVENANTS AND RESTRICTIONS
FOR TRANSMISSION

11/25/97 12:20PM JOHN H. ROBERTS, MARION COY RECORDER CIP \$9.00 PAGES: 25
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for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Property or any part or parts thereof.

1. **Definitions.** The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Architectural Review Board" means that entity established pursuant to Paragraph 14 of this Declaration for the purposes therein stated.

(b) "Articles" mean the Articles of Incorporation of the Corporation, as amended from time to time.

(c) "Assessments" means all sums lawfully assessed against the Members of the Corporation, as amended from time to time.

(d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

(e) "By-Laws" means the Code of By-Laws of the Corporation, as amended from time to time.

(f) "Chapelwood Creek" means the name by which the Property shall be known.

(g) "Common Area" means any area referred to on a Plat as a Common Area.

(h) "Community Area" means (i) the Lake Control Structures (ii) the Drainage System, (iii) the Lakes and Lake Access Easements, (iv) the Entry Ways, (v) the Roadways to the extent not maintained by public authority, (vi) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (vii) any area of land (1) shown on the Plat as a Common Area, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots.

(i) "Corporation" means Chapelwood Creek Homeowners Association, Inc., an Indiana not-for-profit, its successors and assigns.

(j) "Declarant" means Chapelwood Creek, its successors and assigns to its interest in the Property other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated on intent that the grantee assume the rights and obligations of Declarant).

(k) "Development Period" means the period of time commencing with the

execution of this Declaration and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the real estate in the Property.

(l) "Drainage Board" means the Department of Capitol Asset Management, its successors or assigns.

(m) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Lakes and the Lake Control Structures) located in the Property and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

(n) "Entry Ways" means the structures constructed as an entrance to Chapelwood Creek or a part thereof (exclusive of the street pavement, curbs and drainage structures and tiles), the traffic island, if any, and the grassy area surrounding such structures, whether located within or without the Property.

(o) "Landscaping Easement" means a portion of a Lot denoted on the Plat as an area to be landscaped and maintained by the Corporation.

(p) "Lake" means any lake as depicted on the Plat and "Lakes" means all such lakes. A numerically designated Lake means the Lake so designated by such number on the Plat.

(q) "Lake Maintenance Access Easement" means an area designated on the Plat as a means of access, for purposes of maintenance, to a Lake or a Lake Control Structure.

(r) "Lake Control Structures" means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.

(s) "Lot" means a platted lot as shown on the Plat.

(t) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.

(u) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other

expense related to the continuous maintenance, operation or improvement of the facility.

(v) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.

(w) "Mortgagee" means the holder of a first mortgage on a residence.

(x) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

(y) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(z) "Plat" means the final secondary plat of the Property recorded in the Office of the Recorder of Marion County, Indiana.

(aa) "Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

(bb) "Residence" means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

(cc) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.

(dd) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

(ee) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not been accepted for maintenance by a public authority.

(ff) "Zoning Authority" with respect to any action means the Director of the Department of Community Development of the City of Indianapolis, Indiana or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act.

2. **Declaration.** Declarant, Pettit and Davis each hereby as to their respective interests expressly declare that the Property shall be held, transferred, and occupied subject to the Restrictions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, 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 accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such restrictions and agreement.

3. Declarant shall have, and hereby reserves the right, at any time, and from time to time, to add to the Property and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Property, and therefore and thereby becomes a part of the Property and subject in all respects to this Declaration and all rights, obligations and privileges herein, when Declarant places of record in Marion County, Indiana, an instrument so declaring the same to be part of the Property, which declaration may be made as part of a subdivision plat of any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Upon the recording of any such instrument the real estate described therein shall, for all purposes, thereafter be deemed a part of the Property and the Owners of any Lots within such real estate shall be deemed for all purposes to have and be subject to all the rights, duties, privileges and obligations of Owners of Lots within the Property. No single exercise of Declarant's right and option to add to and expand the Property, as described herein as to any part or parts of the Additional Real Estate, shall preclude Declarant from thereafter from time to time further expanding and adding to the Property to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Additional Real Estate so long as such expansion is accomplished during the Development Period. Such expansion of the Property is entirely at the discretion of Declarant and nothing contained in this Declaration or otherwise shall require Declarant to expand the Property beyond the Real Estate, or any other portions of the Additional Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration.

