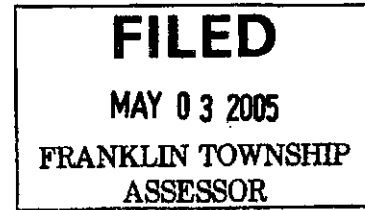
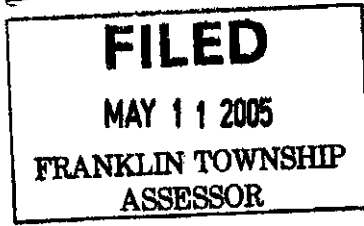


Plat # 05-74759



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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HUNTERS CROSSING ESTATES**

THIS DECLARATION is made this 2<sup>ND</sup> day of MAY, 2005, by DAVIS HOMES, LLC (hereinafter referred to as ADeclarant@).

WITNESSETH:

WHEREAS, Declarant is the owner of all of the lands contained in the area shown on and/or legally described in the Exhibit identified as \_\_\_\_\_, which is attached hereto and made a part hereof by this reference, which lands will, along with contiguous real estate to be acquired in the future, all eventually be subdivided as the "Hunters Crossing Estates Subdivision" (hereinafter generally referred to as the "Development"), and will be more particularly described in the plat thereof to be recorded in several sections in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant is about to sell and convey the residential Lots situated within certain platted areas of the Development and before doing so desires to subject and impose upon all the real estate within said present and future platted areas of the Development, mutual and beneficial covenants and restrictions and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the Lots and lands in the Development, and the future Lot Owners therein and thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted Lots, and lands located within the Development as they become platted, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Developer, the Declarant, and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Developer/Declarant's successors in title to any real estate in the Development.

**1 Definitions.**

- A. "Act" - shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended, or any successor act.
- B. "Annual Assessment" - amount to be paid to the Association by each Lot Owner/Owner annually.
- C. "Articles" - shall mean and refer to the Articles of Incorporation of the incorporated Association, as the same may be amended from time to time.
- D. "Assessments" - collectively refers to Annual Assessments, Lot Assessments and Special Assessments.
- E. "Association"- Hunters Crossing Estates HOA, Inc., an Indiana non-profit corporation, its successors and

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MARION COUNTY RECORDER

assigns.

F. **"Association Documents"** - the articles of incorporation, by-laws, code of regulations and any and all procedures, rules, regulations or policies adopted by the Association or a Committee charged with such regulation by this Declaration as the same may hereafter be amended in accordance with their terms.

G. **"Board"** - the board of directors of the Association.

H. **"Builder"** - the person or entity who actually constructs the home built on the respective Lot. The Builder is generally anticipated to be the initial recipient of a Conveyed Lot; and at the time this Declaration is recorded is anticipated to be Davis Homes.

I. **"By-Laws"** - shall mean and refer to the Code of By-Laws of the incorporated Association as the same may be amended from time to time.

J. **"Committee"** - shall mean and refer to the Architectural Control Committee established pursuant to Paragraph 18 of this Declaration.

K. **"Common Expenses"** - expenses incurred in administration, the upkeep and maintaining the Common Property including but not limited to the payment of property taxes and other assessments, and the performance of all other obligations and actions of the Association.

L. **"Common Property"** - also **"Common Area"** - all real and personal property now or hereafter acquired, pursuant to this Declaration or otherwise, and owned by the Association for the common use and the enjoyment of the Lot Owners as well as all other portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not Lots (or blocks which are to be divided into Lots).

M. **"Conveyed Lot"** - a platted Lot which has been transferred by the Developer/Declarant to the Builder or the initial Lot Owner.

N. **"Declarant"** - Davis Homes, LLC and any manager, general partner, shareholder, successor or assign thereof to which Declarant specifically assigns any of the rights of the Declarant under this Declaration by a written instrument.

O. **"Developer"** - Bay Communities, LLC and any manager, general partner, shareholder, successor or assign thereof to which Developer specifically assigns any of the rights of the Developer under this Declaration by a written instrument.

P. **"Development Statement"** - the Preliminary Plan for the overall planned unit development of the Development is a part, which was approved in the rezoning of the overall real estate to the D-P classification of the Dwelling Districts Zoning Ordinance in Case No. 2003 ZON-060 (2003-DP-008). The Development Statement sets forth the several applicable development standards and zoning commitments for the Development, and is on file in the City of Indianapolis Department of Metropolitan Development, as the same may hereafter be amended in accordance with their terms.

Q. **"First Mortgagee"** - the holder of a mortgage against a Lot (and generally the improvements constructed thereon) which is in the first (or primary) position as compared to any other mortgage against said Lot.

R. **"Improvements"** - all buildings and garages; overhead, above-ground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools and tennis courts; slope and drainage alterations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs,

decks, patios and porches; planted trees, hedges, shrubs and other forms of landscaping that are more than 30 inches high when fully grown; and all other structures of every type.

S. **"Lot"** - a discrete parcel of real property identified upon the recorded subdivision plat of the Development, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Developer/Declarant, excluding the Common Property and any portion of the Development dedicated for public use.

T. **"Lot Owner"**- also **"Owner"** - the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding these having an interest merely as security for performance of an obligation and also excluding the Developer and the Declarant unless otherwise provided herein.

U. **"Lot Assessment"**- an assessment that the Board may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Lot Owner of the Lot(s), costs of additional insurance premiums specifically allocable to a Lot Owner, costs of any utility expenses chargeable to a Lot Owner but not separately billed by the utility company, and all other charges reasonably determined to be a Lot Assessment by the Board.

V. **"Manager"** - a person or entity retained by the Board to assist in the management of the Association.

W. **"Member"** - any person or entity entitled to membership in the Association.

X. **"Perimeter Lot"** - generally defined as a Lot which is within 150 feet of the right of way line for either Senour Road or Pentecost Road, as applicable, and which is also the first Lot in from said right of way line as measured perpendicular thereto.

Y. **"Person"** - an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

Z. **"Plat"** - shall mean and refer to the subdivision plat or plats of the Real Estate recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.

AA. **"Residence"** - shall mean the dwelling unit or home, and such terms shall be considered one and the same as used interchangeably herein.

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

CC. **"Rules"** - the rules and regulations governing use of the Development and the Common Property, as may be established by the Board from time to time.

DD. **"Special Assessment"** - an assessment levied by the Association against all Lots pursuant to rights granted herein, or at a special meeting of the members of the Association to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of any fund established as a reserve.

EE. **"State"** - the State of Indiana.

FF. **"Turnover Date"** - the date upon which the Developer/Declarant turns over control the Association to the Lot Owners. This shall occur no earlier than the date upon which 75% of the Lots containing completed homes have been deeded from the Declarant and/or the Builder to the initial homeowner.

2. **Effect of Becoming an Owner** - The owner(s) of any Lot in the Development, or any Lot or real estate which is otherwise subject to the Restrictions contained in the Declaration, by 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, shall accept such deed and/or execute such contract subject to each and every covenants, restriction and agreement herein contained. By acceptance of such deed and/or execution of such contract, the owner (Lot Owner) acknowledges the rights and powers of Declarant with respect to these covenants and restrictions; and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Declarant and to and with the owners and subsequent owners of each of the Lots affected by these covenants and restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

3. **Drainage, Utility and Other Plat Easements** - There are strips and parcels of ground as shown on the plat marked Landscape, Drainage and/or Utility Easement ("L, DU & SE") which are hereby reserved for the use of landscaping, public utilities (including but not limited to drainage structures, swales and improvements, and sanitary sewer, but not including transportation companies), for the installation and maintenance of poles, mains, laterals, ducts, swales, drains, lines, cables, wires, and the like, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities as the Developer/Declarant or the owner of record after sale, may deem necessary along, through, in, over and under the strips of land shown on this plat. In addition, other Plat easements may be created by Developer/Declarant pursuant to written instruments recorded in the office of the Recorder of Marion County, including but not limited to entry way easements, pond access easements, common area access easements, woodland preservation easements and public health and safety easements, either separately or in any combination thereof. The Developer/Declarant and/or the Association shall have the right to negotiate and grant additional easement rights through and upon said reserved easement areas as are reasonable and necessary to benefit the residents and/or to reasonably resolve disputes. However, no Lot Owner shall modify the Easement, place any improvements within the Easement, modify any improvements within the Easement, change the surface area of any Easement (other than mowing and the like) or otherwise make any changes within the areas reserved as such easements without the prior written permission of the Developer/Declarant and/or the applicable municipal authority which benefits from said Easement, as applicable.

4. **Use Restrictions** - The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Declarant and every Lot Owner or occupant, their heirs, successors and assigns, as well as their family members, guests, and invitees. Present or future Lot Owners, the Declarant or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, including reasonable attorney fees and costs, but there shall be no right of reversion or forfeiture resulting from such violation.

A. **Use of Lots.**

1. **Single Family Residential Usage** - Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a residence.

2. **Diligence in Construction** - Every building whose construction or placement on any residential Lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. For the purposes of this paragraph, 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, landscaping and garage/yard light) has been completed in conformity with the approved plans. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage, or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

3. **Prohibition of Used Structures** - All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot, except that used brick or other exterior design features utilizing other than new materials may be used if specifically approved by the Committee.

4. **Accessory Outbuildings Prohibited** - No accessory outbuilding, including but not limited to mini-barns or storage sheds, whether or not on a permanent foundation, shall be erected or placed on any Lot.

5. **Occupancy or Residential Use of Partially Completed Residence Prohibited** - No residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until it has been substantially completed. The determination of whether the residence has been substantially completed shall be made by the Committee, and such decision shall be binding on all parties.

6. **Other Restrictions** - All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

B. **Use of Common Property or Area** - The Common Property may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the residential use of a Lot. The retention ponds shall be for drainage and passive recreational purposes only; and no wading, swimming, boating, or ice skating, either therein or thereupon, are permitted. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Lot Owners and occupants, and shall comply with the provisions of this Declaration, the laws of the State, and the Rules. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be put into any drainage structure or pond, except the Association may take steps to clear and purify the waters thereof by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. No Owner or other Person shall take or remove any water from or out of any pond, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No Owner or any other Person shall do or permit any action or activity which could result in the elevation of the level of any pond. No Owner or other person shall construct or place any dock, flotation device or structure in or around any pond. Except as otherwise provided, no Person using a pond, if any, has the right to cross another Lot or trespass upon property not within a Common Area owned by the Association, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration.

C. **Noxious, Offensive, or Hazardous Actions or Materials** - No noxious or offensive activities shall occur upon on any lot in the Development, nor shall anything be done on any of said Lots that shall be or become an unreasonable annoyance or nuisance to any owner of another Lot in the Development. No residence or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Real Estate, or which might be a nuisance, annoyance, inconvenience or a cause of damage to other Owners and occupants of residences or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons. Nothing shall be done or kept in or on any Lot or in or on any portion of the Common Property that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Property or that might unreasonably disturb the quiet occupancy of any person residing on any other Lot. No outside toilets shall be permitted on any Lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed. This paragraph shall not be construed so as to prohibit the Declarant and the Builder from construction activities consistent with its residential construction practices that are otherwise in compliance with applicable laws and ordinances of Marion County, Indiana.

D. Signs. - With the exception of Permitted Signs (described hereinafter in this Section 4(D)), all signs including but not limited to those advertising a garage sale, must be approved by the Association before the sign is placed upon any Lot or Common Area. Permitted Signs shall include only those professionally constructed signs advertising a home for sale on a Lot for sale by a licensed and registered real estate broker/company, non-illuminated and less than or equal to six (6) square feet in size. No more than one Permitted Sign may be displayed in the community by an entity owning multiple Lots. All Permitted Signs advertising a Lot (or a home on a Lot) for sale shall be removed within three (3) business days of the conveyance of the Lot.

Signs advertising a Lot (or a home on a Lot) "For Lease" or "Rent to Own" or something similar are expressly prohibited and may not be placed on any Lot or home constructed thereon.

The Developer/Declarant and the Builder are expressly exempt from the provisions of this Section 4(D) and may post signs on Lots and/or Common Areas owned by each as they deem necessary.

Notwithstanding the foregoing provisions, no sign shall be displayed on the Real Estate which is in violation of the Sign Plan approved as a modification to the Development Statement in Case No. 2004-APP-058, as same may be amended.

E. Animals. - No farm animals, fowls, or domestic animals (maintained for food or for commercial purposes) shall be kept or permitted on any Lot or Lots in the subdivision. The keeping of house cats, dogs, or similar domestic animals traditionally defined as "pets" (not to include swine under any circumstances, nor "exotic" pets unless approved in advance by the Board) shall not be considered a nuisance "per se" in violation of the Restrictions so long as the number of each such type of pet does not exceed two (2) which are over the age of eight (8) weeks. Excessive barking of dog(s) or vicious animals shall constitute a nuisance and in such case the animal may be ordered removed from the Real Estate by the Association. Other than those occasions where a pet is on a leash being exercised and/or under the direct control of the owner or occupant of a dwelling in the Development, no pet shall be allowed outside the boundaries of its owner's Lot. In addition, the Lot Owner or occupant of a dwelling shall only allow a pet in their possession to be out of their direct control outside of the dwelling, if such pet is either: (1) kept within an area on the Lot which is securely fenced with an approved above or below ground fence or enclosure, or; (2) on a secure leash or chain which restricts such pet to the rear yard at least ten (10) feet away from any border of the Lot (with the exception that the initial homeowner may secure a pet in the front yard until the rear yard lawn is established, or one(1) year from the date of Completion, whichever time period is shorter). Owners are responsible for the cleanup of any animal fecal matter or other droppings ("Animal Matter") deposited by animals owned by them or their guests in any Common Area or other Owner's Lot, and the failure to remove any Animal Matter from any Common Area or other Owner's Lot shall subject the Owner to a fine not to exceed \$50.00 per occurrence as determined by the Board.

F. Awnings. - Except on Lots on which there is maintained a sales office or model home by the Developer/Declarant or Builder, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Real Estate.

G. Business. - No garage sale, moving sale, rummage sale or similar activity, and no trade or business may be conducted in or from any Lot, except that an Owner or occupant resident on a Lot may conduct business activities within a residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence, (b) no sign or display is erected that would indicate from the exterior that the residence is being utilized in part for any purpose other than that of a residence; (c) no commodity is sold upon the premises, shipped from the residence or delivered to the residence; (d) no person is employed/subcontracted other than a member of the immediate family residing in the residence; (e) no manufacture or assembly operations are conducted; (f) the business activity conforms to all zoning requirements for the Real Estate; (g) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and (h) the business activity is consistent with the residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or

threaten the security or safety of other residents of the Real Estate as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or residence shall not be considered a trade or business within the meaning of this section. This Section shall not apply to any activity conducted by the Developer/Declarant or its affiliates, or the Builder, with respect to its development and sale of the Real Estate and improvements upon Lots which are owned thereby.

H. Storage. - No open storage of any kind is permitted;

I. Hotel/Transient Uses: Leases. - No Lot may be used for hotel or transient uses, including without limitation, uses in which the occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to the Restrictions.

J. Vehicles. - The Board shall be entitled to create and enforce reasonable rules concerning the parking of any vehicles on Common Areas. The parking of trucks, commercial vehicles (if otherwise in compliance with applicable laws and ordinances), boats, trailers, snowmobiles, jet skis, campers, recreational vehicles (RVs), or mobile homes shall be parked or stored on the street or on any Lot (except in an enclosed structure completely shielded from view in the case of such vehicles which are otherwise permitted by all applicable laws and ordinances) for any time period longer than forty-eight (48) hours in any thirty (30) day period is prohibited, provided, however, that nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during construction of residences on the Lots. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof; or for the storage and/or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and vans and other than any light pickup truck under 1 ton in size which is used as an automobile vehicle by an Owner or a member of an Owner's family. The repair of inoperative motor vehicles or the material alteration of motor vehicles shall not be permitted on any Lot unless said work involves only the Lot Owner's personal vehicle, and all such work is performed entirely within a garage and such use is otherwise in compliance with all laws and ordinances.

K. Trash. - Except for the reasonably necessary activities of the Developer/Declarant during the original construction of the Development, no burning, burying, or storage of trash, garbage or other refuse of any kind shall be permitted on any Lot or Common Area unless approved by the Committee. All trash and waste shall be deposited in covered, sanitary containers, screened from view. All houses built in the Development shall be equipped with a garbage disposal unit. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept so as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made. No Lot shall be used or maintained as a dumping ground for trash, nor shall any accumulation of refuse or trash, including but not limited to compost, be permitted on any Lot or Common Area.

L. Antennae. - No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be maintained on the premises, to the extent permissible under applicable statutes and regulations, including those administered by the Federal Communications Commission, except that this restriction shall not apply to satellite dishes with a diameter less than twenty four (24) inches, erected or installed to minimize visibility from the street which the dwelling fronts. In no event will the installation location be permitted to be detached from the home, located on the front of the home, or so as to permit the dish to be higher than the roof ridge of the home.

- M. Basketball Goals. - Basketball goals will not be permitted without approval from the Committee. No basketball goal shall be placed or maintained within the right-of-way of any street. Unless the Committee establishes a policy establishing other specifications, backboards of all basketball goals shall be of a translucent material and attached to a black pole or similar type of post. The location of a basketball goal on the Lot is subject to approval of the Committee if it would be visible from a public right-of-way adjoining the Lot. No basketball goal or backboard shall be permitted to hang from or be affixed to the exterior of the residence or the garage. Temporary or portable basketball goals shall be not be left outside of the home/garage overnight.
- N. Play Equipment. - Children's play equipment such as sandboxes, swing and slide sets, and trampolines shall not require approval by the Committee, provided that such equipment is not more than eight (8) feet high (to the highest point of the structure) are properly painted and maintained by the Owner in good repair and such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the residence into the rear yard of the Lot. Such equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee. Notwithstanding any other provision of this Declaration to the contrary, all play equipment shall be constructed of predominantly wooden materials, and no aluminum, PVC, vinyl or metal play equipment, except as an accessory to a predominantly wooden structure, shall be permitted. Notwithstanding any other provision of this Amended Declaration to the contrary, all play equipment shall be professionally installed.
- O. Flag Poles. - Unless otherwise approved by the Committee, flag poles shall be limited to one (1) per Lot, and no flag pole shall exceed twenty (20) feet in height.
- P. HVAC Units. - No room air conditioning unit shall be installed so as to protrude from any window, roof or wall of any residence or garage; provided, however, that this Restriction shall not apply to central air conditioning units. No open loop geothermal heat pumps shall be allowed unless approved in advance by the Developer/Declarant.
- Q. Driveways. - All private driveways shall be hard surfaced with concrete, and shall be well maintained.
- R. Model Homes. - No Owner of any Lot (except Developer/Declarant and Builder) shall build or permit the building upon said Lot of any residence that is to be used as a model home or exhibit house without written prior permission to do so from the Developer/Declarant.
- S. Utility Lines. - All utility lines on the Property shall be underground, subject to the requirements of relevant governmental authorities and utility companies.
- T. Drains and Sump Pump Discharges. - No house footing drain or roof water drain shall be discharged into the sanitary sewers. Any Owner or Builder damaging, changing, or altering any drainage easements, or discharging in a manner which is not in compliance with all applicable laws and ordinances shall be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, the Declarant or the Association will cause repairs or modifications to be accomplished and the cost thereof shall be an expense of the Lot Owner. The Association and/or the Declarant, as applicable, shall make a Special Assessment against the Lot, and also shall have a lien against said Lot for such costs, including but not limited to the actual costs incurred, reasonable related costs and expenses, prejudgment interest, court costs, and actual attorney's fees. Such lien may be formalized via a recorded Notice of Intent to Hold Lien being recorded against the Lot; but the lien shall be valid even without the actual recordation of same. The Association, its Board members, the Declarant, or any agents, employees or contractors shall not be liable for any damage which may result from any work performed pursuant to the foregoing provisions.
- U. Tanks. - With the exception of a standard gas/propane storage tank used for a gas grill, no liquid or gas storage tanks shall be permitted to be located anywhere on a Lot outside the interior edge of the perimeter foundation of the home and/or garage. Any such tank shall be utilized only for approved residential and accessory purposes; and shall conform to all applicable Federal, State and local standards. The tank and related improvements shall not



be visible from any surrounding property.