4. The Lakes. Declarant shall convey title to the Lakes to the Corporation. The Corporation shall be responsible for maintaining the Lakes. One hundred percent (100%) of the Maintenance Costs of the Lakes shall be assessed as a General Assessment against all Lots subject to assessment. Each Owner of a Lot which abuts a Lake shall be responsible at all times for maintaining so much of the bank of the Lake above the pool level as constitutes a part of, or abuts, his Lot and shall keep that portion of a Lake abutting his Lot free of debris and otherwise in reasonable clean condition. No Owner shall pump water out of the Lake. No boats shall be permitted upon any part of a Lake and no dock, pier, wall or other structure may be extended into a Lake without the prior written consent of the Architectural Review Board and such governmental authority as may have jurisdiction thereover. No swimming or ice skating will be permitted in a Lake except if and to the extent authorized by the Board of Directors. Except as otherwise provided herein, no individual using a Lake has the right to cross another Lot or trespass upon the shoreline not within a Common Area, subject to the rights of the Declarant, the Corporation and their employees, agents and assigns as set forth in the Declaration. Each Owner of a Lot abutting a Lake shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, a Lake by any Person who gains access thereto from, over or across such Owner's Lot. Declarant shall have no liability to any Person with respect to the Lakes, the use thereof or access thereto, or with respect to any damage to any Lot resulting from a Lake or the proximity of a Lot thereto, including loss or damage from

erosion.

5. The Lake Control Structures. Declarant shall convey title to the Lake Control Structures to the Corporation. The Corporation shall be responsible for maintaining the Lake Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots.

6. Drainage System - Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of December 31, 1997, or the date the Drainage System is accepted as a legal drain by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

7. Maintenance of Entry Ways, Landscape Easements and Common Area Easements and Common Area. The Corporation shall maintain the Entry Ways and the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs, and other plantings located on an Entry Way or a Landscaping Easement shall be kept nearly cut, cultivated or trimmed as reasonable required to maintain an attractive entrance to Chapelwood Creek, or a part thereof, or a planting area within Chapelwood Creek. All entrance signs located on an Entry Way shall be maintained at all times in good condition appropriate to a first-class residential subdivision.

8. Roadways.

(a) Maintenance. Declarant shall maintain each Roadway in good condition satisfactory for the purpose for which it was constructed until the Roadway has been accepted as a public roadway.

(b) Landscaping. All landscaping within the road right-of-way is subject to the approval of the appropriate governmental authority which, initially, is the Department of Capitol Asset Management.

(c) Cul-de-sac Parking. There shall be no parking on the Cul-de-sacs shown on the Plat.

9. Construction of Residences.

(a) Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of the City of Indianapolis, Indiana. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Chapelwood Creek than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and which is incidental to a business, profession or occupation of the Owner or occupant of

such Lot and which is generally or regularly conducted at another location which is away from such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.

(b) Size of Residence. Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have a ground floor area of 1,200 square feet if a one-story structure, or 1,200 square feet if a higher structure.

(c) Temporary Structures. No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

(d) Building Location and Finished Floor Elevation. No building may be erected between the building line shown on the Plat and the front Lot line, and no structure or part thereof may be built or erected nearer than five (5) feet to any side Lot line or nearer than twenty (20) feet to any rear Lot line. The side yards must aggregate ten (10) feet. No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation, shown on the development plan for Chapelwood Creek, has been established for each Lot depicted on the Plat and no finished floor elevation with the exception of flood protected basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.

(e) Driveways. All driveways shall be paved and maintained dust free.

(f) Yard Lights. If street lights are not installed in Chapelwood Creek, then the builder on each Lot shall supply and install a yard light in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The yard light thereafter shall be maintained in proper working order by the Lot Owner.

(g) Storage Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

(h) Construction and Landscaping. All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Landscaping shall include a minimum of two 2" deciduous trees planted near the street right-of-way, taking care to avoid easements and not to violate site distance requirements.

The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from

his obligation to commence and complete construction of a Residence upon the Lot within the time periods specified herein. For the purposes of this sub-paragraph (h), construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

(i) Mailboxes. All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board.