V. Wells and Septic Tanks. - No water wells shall be drilled on any Lot, nor shall any septic tanks or other sewage disposal systems be installed on any Lot.

W. Landscaping of Common Areas. - No Owner shall plant trees, landscape or do any gardening in any of the Common Areas, except with express prior permission from the Board.

X. Mailbox. - Developer/Declarant may designate a required uniform design for the curb side mailbox and post for each Lot; and said mailbox and post shall be installed by the Builder simultaneously with the construction of the home. If the mailbox is damaged, destroyed or deteriorates, then each Lot Owner, at such Lot Owner's expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailbox. No separate newspaper box shall be permitted other than those approved by the Committee.

Y. Yard Lights, Lamp Posts, or Garage Light. - All homes shall have a garage light on the exterior of the home or a yard light in the front yard which will operate by photocell or similar device from dusk to dawn; and the Lot Owner shall be responsible for maintaining and repairing said light so it remains operational at all times, or replacing same if necessary with a like-kind light. All such lighting shall conform to standards set forth by the Committee.

Z. Swimming Pools. - No above ground swimming pool shall be permitted upon any Lot, with the exception of a temporary pool designed for use by a child, which said pool does not exceed twenty four (24) inches in height, is located in the rear yard and at least eight (8) feet away from the abutting side Lot line, is not left outdoors on the Lot for more than five (5) consecutive days. Nothing in this section shall be interpreted to prohibit the installation of a hot tub or sauna. The only type of pools permitted shall be permanent in-ground pools with professional construction. All pools, not tubs and saunas should be oriented to minimize the potential effect on neighboring Lots. All fencing or protective enclosure related to the pool, hot tub or sauna shall be subject to the prior review and approval of the Committee, and in addition must conform to state, county and municipal regulations. The use of plantings/screenings in the vicinity of the pool, hot tub or sauna will likely be required to soften the visual and sound effect on adjacent Lots or Common Properties; and all submittals to the Committee for the approval of a pool, hot tub, sauna and related improvements shall include a specific landscape plan.

As a specific exception to the foregoing provisions authorizing certain pools in certain situations, there shall be no pools of any type permitted on either of the two easternmost Perimeter Lots along Pentecost Road.

AA. Temporary Structures. - No temporary structure of any kind, such as a house, trailer, tent, incomplete basement, garage or accessory building shall be placed or erected on a Lot, nor shall any overnight camping be permitted on a Lot.

BB. Carports and Side Drives. - No carport shall be placed or erected on any Lot; nor shall any side gravel drives or gravel parking areas be installed or used on any Lot.

CC. Ditches, Swales, and Drainage. - It shall be the duty of the Owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the Lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this subsection. 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 ditch or storm drain even if no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the municipal authority "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. 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. It shall be the duty of every

Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon his Lot continuously unobstructed (both by improvements and plant material) and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this paragraph.

DD. Compliance with Rules. - All Lot Owners and members of their families, their guests, or invitees, and all occupants of any home, or other persons entitled to use the same shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board or its authorized Committees governing the operation, use and enjoyment of the Common Property.

EE. Compliance with Development Statement. - So long as any portion of the Development Statement is in effect, no use shall be made of any part of the Development which violates said Development Statement, or the zoning commitments contained therein; and all Lot Owners, members of their families, their guests, tenants, invitees and all occupants or other parties entitled to use or who may use any part of the Development shall at all times fully comply with the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Development Statement.

**5. Lot Owner's Responsibility for Building and Grounds Maintenance: Remedies for Violation** - The Lot Owner and/or party in possession of each Conveyed Lot in the Development shall conform to the following standards:

- A. Even prior to occupation of the Lot, keep and maintain such Lot in an orderly manner, causing weeds and other growths to be reasonably cut and preventing the accumulation of rubbish and debris thereon.
- B. Seed, treat, and mow the lawn on the Lot at such times as is consistent with good property management as determined by the Committee;
- C. Promptly remove all debris or rubbish;
- D. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
- E. Pruning and cutting of all trees and shrubs consistent with good property management as determined by the Committee;
- F. Cut down and promptly remove dead limbs and dead or diseased trees;
- G. Where applicable, prevent debris, foreign material, toxic, hazardous, or damaging materials or substances, from entering drainage areas, swales, and/or storm sewers;
- H. Paint, clean and/or otherwise keep the exterior of all improvements in such a state of repair and maintenance as to be consistent with good property management as determined by the Committee;
- I. Comply fully and promptly with all provisions of these Restrictions, the Development Statement, and the rulings and decisions of the Developer/Declarant, the Association, and/or the Committee.

In the event that any Lot Owner and/or party in possession shall fail to maintain his/her Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Association and/or the Developer/Declarant shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean, remove, reconstruct, modify, or perform such other acts as may be reasonably necessary to make such Lot and the improvement(s) situated thereon, if any, conform to the requirements of the Restrictions. The cost thereof shall be an expense of the Lot Owner, and the Association and/or

the Developer/Declarant, as applicable, shall make a Special Assessment against the Lot, and also a lien against said Lot for such costs, including but not limited to the actual costs incurred, reasonable related costs and expenses, prejudgment interest, court costs, and actual attorney's fees. Such lien may be formalized via a recorded Notice of Intent to Hold Lien being recorded against the Lot; but the lien shall be valid even without the actual recordation of same. The Association, its Board members, the Developer, the Declarant, or any agents, employees or contractors shall not be liable for any damage which may result from any work performed pursuant to the foregoing provisions.

6. **Rights and Obligations of the Association.** A property owners association is or shall be created which is anticipated to be named Hunters Crossing Estates HOA, Inc. (the "Association"), an Indiana nonprofit corporation, which shall have, in addition to all rights and obligations otherwise set forth in or contemplated by this Declaration, the Act, or the Association Documents, the following rights and obligations::

A. **Common Property/Common Area.** - Declarant may, from time to time, at Declarant's option, convey to the Association for the use and benefit of the Association and the Members a full, partial or shared interest in any real estate or personal property, or any interest therein in the nature of an easement. The Association shall accept title to any interest in any real or personal property transferred to it by Declarant. The Association, subject to the rights of the Lot Owners set forth in this Declaration and the Association Documents, shall be responsible for the exclusive management and control of the Common Property, if any, and all improvements thereon, and shall keep it in good, clean, attractive, safe and sanitary condition, order, and repair, in accordance with the terms and conditions of this Declaration.

B. **Personal Property and Real Property for Common Use.** - The Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real estate in addition to that property conveyed to it by Declarant.

C. **Maintenance Obligations.**

1. **Ponds and Drainage Improvements.** - Although the ponds and the storm drainage easements in the Development shall be a part of the drainage system of the Development which also runs to the City of Indianapolis, the Association shall control the water quality and condition of the retention ponds and drainage improvements.

2. **Landscaping and entry areas.** - The landscaping contained upon Common Property/Area, any other entry area improvements, including but not limited to any perimeter fencing, the subdivision signage, and any structures related to the entrances, shall be regularly mowed, planted, replanted, replaced, repaired and/or well maintained by the Association for the beautification of the Development.

3. **Other Common Areas.** - Any landscaping, grass, trails or sidewalks, structures, recreational facilities such as pools, gazebos, play equipment, or any other type of improvements located on Common Area or owned by the Association shall be managed and well maintained by the Association and shall be the full responsibility of the Association, subject to any restrictions imposed by Developer/Declarant at the time of transfer.

4. **Decorative Street Lights.** - Such lights shall be installed by the Declarant at the main entrance and street intersections within the subdivision, and possibly other areas, during the initial development of the subdivision. These lights shall be maintained by the Association, which shall also pay all utility costs related thereto.

5. **Snow Removal.** - The Association shall supplement the municipal snow removal services as necessary, and shall pay all costs related to hiring private contractors as required.

D. **Cost-Sharing Agreements.** - The Association may enter into cost-sharing agreements with other home owners associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, signs, landscaping, storm water retention facilities, mounding, fencing, lake and lake

access easements and facilities, and any other improvements that benefit the Development.

E. Rules and Regulations. -The Association may make and enforce reasonable rules and regulations governing the use of the Property, which may be in addition to and shall not be inconsistent with this Declaration and the Association Documents. The Association shall have the power to impose sanctions on Lot Owners, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Declaration, the Association Documents or the Rules against any Lot Owner, tenant, guest or invitee of any Lot Owner, the amount shall be due and payable by such Lot Owner and shall be a Lot Assessment against such Owner's Lot. Owners shall be bound by all such Rules and Regulations promulgated by the Association the same as if specifically included herein and recorded herewith.

F. Implied Rights. - The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration and every other right or privilege reasonably implied from the existence of any right or privilege granted in his Declaration or reasonably necessary to effect any such right or privilege.

G. Managing Agent. - The Board may retain and employ on behalf of the Association a Manager or Managing Agent, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The term of any management agreements shall not exceed One (1) year; and shall allow for termination by either party without cause or penalty, upon no more than ninety (90) days prior written notice. Notwithstanding anything to the contrary contained in this Declaration, Developer/Declarant shall have, and Developer/Declarant hereby reserves to itself, the exclusive right to manage or designate a Manager or Managing Agent, and to perform all the functions of the Corporation, until the Turnover Date. Developer/Declarant may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Developer/Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

H. Insurance. -

1. As of the Turnover Date, the Association shall be required to obtain and maintain adequate blanket property/casualty insurance, comprehensive public liability insurance and flood insurance covering all of the Common Property in an amount as is required by law or commonly required by prudent institutional mortgage investors. The public liability coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Association, the Board of Directors, or any committee of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may act as agents or employees of any of the foregoing with respect to the Development. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Lot Owners.

2.. The Association may, in the discretion of the Developer/Declarant prior to the Turnover Date, and the discretion of the Board thereafter, obtain and maintain the following insurance: (a) fidelity bond coverage and/or surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board (any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board), and also workers' compensation insurance for all managers, managing agents, officers directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers' and trustees' liability insurance to fund other obligations of the Association, (d) additional insurance against

such other hazard's and casualties as is required by law, and (e) and any other insurance the Association deems necessary.

3. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses.

4. In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Lot Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Association may levy a Special Assessment pursuant to cover the additional costs.

I. **Condemnation.** - The Association shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property or any portion thereof. Each Owner hereby appoints the Association as its attorney-in fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Lot Owners.

J. **Books, Records.** - As of the Turnover date, upon reasonable notice of any member in good standing, the Association shall be required to make available for inspection all books, records and financial statements of the Association.

7. **Powers: Assessment and Collection** - The Association shall have all the powers set forth in the Declaration, the Association Documents and in the Act, together with all other powers that belong to it by law, including the power to levy Annual Assessments, Lot Assessments and other Special Assessments against the Lots.

8. **Membership and Voting Rights** - Every Lot Owner shall be a member of the Association. For purposes of determining classes of membership (1) a Class A member shall be the owner of any Conveyed Lot; (2) a Class B member shall be the owner of any lot which is not a Conveyed Lot (includes developed platted Lots which have not been conveyed, and also undeveloped platted lots; and (3) each reference to a Lot in this Declaration shall be deemed to either be a Conveyed Lot, a Conveyed Lot containing a completed home (as applicable), or a lot which is not yet a Conveyed Lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

8.1 **Class A.** Every person, group of persons, or entity (other than the Developer/Declarant and/or the Builder) who is a record owner of a fee interest in a Conveyed Lot shall, by this Declaration (but specifically subject to the provisions of Paragraph 10 of this Declaration), be subject to assessment by the Association and classified as a Class A member; provided however, that any such person, group, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

8.2 **Class B.** The Class B members shall be the Developer/Declarant, and shall be entitled to three (3) votes for each platted Lot owned which is not yet a Conveyed Lot. Developer/Declarant shall have the automatic right to plat, record and sell Lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: 1) the Turnover Date, or 2) January 1, 2020. In the event all the Lots have not been conveyed to initial homeowners, or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, all those Class B memberships existing, if any, at time of cancellation shall

automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until the Developer/Declarant conveys said Lot. However, in no case shall the Builder be required to pay any assessments/dues.

9. **Covenant Accepting Assessments** - Each owner of any Lot (except the Builder), by acceptance of a Deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (subject to the provisions of Paragraph 10 of this Declaration): 1) annual assessments or charges imposed by the Association, and 2) special assessments for capital improvements, other reasonable expenses of the Association, or the collection of expenses, fees and costs incurred by the Association or the Developer/Declarant in enforcing these Restrictions against certain Lot(s) and/or Lot Owner(s) as stated herein and/or in the Bylaws. All such assessments are to be established and collected as provided herein and in the Bylaws of the Association.

10. **Commencement of Assessments/Dues, and the Calculation and Payment of the Initial Assessments/Dues** Assessments/Dues shall commence accruing against a Lot as of the date each Lot with a completed home thereon is conveyed to the initial homeowner, and the obligation to pay such assessments/dues by the Lot Owner shall continue thereafter in perpetuity. The first year's assessment/dues shall be adjusted (pro-rated) according to the number of days remaining in the annual assessment period after the date of the conveyance of the Lot with a completed home thereon is conveyed to the initial homeowner by either the Developer/Declarant or the Builder, as applicable. The prorated initial annual assessment, plus a one time initial assessment/fee to the Association in the amount of One Hundred and Fifty and No/100 Dollars (\$150.00), shall both be paid to the Association by the initial homeowner at (or at the time of) the closing on the conveyance of the Lot with a completed home thereon to the initial homeowner.

The commencement, calculation and payment terms hereinabove shall also apply to a Lot Owner (other than the Builder) who receives a Lot without a completed home directly from the Developer/Declarant or the Builder. In such case the Lot Owner shall pay the prorated assessment and the one time initial assessment at (or at the same time as) the closing on said Lot. In all cases, the Lot Owner (other than the Builder) shall pay all assessments/dues after the date commencement date thereof, on or before the due date for same.

11. **Developer/Declarant's Exemption from Assessments, and Right to Collect Advances** - The Declarant, as the owner of platted or unplatted Lots, shall be exempt from any and all assessments. The Developer/Declarant shall advance any deficits in usual or ordinary expense until such time as the assessments upon Lots with homes thereon is sufficient to meet such expense. However, the Developer/Declarant shall have the right to recover any such advances made by Developer/Declarant to cover such deficits, from the receipt/collection of any assessments which were assessed prior to the Turnover Date.

12. **Assessment Procedure and Requirement For Uniform Rates** - Unless otherwise authorized by the Board, the Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period and provide the membership due notice thereof. Annual Assessments may be made payable at more frequent periods than one (1) year by resolution of the Board of Directors of the Association. Both Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless said Special Assessment(s) are necessary to reimburse the Association for funds spent related to the enforcement of these covenants against specific Lot(s), whereupon said uniform rate requirement for similarly situated homes shall not apply, or as otherwise specified herein.

13. **Right to Increase Annual Assessments** - Because of uncertainties in usual and ordinary common property expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unforeseeable operating expenses, the Board of Directors of the Association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by normal accounting procedures and distributed to the membership to demonstrate that such increases are attributable to increases in operating expenses and no portion of such increase shall inure to the benefit of the Developer/Declarant; and the monies received shall be entirely expended on Association expenses.

The maximum annual assessment per Lot may be increased above the maximum percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose.

**14. Liens, Charges and Subordination** - Any charge levied or assessed against any Lot, together with interest, reasonable attorney's fees and other charges and costs hereinafter provided, shall become and remain a lien upon that Lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the Lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the Lot or Lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay the expense or costs, including reasonable attorney's fees, incurred by the Association in collecting same. Every owner of a Lot in the subdivision and any person who may acquire any interest in such Lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said Lot at the time of the acquisition of such interest are valid liens and shall be paid; and shall be held to have conclusively covenanted to pay the Association all charges that the Association shall make pursuant to these covenants and restrictions.

The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. In addition, no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association of the payment status of the assessments on a specified Lot, and/or that certain assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and for the improvement and maintenance of the properties owned or operated by the Association.

**15. Suspension of Privileges** - Notwithstanding any other provision contained herein or in the Bylaws, the Board of Directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the Common Areas and facilities of the Association, of any member; (i) for any period during which any of the Association's charges owed by the member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board of Directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, Bylaws, the provisions of the Development Statement, the Restrictions, or the rules and regulations of the Association.

**16. Limits on the Association's Rights Against First Mortgagees** - Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned) or the Class A members have given their prior written approval, the Association shall not:

A. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Development, Common Area (s) or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Development by the Association shall not be deemed a transfer within the meaning of this clause.

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

C. By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the homes on Lots, the exterior maintenance of the dwellings on Lots, the maintenance of common fences or common driveways or the upkeep of lawns and plantings in the Development.

D. Fail to maintain fire and extended coverage insurance on insurable Common Area(s) on a current replacement cost basis, and in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost).

E. Use hazard insurance proceeds for losses to common property for other than the repair, replacement or reconstruction of such improvements.

F. Adopt or amend any constituent document so as to give a Lot Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to the homeowner/ mortgagor of insurance proceeds or condemnation awards for losses to or a taking of Common Property/Common Area.

**17. Rights of First Mortgagees**

A. A First Mortgagee, or their successors or assigns, shall have the right to examine the books and records of the Association upon reasonable advance notice.

B. A First Mortgagee may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area, and a First Mortgagee making such payment (s) shall be owed immediate reimbursement therefore from the Association.

**18. Architectural Control** - There shall be created an architectural control committee (the "Committee") initially composed of Bruce T. Sklare, Jane A. Hendrickson and such other persons (if any) which the Declarant and Developer appoint in their joint discretion. No later than the Turnover Date, the initial Committee shall turn over its authority (other than the right to approve plans for the original construction of a home on a Lot, which shall be retained by the Developer/Declarant until all homes have been completed on all Lots) to the Association, which shall then appoint three (3) persons from among its members to serve as the Committee. Both before and after the Turnover Date, so long as the standards are in compliance with the Declaration, the Committee shall have the exclusive authority, by action of two or more of the members thereof, at a private or public meeting to determine the architectural standards which shall govern the construction of any and all improvements within the Development. The Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause his/her Lot and any occupant thereof to comply with the standards promulgated by the Committee. No improvement shall be placed, erected or installed within the Development, and no construction (which term shall include in its definition staking, clearing, excavation, grading, and other site work) shall commence until and unless the Lot Owner first obtains the written approval thereof of the Committee and otherwise complies with the provisions of this Declaration.