(j) Septic Systems. No septic tank, absorption field or any other on-site sewage disposal system (other than a lateral main connected to a sanitary sewage collection system operated by the Clay Township Regional Waste District or a successor public agency or public utility) shall be installed or maintained on any Lot.

(k) Water Systems. Each Owner shall connect to such water line maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use an irrigation water well on his Lot.

(l) Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within Chapelwood Creek may be included in a legal drain established by the Drainage Board. In such event, each Lot in Chapelwood Creek will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the Drainage System and the Lake Control Structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains, downspouts and water softeners, shall be connected whenever feasible into a subsurface drainage tile. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

(m) Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereon. Declarant and the Corporation shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots.

(n) Out buildings and sheds are specifically prohibited except that Declarant may allow them on a case by case basis.

10. Maintenance of Lots.

(a) Vehicle Parking. No camper, motor home, truck, trailer, boat or disabled vehicle may be parked or stored overnight or longer on any Lot in open public view.

(b) Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of Chapelwood Creek and the sale of Lots therein and such signs as may be located in any Common Area or Community Area, no sign of any kind shall be displayed to the public view on any Lot except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. A builder shall display a "sold" sign on the Lot when he has sold the property.

(c) Fencing. No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Corner Lots shall be deemed to have two (2) front yards. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No chain link fence shall be erected upon a Lot. No fence shall be erected or maintained on or within any Landscaping Easement or Sign Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without the prior approval of the Architectural Review Board, which may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street 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 points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(d) Vegetation. An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this restriction, the Architectural Review Board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the cleared Lot for the expense thereof.

(e) Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Barking dogs shall constitute a nuisance.

(f) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

(g) Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such

permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

(h) Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.

(i) Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any residential Lot without the written approval of the Architectural Review Board, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.

(j) Exterior Lights. No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

(k) Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

(l) Tennis Courts. No tennis court shall be installed or maintained on any Lot.

(m) Swimming Pools. No swimming pool or equipment or building related thereto shall be constructed without the prior approval of the Architectural Review Board. No swimming pool shall be located on a Lot abutting within 35 feet from the water's edge of a Lake at normal pool elevation as established on the engineering design plans for the Lake filed with the zoning authority. If a variance permitting installation of a mechanical pool cover in lieu of fencing has been or may be obtained from the Zoning Authority, then the Architectural Review Board may require, as a condition to the location of a swimming pool on a Lot, that the Owner install a mechanical pool cover. If the Board imposes such requirement, then a mechanical pool cover of a type and manufacture approved by the Architectural Review Board shall be installed by the Owner in compliance with all applicable legal requirements established by the Zoning Authority as a condition to such variance, and all requirements established by the Architectural Review Board.

11. Chapelwood Creek Homeowners Association, Inc.

(a) Membership. Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those

provisions with respect to the payment of Assessments.

(b) Powers. The Corporation shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, together with all other powers that belong to it by law.

(c) Classes of Membership and Voting Rights. The Association shall have the following two (2) classes of voting membership:

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

Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when the total number of votes outstanding in the Class A membership is equal to the total number of votes outstanding in the Class B membership; or, (b) December 31, 2010.

(d) Reserve for Replacements. The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(e) Limitations on Action by the Corporation. Unless the Class B Member and (i) at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting or easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

(f) Mergers. Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.

(g) Termination of Class B Membership. Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time as the Class B Membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 16(b), 16(f), 17, or 20(b).

(h) Board of Directors. During the Development Period, the Declarant shall appoint all directors, shall fill all vacancies in the Board of Directors, and shall have the right to remove any Director at any time, with or without cause. After the Development Period, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

12. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Corporation the following: (1) General Assessments, (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

(b) General Assessment.

(i) Purpose of Assessment. The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the Community Area and all sign easements and landscape easements. The General Assessment shall also be levied for the payment of real estate taxes allocable to the Community Areas, which real estate taxes shall be paid by the Corporation from the date hereof, notwithstanding that the Declarant may retain title to all or part of the Community Area. It shall further be the obligation of the Corporation to (i) maintain and pay all costs of maintenance of all public lighting installed and existing in any right-of-way (ii) pay the costs of all electricity and energy usage attributable to public

lighting installed and existing any right-of-way and (iii) maintain and pay the costs of maintenance of any sidewalks which abut a right-of-way but are not within the right-of-way, and the General Assessment shall also be levied by the Corporation to comply and pay for with the foregoing maintenance requirements and obligations.