A. Generally - No dwelling, building, fence, wall, screen, pool, deck, patio, structure, addition, remodeling, reconstruction, or improvement of any type or kind shall be constructed or placed on any Lot or Common Area within the subdivision without the prior written approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee (no less than thirty (30) days prior to the anticipated start of construction) by the Lot Owner or the contractor requesting authorization by the Committee, and such application shall be accompanied by two (2) complete detailed sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans



and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1/4" = 1' and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall require.

B. Duties of Committee - The Committee shall make a good faith effort to review all applications and render a written decision within thirty (30) days after the date upon which all required information (and all supplemental information reasonably requested by the Committee) shall have been submitted to it. One copy of the submitted material shall be retained by the Committee, or copies thereof in a reduced form, for its permanent files and the second copy returned to applicant. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the general reason or reasons for such disapproval. However, failure of the Committee to issue a decision within thirty (30) days shall not constitute approval until and unless the Lot Owner submits a written request thereafter for a written decision to the Committee, and after receiving such request, the Committee's failure to issue a decision continues for thirty (30) additional days.

C. Power of Disapproval - The Committee may refuse to grant permission to construct, place or make any requested improvement when:

1. The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of the applicable restrictions.
2. The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures.
3. The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of the other Lot Owners.

D. Variances. - To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Committee shall have the authority to grant reasonable variances from the standards contained in this Declaration, provided that the activity or condition is not prohibited by applicable law, ordinance, code, or the Development Statement; and provided further that in their judgment, the variance is truly in the best interests of the community, the other Lot Owners and is in the spirit of the standards of the Committee. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Declaration as applied to any other person or any other part of the Development.

E. Liability of the Committee. - Neither the Committee nor any agent thereof, nor the Developer/Declarant shall be responsible in any way for any defects in any plans, specification or other materials submitted to it, nor for any defects in any work done according thereto. Further, any action or inaction of the Committee shall not be deemed as any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

F. Inspection. - The Committee may inspect work being performed with its permission to assure compliance with this Declaration, and/or the submitted plans and applicable regulations.

G. Improvements by Developer/Declarant. - Notwithstanding any provision to the contrary, all improvements installed or constructed by the Developer/Declarant or its partners, members or shareholders (as applicable) shall be deemed to comply in all respects with the requirements of the Committee.

H. Fencing. - The approval of the Committee must be obtained prior to any installation of any fencing, walls, mounds, and landscape screening. The approval of the Committee shall include the review and authority to approve or disapprove all fencing, walls, and landscaping screening, including the materials, design, and location, on an individual basis. It is the goal of the Committee to keep all fencing, walls or screening as harmonious as possible with the architectural character of the Development. Undue obstruction of view of other amenities from adjoining

properties will be taken into consideration by the Committee when reviewing fences for approval. With the exception of a Lot on which there is maintained a sales office or model home by Developer/Declarant and/or Builder, and with the possible exception of underground fencing installed to confine a pet in the front yard, fencing shall only be allowed in the rear yard. Therefore, above ground fences shall not be nearer to the front of a dwelling than the rear foundation line of the dwelling. In addition, in order to provide for fire department access to the rear of the dwelling, if any portion of the fence is located within four feet of the rear foundation line of the dwelling, a gate not less than 4 feet in width shall be placed in the fence not less than ten (10) feet from said rear foundation line. Other than fencing installed by the Developer/Declarant, no fencing shall be installed on the exterior street side of any perimeter mounding. Approved fencing should generally be professionally installed; but the Committee may approve private installation if sufficient evidence is provided that it will be constructed to professional levels of quality. Fences installed by nonprofessionals will be inspected by the Committee after completion in order to insure that the final product is of a professional quality, and final approval of the fence shall be deemed withheld until successful completion of this final review. General guidelines are as follows:

1. The exact location, material, color and height of the fence, wall, or landscape screening and a rendering or photograph thereof shall be submitted to the Committee for written approval at least thirty (30) days prior to proposed construction. If however, approval has not been issued by the Committee in writing within thirty (30) days after submission, then said request shall be considered DENIED.
2. Only residential wrought iron style fencing, wooden shadow box style fencing, wooden picket style fencing, vinyl coated chain link fencing, or PVC fencing shall be permitted on any Lot.
3. Walls above grade must be constructed of natural stone, masonry, or shadow box fencing.
4. Barring extreme circumstances, there shall be no fencing permitted on any corner lot other than possibly patio screens and privacy fences which adjoin the rear of the residence.
5. Any fence constructed shall be deemed to include as a condition of the approval of same, the right for an abutting property owner to connect a fence on said abutting Lot to the installed fence in a fashion approved by the Committee.
6. The Committee will not ordinarily approve a proposed a propose fence or wall which is located on an area where the existing grade has been or will be altered in a manner which appears unreasonable to the Committee.
7. There shall be no fencing, walls or other structures erected and maintained in any area within a designated 100 year flood way as shown on the Federal Flood Hazard Maps and/or the Plat(s) of the Development.
8. Other than fencing installed by the Developer/Declarant, no fences shall be constructed or located within any drainage, utility or landscape maintenance easement.
9. Any fence which is constructed within any easement, without regard to whether it was approved by the Committee, shall be subject to removal at the Lot Owners expense at any time.
10. The Developer/Declarant, prior to the Turnover Date (and thereafter, the Committee) may amend or change any of the above fencing guidelines so long as the amendment(s) are still in compliance with the Development Statement.
11. Pursuant to the Development Statement, the following specific fencing provisions shall apply to the Perimeter Lots, with the exception of those perimeter lots located in the area identified in the Development Statement as "Parcel A" which contain homes with the front of the residence primarily facing Senour Road:
  - (a) All fences constructed around an in-ground swimming pool shall be of a uniform style, design,

color and height; and be in compliance with applicable ordinances for such pool fences.

(b) With the exception of the provision of 11(a), the use of a solid "privacy" fence shall not be permitted unless it is for purposes of fencing a patio, deck, hot tub area or the like; and even in such case the area covered by a "privacy" fence shall not exceed 300 square feet in size (approx. 15' x 20', as an example), and the area fenced with the "privacy" fence must abut the residence.

(c) No "privacy" fence shall exceed 6' in height. Further, the Committee shall determine a uniform style/design for "privacy" fences which will be used as the uniform standard for "privacy" fencing on these affected perimeter Lots.

(d) With the exception of the fencing for in-ground pools, and for "privacy" fences, as described previously in this section H(11), any other fencing in the rear/side yard of the residence shall be limited to vinyl coated chain link fence not to exceed four (4) feet in height.

(e) The Association shall require the prompt removal of any fence constructed which is not approved by the Committee as being in compliance with these specific perimeter lot fencing restrictions.

(f) If the Committee approves a fence which is actually not in compliance with these specific Perimeter Lot fencing restrictions; and the Committee is unable to reach an agreement with the Lot Owner to bring the fence into compliance within sixty (60) days of the date upon which the fence is finally determined to be in violation (either due to written admission by the Committee that its approval was in error, or the final determination of court of law of same) then the Association shall promptly (weather permitting) supplement the landscaping on the mound located within the common buffer area behind/beside the Lot on which such improper fence is located in a manner sufficient that the improper fence is effectively screened from the direct view of a person looking out the largest front window on each of the two closest existing residences which are located directly across Pentecost or Senour Road (as applicable) from the Lot.

I. Height Restrictions for Fences and Walls - The Developer/Declarant is of the opinion that the environmental integrity of the Development will be materially lessened if the open nature of the Development is damaged by the proliferation of fences of excessive height. The specific guidelines for fence and wall height restrictions are as follows:

1. The Committee will not ordinarily approve a proposed fence (other than a patio screen or privacy fence as described in paragraph 2 of this Section I) which exceeds forty two (42) inches in height unless it is reasonably necessary in order to enclose an in-ground pool.

2. A Patio screen and/or privacy fence is defined as a fence which abuts the rear of residence at not less than one end of the fence, and which extends not more than sixteen (16) feet away from the rear wall of the residence. A patio screen and/or privacy fence shall not exceed six (6) feet in height.

3. In no case shall fencing or a wall on a lot exceed six (6) feet in height above grade.

4. The Developer/Declarant, prior to the Turnover Date (and thereafter, the Committee) may amend or change, any of the above height restrictions and guidelines.

19. Sight Visibility. - Regardless of Committee approval or any other provision of this Declaration, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') and ~~six (6)~~ <sup>nine (9')</sup> 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 twenty-five feet (25') from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any Lot within ten feet (10') from intersection of a street line with the edge of a driveway pavement or

alley line. No tree or landscaping 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.

20. **Setback Lines** - Front building setback lines ("BL") shall be established on the plat; but shall not be less than twenty five (25) feet from the street right of way. The minimum rear yard shall be twenty five (25) feet.

A. **Side Yard Setback** - The standard minimum side yard setback for each Lot within the subdivision is four (4) feet. However, the residences on abutting Lots shall not be located less than fifteen (15) feet apart.

B. **Combined Lots** - In the event a building is erected on more than one single Lot, the provisions of this Paragraph shall be interpreted as based on the lot width at the BL of the combined Lots, and shall apply to the side lines of the extreme boundary of the combined Lots. In the event of a discrepancy between this Declaration and a recorded plat, this Declaration shall control.

21. **Minimum Size of Dwellings and Garages** - Subject to the provisions contained in the Development Statement, the typical minimum square footage of livable space contained in a home built on any Lot which is located in the Development shall be 1400 square feet for a one story home and 1800 square feet for a home in excess of one story. The minimum square footage of livable space contained in a home built on any Perimeter Lot, or on any Lot in the area in the southeast portion of the Development (identified in the Development Statement as Parcel C), shall be 1500 square feet for a one story home and 1800 square feet for a home in excess of one story. All homes constructed in the Development shall have an attached garage capable of storing at least two (2) vehicles, and said attached garage shall be at least 380 square feet in size (not including any portion of the garage area which contains the furnace, water heater or similar mechanicals).