(ii) Basis for Assessment.

(1) Lots Generally. Each Lot owned by a person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant. No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis. The basis for assessment may be changed with the assent of the Class B Member and of (i) two-thirds (2/3) of the Class A Members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) Method of Assessment. By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

(iv) Allocation of Assessment. Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Area shall be allocated equally among owners of all Lots and shall be uniformly assessed.

(c) Special Assessment. The Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B Member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(d) Date of Commencement of Assessments. The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.

(e) Effect of Nonpayment of Assessments; Remedies of the Corporation. Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the

current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

(f) Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

(g) Certificates. The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

(h) Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and (2) the Community Area.

(i) Annual Budget. By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

13. Architectural Control.

(a) The Architectural Review Board. Until the end of the Development Period, an Architectural Review Board consisting of three (3) Persons shall be appointed by the Declarant. After the expiration of the Development Period, the Architectural Review Board shall be appointed by the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such manner as to preserve values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Change in Conditions. Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement

by an Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Chapelwood Creek, and no Owner shall undertake any construction activity within Chapelwood Creek unless legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than 18 inches.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors' approval will be deemed granted. If Declarant is no longer a Class B member, a decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.

(e) Guidelines and Standards. The Architectural Review Board shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. If Declarant is no longer a Class B member, any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

14. Community Area

(a) Ownership. The Community Area shall remain private, and neither Declarant's execution or recording of any instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.

(b) Density of Use or Adequacy. Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities located thereon or the adequacy thereof for the purpose intended.

(c) Obligations of the Corporation. The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

(d) Easements of Enjoyment. No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of lots abutting the Lake may use the Lake, but such use shall be limited to fishing and such other uses as may be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use such parts of the Community Area as are reasonably required to afford access to and from such Owner's Lot.

(c) Extent of Easements. The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area;

(ii) the right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and (i) two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and

(iii) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and (i) the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.

(f) Additional Rights of Use. The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation and included within the Register of Regulations.

(g) Damage or Destruction by Owner. In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area; the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.

(h) Conveyance of Title. Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the lakes and Lake Control Structures to the Corporation, free and clear of all liens and financial encumbrances. Owners shall have all the rights and obligations imposed by this Declaration

with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

15. Easements.

(a) Plat Easements. In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Marion County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, sign easements, entry way easements, landscaping easements, lake maintenance access easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utilities companies and governmental agencies as follows:

(1) Drainage Easements. (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Chapelwood Creek and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. In the event the Declarant or the Architectural Review Board undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no circumstances shall the Declarant be liable for any damage or destruction to any fences, structures, or other improvements which are damaged, destroyed or remodeled by Declarant, or its agents or employees as a result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) Sewer Easements. (SE) are created for the use of the local government agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve Chapelwood Creek for the purpose of installation and maintenance of sewers that are a part of said system.

(iii) Utility Easements. (UE) are created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Entry Way Easements. (EWE) are hereby created in the area of the Entry Ways for the use of Declarant, the Architectural Review Board and the Corporation for the installation, operation and maintenance of the Entry Ways.

(v) Landscaping Easements. (LE) are created for the use by Declarant, the Architectural Review Board and the Corporation for the

planting and maintenance of trees, shrubs and other plantings.

(vi) Lake Maintenance Access Easements. (LMAE) are created for the use of Declarant, the Corporation, the Drainage Board and the Clay Township Regional Waste District for the purpose of gaining access to the Lake, the Lake Control Structures, the Drainage System in the course of maintenance, repair or replacement of any thereof.

(vii) Non-Access Easements are depicted on the Plat and are created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements.

(viii) Sign Easements - There are strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. Declarant hereby reserves unto itself during the Development Period and thereafter unto the Association, such easements for the purposes of providing signs which either (i) advertise the Property, and the availability of Lots the identity of participating builders, or events, or (ii) identify the Property. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Association. No fences shall be erected or maintained in the area of such easements, except as may be installed by the Declarant.

(b) General Easement. There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant or the providing utility or service company to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and Declarant shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Property to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, Declarant or the Corporation shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

(c) Public Health and Safety Easements. An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.

(d) Drainage Board Easement. An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Lake Control Structures which are included within any legal drain.

(e) Crossing Underground Easements. Easements utilized for underground service may be crossed by driveways, walkways and Lake Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings, driveways, walkways or Lake Access Easements, and neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees, or servants to shrubbery, trees, flowers or other improvements of the Owner located on the land covered by said easements.

(f) Declarant's Easement to Correct Drainage. For a period of ten (10) years from the date of conveyance of the first Lot in the Property, Declarant reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary. If such grading or cutting of trees, bushes or shrubbery is in an area designated on the Plat as a Drainage Easement, then Declarant's obligation to restore the affected real estate shall be limited to re-grading and re-seeding, and neither the Declarant nor its agents, employees or assignees shall be liable for any damage or destruction to any improvements, structures or fencing located on or in such existing Drainage Easement. If such grading or cutting of trees, bushes or shrubbery is not in an area already designated on the Plat as a Drainage Easement, Declarant will restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinion of Declarant an emergency exists which precludes such notice.

(g) Water Retention. The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (detention) of storm water within the drainage easements (DE) on such Owner's Lot.

16. Declarant's Use During Construction. Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences in the Property, upon such portion thereof as is owned or leased by Declarant, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, but without limiting the generality thereof, a business office, storage area, construction yards, signs, model Residences and sales offices.

17. Enforcement. The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither

Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration, such party shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

18. Approvals by Declarant. As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: the dedication or transfer of the Community Area; the merger or consolidation of the Property with other real estate; mortgaging of the Community Area; amendment of this Declaration; and changes in the basis for assessment or the amount, use and time of payment of the Initial Capital Assessment.

19. Amendments.

(a) Generally. This Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, (ii) the Declarant, so long as the Declarant still owns at least one (1) Lot.

(b) By Declarant. Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and restrictions contained in this Declaration during the period prior to December 31, 2015. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Marion County, Indiana. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized in Paragraph 15(b), Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed without the consent of the Owner of such Lot.

(c) Effective Date. Any amendment shall become effective upon its recordation in the office of the Recorder of Marion County, Indiana.

20. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any work 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 to the neuter.

21. Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2015 and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

22. Severability. Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.

23. Non-Liability of Declarant. Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed and of the builder of such Residence, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

24. Applicable Law. This Declaration shall be governed by the laws of the State of Indiana.

25. Access Rights. Declarant hereby declares, creates and reserves an access license over and across all the Real Estate (subject to the limitations hereinafter provided in this Paragraph 13.1) for the use of Declarant and its representatives, agents, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this Paragraph 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

IN TESTIMONY WHEREOF, witness the signatures of Declarant as of the date set forth above.

WAYNE TOWNSHIP
ASSESSOR
PLAT APPROVED
Date: Nov. 25, 1997
By: Mark S. Hill - Assessor
CHARLES R. SPEARS
ASSESSOR

CHAPELWOOD CREEK, LLC
By: [Signature]
John B. Urbahn, Member
"Declarant" ®

DAVIS HOMES, LLC
By: [Signature]
Printed: Charlene E. White
Title: Vice President

[Signature]
Sandra Sue Pettitt

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared John B. Urbahms, a Member of Chapelwood Creek, LLC, who acknowledged the foregoing Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 24 day of November, 1997.

My Commission Expires:
JERALYN R COLSTEN
NOTARY PUBLIC STATE OF INDIANA
~~MARION COUNTY~~
MY COMMISSION EXP SEPT 28, 1999

Jeralyn R. Colsten
_____, Notary Public
Resident of _____ County, Indiana

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public, in and for said County and State, personally appeared Jennifer M Brooks, the Closing Administrator of Davis Homes, LLC, who acknowledged the foregoing Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 24th day of November, 1997.

My Commission Expires:
12-14-98

Marion County
Expires: 12-14-98
STATE OF INDIANA

Jennifer M Brooks
_____, Notary Public
Resident of Marion County, Indiana



CHICAGO TITLE

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Sandra Sue Pettitt, who acknowledged the foregoing Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 24 day of November, 1997.