22. **Exterior Construction** - Each home constructed in the Development, and any addition(s) thereto, shall conform to the following restrictions:

A. The use of any exterior material other than brick, stone, wood, vinyl siding, vinyl and/or aluminum soffits to cover the exterior walls of the home (not including doors, windows and the like), and the use any roofing material other than residential quality asphalt shingles, shall be prohibited unless approved in advance of such application/installation by the Developer/Declarant.

B. The exterior of each home which is located on a Perimeter Lot shall be covered with percentages of brick/stone in compliance with the following provisions:

1. The exterior of the home located on the specific Perimeter Lot located on the southeast end/edge of the turnaround at the South end of the access road just West of Senour Road which extends South from the Senour Road entrance to the Development (the southernmost lot on the access road) will contain a home with brick/stone on not less than the entire first floor exterior of the home (exclusive of doors, windows, chimneys, architectural features, porches and the like).

2. With the exception of the Perimeter Lot which is the subject of Section B (1) of this Paragraph 22, all of the Lots which are located along the West side of the access road located just West of Senour Road which extends South from the Senour Road entrance to the Development, and/or which are located on the turnaround area at the South end of the herein described access road, shall contain homes which are covered with brick/stone on the entire portion of the first floor exterior front wall of the home that faces the access road (exclusive of doors, windows, chimneys, architectural features, porches and the like).

3. The home constructed on any Perimeter Lot which is not the subject of Sections B(1) or B(2) of this Paragraph 22, will be covered with brick/stone on not less than the entire first floor exterior of the home (exclusive of doors, windows, chimneys, architectural features, porches and the like).

- C. The exterior of each home which is located on a Lot which is not a Perimeter Lot (therefore not covered by Section B of this Paragraph 22) will be covered with brick/stone on not less than 25% of the first floor front exterior of the home (exclusive of doors, windows, chimneys, architectural features, porches and the like).
- D. At least one (1) model home constructed in the Development must be covered with brick/stone on not less than the entire first floor exterior of the home (exclusive of doors, windows, chimneys, architectural features, porches and the like).
- E. Of the model home(s) constructed in the portion of the Development identified as Parcel A in the Development Statement, at least one (1) must be covered with brick/stone on at least the entire first floor exterior of the residence (exclusive of doors, windows, chimneys, architectural features, porches and the like).
- F. Any model home which is constructed in the portion of the portion of the Development identified as Parcel B in the Development Statement shall utilize the version of the several different standard house plans for said model which contains the highest amount of brick/stone.
- G. No two abutting Lots shall be developed with the same house using the same front elevation plan.
- H. No heat pumps, air conditioning units or gas meters shall be installed in, or on the, front of a residence.
- I. No unfinished (not painted, clad, or otherwise sealed to match the décor of the exterior) storm doors or storm windows shall be installed.
- J. All gutters and down-spouts other than copper must be painted, coated, or sealed to match the décor of the exterior of the residence.
- K. All roof and fireplace flashing other than copper must be painted or coated.
- L. All metal roof or range vents will be painted or coated to blend with roof color. Every effort must be made to locate such vents to the rear of the dwelling or along the upper roof line.
- M. No solar panels shall be permitted on any residence.
- N. Every effort must be made to locate all plumbing vent stacks to rear of the residence.
- O. Any reconstruction of, or addition to a home shall comply with the same minimum brick/stone standards as the original residence.
- P. Any addition or reconstruction shall comply with the provisions of this Declaration, and all applicable provisions in the Development Statement.
23. **Driveway and Sidewalks** - All sidewalks and driveways shall be installed and paved simultaneously with construction of the homes. Sidewalks at property lines are to meet flush with no abrupt change in grade from one Lot to another; and the portion of the driveway containing the sidewalk must match the abutting sidewalk elevation and angle. The type of construction and materials used on the driveway and/or the sidewalk must first be approved by the Committee. The driveway and sidewalks must be paved along their entire length. With the exception of the provisions hereinafter in this section regarding driveways serving side-load garages, the driveway shall be no less than sixteen (16) feet wide at any point.
24. **Shared Common Areas** - Certain common areas and/or improvements which are not dedicated to the public, and are within the boundaries of the original approximately 423 acres which is the subject of the Development Statement (such as the Common Area, anticipated trails, and related improvements along Big Run Creek, for

example) are anticipated to eventually be shared and available for use by the residents in all of the separate subdivision(s) which are developed upon the original 423 acre parcel. In such case, the ownership of, and the responsibility for continuing the development of, and the maintenance and management of these shared common areas/improvements is anticipated to be conveyed to a separate "Common Area Property Owner's Association" (name yet to be chosen) which shall be funded by dues from every owner of a lot in each of the several separate subdivisions sharing such common areas/improvements. A separate Declaration of Covenants and Restrictions applicable to these Shared Common Areas shall be considered incorporated herein automatically upon the recordation of said document containing a reference to its incorporation in the Declaration as a result of this reference. The Common Area Property Owner's Association shall have mandatory dues and lien rights as those contained in this Declaration. Each of the subdivisions with rights to the Shared Common Areas/improvements shall have representation on the Common Area Property Owner's Association as set forth in the documents establishing and governing same. If said separate Declaration is not yet recorded as of the date any Lot is initially conveyed by the Developer/Declarant, then the acceptance of any such Deed for a Lot in Hunters Crossing Estates is acknowledgement of the fact that the Lot is transferred and will be forever held, subject to the terms of the Declaration, the Articles, the By-Laws, and the future rules, amendments, additions, rights, obligations, and actions, of the proposed Common Area Property Owner's Association, so long as the provisions contained therein do not negatively and materially impact the rights of the First Mortgagees, or result in material additional obligations being imposed on said Lot Owner other than the obligation to pay any and all Assessments, Lot Assessments, and Special Assessments related thereto.

25. **Enforcement of Restrictions** - In the event there shall be any violation or attempted violation of any of the Restrictions, it shall be lawful for the Developer, the Declarant, the Association, or for any person owning any real property in the Development, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Developer, the Declarant nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these covenants and restrictions. 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 Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of the Restrictions.

26. **Additional Acquired Property** - This Declaration shall apply to all sections of the Development, as each section is platted; including but not limited to any additional real estate which is added to the development after the date of this Declaration. Any and all plat(s) for any section(s) of the Development shall be subject to this Declaration simply by reference to this Amended Declaration, in each such Plat. However, even in the absence of such reference, all such sections of the Development shall be deemed subject to this Declaration.

27. **Rights to Amend** - The Declaration may be amended as follows:

A. **Amendment by the Developer/Declarant**. Until the Turnover Date, the Developer/Declarant may in their sole and absolute discretion unilaterally amend this Declaration at any time without the consent of any other Lot Owners. Any such amendment may impose covenants, conditions, restrictions and easements upon the Development in addition to those set forth herein, including, without limitations, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the development. After the Turnover Date, the Developer/Declarant may unilaterally amend this Declaration, without the consent of any other Lot Owners, if such amendment is (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order; (2) necessary to enable a title insurance company to issue title insurance coverage on the lots; (3) necessary to conform to the requirements of the United States Federal Housing Administration; or (4) necessary to correct errors, provided however that any such amendment shall not materially and adversely effect the title to any Lot unless the Lot Owner has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of the Developer/Declarant without the written consent of the Developer/Declarant, or the assignees of such right or privilege.

B. Amendment by the Lot Owners. Except as provided otherwise in this Declaration, amendments to this declaration shall be proposed and adopted in the following manner: (1) Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered. (2) A resolution to adopt a proposed amendment may be proposed by the Board, or Lot Owner having any aggregate total of at least 2/3's of the votes of all Lot Owners; (3) The resolution concerning a proposed amendment must be adopted by a designated vote of not less than 2/3's of the Lot Owners at a meeting duly called and held in accordance with the provisions of the Association Documents.

28. Titles - The underlined titles preceding the various paragraphs and subparagraphs of the 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 to give effect the purposes herein, 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.

29. Severability - Every one of the provisions of the Declaration is hereby declared to be independent of, and severable from, the rest of the provisions and of and from every other one of the provisions, and of and from every combination of the provisions herein. Therefore, if any of the provisions herein 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 the quality of running with the land of any other provision.

30. Term - This Declaration shall bind and run with the land for a term of thirty (30) years from and after the date that this Declaration is filed for recording in the Office of the Recorder of Marion County, Indiana, and thereafter shall automatically renew forever for successive periods of ten (10) years each.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 2<sup>ND</sup> day of MAY, 2005.

DAVIS HOMES, LLC

By Jane A. Hendrickson  
Jane A. Hendrickson, as VICE-PRESIDENT

STATE OF INDIANA     )  
                                  )     SS:  
COUNTY OF Marion    )

Before me, a Notary Public in and for County and State, personally appeared Jane A. Hendrickson, known to me to be the authorized Vice President of DAVIS HOMES, LLC, who acknowledged execution of the foregoing Amended Declaration for and on behalf of said company, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and notarial seal this 2<sup>nd</sup> day of may, 2005.