My Commission Expires:

JERALYN R COLSTEN
~~NOTARY PUBLIC STATE OF INDIANA~~
MARION COUNTY
MY COMMISSION EXP SEPT 28, 1999

Jeralyn R. Colsten
Notary Public
Resident of _____ County, Indiana

This instrument prepared by: Barbara A. Wolenty, Attorney at Law, 8888 Keystone Crossing, Suite 710, Indianapolis, IN 46240.

c:\wolenty\subba\pettit\chapelwood covenants
11/12/97



CHICAGO TITLE

LEGAL DESCRIPTION

Part of the Northwest Quarter of the Southwest Quarter of Section 35, Township 16 North, Range 2 East in Marion County, Indiana, being more particularly described as follows

Commencing at the Northwest corner of said Quarter Quarter Section; thence South 00 degrees 00 minutes 00 seconds West (assumed bearing) along the West line thereof 254.00 feet; thence North 90 degrees 00 minutes 00 seconds East 300.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 340.00 feet; thence North 90 degrees 00 minutes 00 seconds East 55.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 312.35 feet to the POINT OF BEGINNING of this description; thence South 90 degrees 00 minutes 00 seconds West 150.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 160.00 feet; thence North 90 degrees 00 minutes 00 seconds East 83.41 feet to a point on a curve concave to the South, the radius point of said curve being South 00 degrees 00 minutes 00 seconds West 500.00 feet from said point; thence 63.27 feet along said curve to the point of tangency, the radius point of said curve being South 07 degrees 14 minutes 59 seconds West 500.00 feet from said point; thence South 82 degrees 45 minutes 21 seconds East 3.52 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with said West line 164.44 feet to the place of beginning, containing 0.553 acres, more or less.

ALSO,

Part of the Northwest Quarter of the Southwest Quarter of Section 35, Township 16 North, Range 2 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Quarter Quarter Section; thence South 00 degrees 00 minutes 00 seconds West (assumed bearing) along the West line thereof 254.00 feet; thence North 90 degrees 00 minutes 00 seconds East 300.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 170.00 feet; thence North 90 degrees 00 minutes 00 seconds East 1033.18 feet to a point on the East line of said Quarter Quarter Section; thence South 00 degrees 07 minutes 16 seconds West along said East line 894.25 feet to a point on the South line of said Quarter Quarter Section; thence South 89 degrees 21 minutes 22 seconds West along said South line 986.35 feet to the POINT OF BEGINNING of this description; thence continuing South 89 degrees 21 minutes 22 seconds West along the said South line 60.00 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with the aforesaid West line 196.65 feet; thence North 90 degrees 00 minutes 00 seconds East 60.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 195.98 feet to the place of beginning, containing 0.270 acres, more or less.

EXHIBIT "A"

METES/25858EXA

LEGAL DESCRIPTION

A part of the Northwest Quarter of the Southwest Quarter of Section 35, Township 16 North, Range 2 East in Marion County, Indiana, being more particularly described as follows:

Commencing at the Northwest corner of said Quarter Quarter Section; thence South 00 degrees 00 minutes 00 seconds West (assumed bearing) along the West line thereof 254.00 feet; thence North 90 degrees 00 minutes 00 seconds East 300.00 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with said West line 170.00 feet to the POINT OF BEGINNING of this description; thence North 90 degrees 00 minutes 00 seconds East 1033.18 feet to a point on the East line of said Quarter Quarter Section; thence South 00 degrees 07 minutes 16 seconds West along said East line 894.25 feet to a point on the South line of said Quarter Quarter Section; thence South 89 degrees 21 minutes 22 seconds West along said South line 1046.36 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with the aforesaid West line 196.65 feet; thence South 90 degrees 00 minutes 00 seconds West 235.00 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with said West line 67.00 feet; thence North 90 degrees 00 minutes 00 seconds East parallel with said West line 160.00 feet; thence North 90 degrees 00 minutes 00 seconds East 150.00 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with said West line 312.35 feet; thence South 90 degrees 00 minutes 00 seconds West 55.00 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with said West line 170.00 feet to the place of beginning, containing 21.734 acres, more or less. Subject to all legal highways, rights-of-way easements and restrictions of record.

Except the area which shows on Exhibit "A".

EXHIBIT "B"

METES/25834EXB
11/21/97



CHICAGO TITLE