My Commission Expires:

11/18/2012

Andrea D. Hittle  
Notary Public, Signature

Andrea D. Hittle  
Notary Public, Printed

Marion  
County of Residence



Prepared by: David A. Retherford, Attorney at Law, Inc., 8801 Southeastern Avenue, Indianapolis, IN - 46239

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE SHARED COMMON AREA HOA, INC.**

**THIS DECLARATION** is made this 28th day of July, 2009, by **BAY COMMUNITIES, LLC** (hereinafter referred to herein as "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of all of the lands contained in the area shown on and/or legally described in Exhibit A, which is attached hereto and made a part hereof by this reference, which lands likely will, along with additional real estate to be acquired in the future, all eventually be reserved as Shared Common Area (said property hereinafter generally referred to as the "Shared Common Area"), the use of and responsibility of which is to be shared amongst all the Lot Owners of the subdivisions known as "Hunters Crossing Estates", "Wolf Run", and the as yet unnamed subdivision to be located North of Big Run Creek and West of Hunter's Crossing Estates which will be contained within the boundaries of the original approximately 423 acres which is the subject of the D-P Development Statement for same (all three of the subdivisions are referred to hereinafter jointly as the "Subdivisions"), and which will be more particularly described in the plats (or sections thereof) and/or Deeds to be recorded in the Office of the Recorder of Marion County, Indiana; and

**WHEREAS**, Declarant either has, or will convey the Shared Common Area to an entity anticipated to be known as "Shared Common Area HOA, Inc.", and before doing so desires to subject and impose upon all the real estate within the Subdivisions and the Shared Common Area itself, and future platted areas of said Subdivisions, mutual and beneficial covenants and restrictions and charges concerning the Shared Common Area (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the Lots and lands in the Subdivisions, the future Lot Owners therein and thereof, and the Shared Common Area; and

**WHEREAS**, by specific reference in Paragraph 24 (approx.) of the Declaration of Covenants, Conditions and Restrictions for Hunters Crossing Estates, executed on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ and recorded on or about the 6<sup>th</sup> day of Nov., 2006 as Instrument No. 2006-16962 in the Office of the Recorder of Marion County, Indiana, (the "Hunters Crossing Estates Declaration"), the provisions of this document are incorporated in their entirety in the Hunters Crossing Estates Declaration, and all lots owned in Hunters Crossing Estates are subject to the provisions hereof; and

**WHEREAS**, by specific reference in Paragraph 24 (approx.) of the Amended Declaration of Covenants, Conditions and Restrictions for Wolf Run, executed on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ and recorded on or about the 11<sup>th</sup> day of April, 2005 as Instrument No. 2005-54245 in the Office of the Recorder of Marion County, Indiana, (the "Wolf Run Declaration"), the provisions of this document are incorporated in their entirety in the Wolf Run Declaration, and all lots owned in Wolf Run are subject to the provisions hereof; and

**WHEREAS**, the as yet unnamed subdivision to be located North of Big Run Creek and West of Hunter's Crossing Estates which will be contained within the boundaries of the original approximately 423 acres which is the subject of the Development Statement shall also be subject to the provisions hereof via the incorporation of the provisions of this document in the eventual Declaration for such subdivision,

**NOW, THEREFORE**, Declarant hereby declares that all of the platted Lots, and all lands located within the Subdivisions as they become platted and/or developed/transferred as the part of the overall plan for the subdivision, are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and



improved, subject to the following covenants and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said Lots and lands in the Subdivisions, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivisions as a whole and of each of said Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

**1 Definitions.**

- A. "Act" - shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended, or any successor act.
- B. "Annual Assessment" - amount to be paid to the Association by each Lot Owner/Owner annually.
- C. "Articles" - shall mean and refer to the Articles of Incorporation of the incorporated Association, as the same may be amended from time to time.
- D. "Assessments" - collectively refers to Annual Assessments, Lot Assessments and Special Assessments.
- E. "Association" - Shared Common Area HOA, Inc., an Indiana non-profit corporation, its successors and assigns.
- F. "Association Documents" - the articles of incorporation, by-laws, code of regulations and any and all procedures, rules, regulations or policies adopted by the Association or a Committee charged with such regulation by this Declaration as the same may hereafter be amended in accordance with their terms.
- G. "Board" - the board of directors of the Association.
- H. "Builder" - the person or entity who actually constructs the home built on the respective Lot in any of the Subdivisions. The Builder is generally anticipated to be the initial recipient of a Conveyed Lot; and at the time this Declaration is recorded is anticipated to be either Westport Homes or Ryland Homes, or an associated entity.
- I. "By-Laws" - shall mean and refer to the Code of By-Laws of the incorporated Association as the same may be amended from time to time.
- J. "Common Expenses" - expenses incurred in administration, the upkeep and maintaining the Shared Common Property including but not limited to the payment of property taxes and other assessments, and the performance of all other obligations and actions of the Association.
- K. "Conveyed Lot" - a platted Lot which has been transferred by the Developer/Declarant to the Builder or the initial Lot Owner.
- L. "Declarant" - Bay Communities, LLC and any manager, general partner, shareholder, successor or assign thereof to which Declarant specifically assigns any of the rights of the Declarant under this Declaration by a written instrument.
- M. "Developer" - Bay Communities, LLC and any manager, general partner, shareholder, successor or assign thereof to which Developer specifically assigns any of the rights of the Developer under this Declaration by a written instrument.
- N. "Development Statement" - the Preliminary Plan for the overall planned unit development of the

Development of the Shared Common Area and the Subdivisions are a part, which was approved in the rezoning of the overall real estate to the D-P classification of the Dwelling Districts Zoning Ordinance in Case No. 2003 ZON-060 (2003-DP-008). The Development Statement sets forth the several applicable development standards and zoning commitments for the Development, and is on file in the City of Indianapolis Department of Metropolitan Development, as the same may hereafter be amended in accordance with its terms.

- O. **"First Mortgage"** - the holder of a mortgage against a Lot (and generally the improvements constructed thereon) which is in the first (or primary) position as compared to any other mortgage against said Lot.
- P. **"Improvements"** - all buildings; overhead, above-ground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools and tennis courts; slope and drainage alterations; paved areas, improved trails, bridges, lighting; fences, trellises, walls, retaining walls, steps, decks, patios; trees, hedges, shrubs and other forms of landscaping; and all other structures of every type, which are located upon or within the Shared Common Area.
- Q. **"Lot"** - a discrete parcel of real property identified upon the recorded subdivision plat of any of the Subdivisions, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Developer, excluding the Shared Common Property, and any portion of the overall development which is dedicated for public use.
- R. **"Lot Owner"**- also **"Owner"** - the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding these having an interest merely as security for performance of an obligation and also excluding the Developer.
- S. **"Lot Assessment"**- an assessment that the Board may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Lot Owner of the Lot(s), costs of additional insurance premiums specifically allocable to a Lot Owner, costs of any utility expenses chargeable to a Lot Owner but not separately billed by the utility company, and all other charges reasonably determined to be a Lot Assessment by the Board.
- T. **"Manager"** - a person or entity retained by the Board to assist in the management of the Association.
- U. **"Member"** - any person or entity entitled to membership in the Association.
- V. **"Person"** - an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- W.. **"Plat"** - shall mean and refer to the subdivision plat or plats of the Real Estate recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented.
- X. **"Residence"** - shall mean the dwelling unit or home, and such terms shall be considered one and the same as used interchangeably herein.
- Y. **"Restrictions"** - shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.
- Z.. **"Rules"** - the rules and regulations governing use of Shared Common Property, as may be established by the Board from time to time.
- AA. **"Shared Common Property"** - also **"Shared Common Area"** - all real and personal property now or hereafter acquired, pursuant to this Declaration or otherwise, and owned by the Association for the shared common

use and the shared enjoyment of the Lot Owners in all of the Subdivisions.

BB. "Special Assessment" - an assessment levied by the Association against all Lots pursuant to rights granted herein, or at a special meeting of the members of the Association to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of any fund established as a reserve.

CC. "State" - the State of Indiana.

DD. "Subdivisions" - jointly refers to all of the subdivisions which will be contained within the boundaries of the original approximately 423 acres which is the subject of the Development Statement upon completion of the overlap development, which at the time of this Declaration consist of "Hunters Crossing Estates", "Wolf Run", and the as yet unnamed subdivision to be located North of Big Run Creek and West of Hunter's Crossing Estates.

EE. "Turnover Date" - the date upon which the Declarant/Developer turns over control of the Association to the Lot Owners. This shall occur no earlier than the date upon which 75% of the Lots in the Subdivisions containing completed homes have been deeded from the Declarant/Builder to the initial homeowner. However, control shall not be turned over to the Lot Owners until any and all Shared Common Area has been conveyed by the Declarant to the Association.

2. **Effect of Becoming an Owner** - The owner(s) of any Lot in the Subdivisions, or any Lot or real estate which is otherwise subject to the Restrictions contained in the Declaration for any of the Subdivisions, by 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, shall accept such deed and/or execute such contract subject to each and every covenants, restriction and agreement herein contained. By acceptance of such deed and/or execution of such contract, the owner (Lot Owner) acknowledges the rights and powers of Declarant with respect to these covenants and restrictions; and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Declarant and to and with the owners and subsequent owners of each of the Lots affected by these covenants and restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

3. **Plat Easements** - There are strips and parcels of ground as shown on the plat marked as various type of easements, which are hereby reserved for the use of landscaping, public utilities (including but not limited to drainage structures, swales and improvements, and sanitary sewer, recreational purposes, etc., and/or for the installation and maintenance of trails, bridges, maintenance drives and the like, and any related improvements, which are subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities as the Declarant or the owner of record after sale may deem necessary along, through, in, over and under the Shared Common Area shown on said plat. In addition, other Plat easements may be created by Declarant pursuant to written instruments recorded in the office of the Recorder of Marion County, including but not limited to entry way easements, pond access easements, common area access easements, woodland preservation easements and public health and safety easements, either separately or in any combination thereof. The Declarant and/or the Association shall have the right to negotiate and grant additional easement rights through and upon said reserved easement areas and or the Shared Common Area as are reasonable and necessary to benefit the residents and/or to reasonably resolve disputes. However, no Lot Owner shall modify any Easement, place any improvements within any Easement, modify any improvements within the Easement, change the surface area of any Easement or otherwise make any changes within the areas reserved as such easements without the prior written permission of the Declarant and/or the applicable municipal authority which benefits from said Easement, as applicable.

4. **Use Restrictions** - The following restrictions and covenants concerning the use and occupancy of the Shared Common Area shall run with the land and be binding upon the Declarant and every Lot Owner or occupant, their heirs, successors and assigns, as well as their family members, guests, and invitees. Present or future Lot Owners, the Declarant or the Association shall be entitled to injunctive relief against any violation or attempted violation of

any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, including reasonable attorney fees and costs, but there shall be no right of reversion or forfeiture resulting from such violation.

- A. There shall be no structure built without the prior written authorization of the Declarant.
- B. No structure properly built on the Shared Common Area shall be used for residential purposes or human habitation.
- C. The Shared Common Area shall be subject to the applicable easements, restrictions and limitations of record appearing on the recorded plat of the subdivision, on recorded easements, on recorded deed covenants or restrictions, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.
- D. The Shared Common Area may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the recreational purposes and enjoyment of the natural beauty of same.
- E. All use of the Shared Common Area, and the improvements therein, shall be subject to the rules, regulations, and standards adopted and approved by the Board.
- F. Any ponds, creeks or rivers within said Shared Common Area shall be for drainage and passive recreational purposes only; and no wading, swimming, boating, or ice skating, either therein or thereupon, are permitted.
- G. All uses of the Shared Common Area shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Lot Owners and occupants, and shall comply with the provisions of this Declaration, the laws of the State, and the Rules.
- H. No sewage, garbage, refuse, or other solid, liquid, gaseous or other materials or items (other than storm and surface water drainage) shall be placed, kept or stored on the Shared Common Area, except the Board may take steps to clear and purify the waters of any pond located therein by the addition of chemicals or other substances commonly used for such purposes or by providing therein structures and equipment to aerate the same. No Owner or other Person shall take or remove any water from or out of any pond, or utilize the water contained therein for any purposes, including, without limitation, connection with any sprinkler or irrigation systems. No Owner or any other Person shall do or permit any action or activity which could result in the elevation of the level of any pond. No Owner or other person shall construct or place any dock, flotation device or structure in or around any pond. Except as otherwise provided, no Person using any portion of the Shared Common Area has the right to cross another Lot or trespass upon property not within Common Area associated with one of the Subdivisions, subject to the rights of the Declarant, the Association, their employees, heirs, successors and assigns as set forth in the Declaration.
- I. No noxious or offensive activities shall occur upon the Shared Common Area, nor shall anything be done thereupon that shall be or become an unreasonable annoyance or nuisance to any owner of a Lot in the Subdivisions. The Shared Common Area shall not be used in any unlawful manner or in any manner which might cause injury to the reputation of the Subdivisions, or which might be a nuisance, annoyance, inconvenience or a cause of damage to other Owners and occupants of residences or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons. Nothing shall be done or kept in or on any portion of the Shared Common Property that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Shared Common Property or that might unreasonably disturb the quiet occupancy of any person residing on any Lot in the Subdivisions.
- J. With the exception of directional or informational signage, or signage necessary to display rules and/or safety information, there shall be no signs displayed within the Shared Common Area. All signs shall be considered

illegal unless approved in advance by the Board; and any approval shall still be subject to any applicable permitting requirements of the municipality. The Declarant/Developer is expressly exempt from the provisions of this Section 4(J) and may post otherwise legally permitted signs on the Shared Common Area as they deem necessary. Notwithstanding the foregoing provisions, no sign shall be displayed on the Shared Common Area which is in violation of the Sign Plan approved as a modification to the Development Statement in Case No. 2004-APP-058, as same may be amended.

K. No pets, farm animals, fowls, or domestic animals (maintained for food or for commercial purposes) shall be kept on the Shared Common Area. Other than those occasions where a pet is on a leash being exercised and/or under the direct control of the owner or occupant of a dwelling in the Subdivisions, no pet shall be allowed on the Shared Common Area. The Owner responsible for a pet being on the Shared Common Area is responsible for the immediate cleanup of any animal fecal matter or other droppings ("Animal Matter") deposited by animals owned by them or their guests in any portion of the Shared Common Area, and the failure to remove any Animal Matter from any portion of the Shared Common Area shall subject the Owner to a fine not to exceed \$50.00 per occurrence as determined by the Board.

L. The Board shall be entitled to create and enforce reasonable rules concerning the use and operation of any and all types of vehicles or other conveyances on the Shared Common Area.

M. Except for the reasonably necessary activities of the Developer during the original construction of the improvements located within the Shared Common Area, no burning, burying, or storage of trash, garbage or other refuse of any kind shall be permitted on any portion of the Shared Common Area unless approved by the Board. The Board shall be permitted to place appropriate refuse collection containers as deemed necessary, provided they are well maintained, and serviced regularly.

N. No house footing drain, sump pump drain, roof water drain, or the like shall be discharged into unapproved outlet which encroaches into the Shared Common Area. Any Owner discharging in a manner which is not in compliance with all applicable laws and ordinances shall be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, the Declarant or the Association will cause repairs or modifications to be accomplished and the cost thereof shall be an expense of the Lot Owner. The Association and/or the Declarant, as applicable, shall make a Special Assessment against the Lot, and also shall have a lien against said Lot for such costs, including but not limited to the actual costs incurred, reasonable related costs and expenses, prejudgment interest, court costs, and actual attorney's fees. Such lien may be formalized via a recorded Notice of Intent to Hold Lien being recorded against the Lot; but the lien shall be valid even without the actual recordation of same. The Association, its Board members, the Declarant, or any agents, employees or contractors shall not be liable for any damage which may result from any work performed pursuant to the foregoing provisions.

O. No Owner shall plant trees, landscape, clear trees or brush, or do any gardening in any portion of the Shared Common Areas, except with express prior permission from the Board.

P. All Lot Owners and members of their families, their guests, or invitees, and all occupants of any home, or other persons entitled to use the same shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board or its authorized Committees governing the operation, use and enjoyment of the Shared Common Property.

Q. So long as any portion of the Development Statement is in effect, no use shall be made of any part of the Shared Common Area which violates said Development Statement, or the zoning commitments contained therein; and all Lot Owners, members of their families, their guests, tenants, invitees and all occupants or other parties entitled to use or who may use any part of the Shared Common Area shall at all times fully comply with the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Development Statement.

**5. Rights and Obligations of the Association.** A property owners association is or shall be created which is anticipated to be named Shared Common Area HOA, Inc. (the "Association"), an Indiana nonprofit corporation, which shall have, in addition to all rights and obligations otherwise set forth in or contemplated by this Declaration, the Act, or the Association Documents, the following rights and obligations::

A. **Shared Common Property/Common Area.** - Developer may, from time to time, at Developer's option, but no later than that point in time where seventy-five percent (75%) of all Lots in the Subdivisions have been sold and developed with homes, convey to the Association for the use and benefit of the Association and the Members a full, partial or shared interest in any real estate or personal property, or any interest therein in the nature of an easement. The Association shall accept title to any interest in any real or personal property transferred to it by Developer. The Association, subject to the rights of the Lot Owners set forth in this Declaration and the Association Documents, shall be responsible for the exclusive management and control of the Shared Common Property/Common Area, if any, and all improvements thereon, and shall keep it safe and sanitary condition, order, and repair, in accordance with the terms and conditions of this Declaration, and the rules and standards adopted by the Association.

B. **Personal Property and Real Property for Common Use.** - The Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real estate in addition to that property conveyed to it by Developer.

C. **Maintenance Obligations.**

1. **Ponds and Drainage Improvements.** -- Although the ponds and the storm drainage easements in the Development which are located within the Shared Common Area shall be a part of the drainage system of the Development which also runs to the City of Indianapolis, the Association shall control the water quality and condition of the retention ponds and drainage improvements therein.

2. **Landscaping, trails, bridges and related improvements.** -- Any landscaping, grass, trails or sidewalks, structures, recreational facilities or any other type of improvements located on Shared Common Area or owned by the Association shall be managed and well maintained by the Association and shall be the full responsibility of the Association, subject to any restrictions imposed by Developer at the time of transfer.

D. **Rules and Regulations.** --The Board may make and enforce reasonable rules and regulations governing the use of the Shared Common Area, which may be in addition to and shall not be inconsistent with this Declaration and the Association Documents. The Board shall have the power to impose sanctions on Lot Owners, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Shared Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Declaration, the Association Documents or the Rules against any Lot Owner, tenant, guest or invitee of any Lot Owner, the amount shall be due and payable by such Lot Owner and shall be a Lot Assessment against such Owner's Lot. Owners shall be bound by all such Rules and Regulations promulgated by the Association the same as if specifically included herein and recorded herewith.

E. **Implied Rights.** - The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration and every other right or privilege reasonably implied from the existence of any right or privilege granted in his Declaration or reasonably necessary to effect any such right or privilege.

F. **Managing Agent.** - The Board may retain and employ on behalf of the Association a Manager or Managing Agent, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The term of any management agreements

shall not exceed One (1) year; and shall allow for termination by either party without cause or penalty, upon no more than ninety (90) days prior written notice. Notwithstanding anything to the contrary contained in this Declaration, Declarant shall have, and Declarant hereby reserves to itself, the exclusive right to manage or designate a Manager or Managing Agent, and to perform all the functions of the Corporation, until the Turnover Date. Declarant may, at its option, engage the services of a Managing Agent affiliated with it to perform such functions and, in either case, Declarant or such Managing Agent shall be entitled to reasonable compensation for its services.

G. Insurance. -

1. As of the Turnover Date, the Association shall be required to obtain and maintain adequate blanket property/casualty insurance, comprehensive public liability insurance and flood insurance covering all of the Shared Common Property in an amount as is required by law or commonly required by prudent institutional mortgage investors. The public liability coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Shared Common Property and shall insure the Association, the Board of Directors, or any committee of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may act as agents or employees of any of the foregoing with respect to the Development. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Lot Owners.

2.. The Association may, in the discretion of the Declarant prior to the Turnover Date, and the discretion of the Board thereafter, obtain and maintain the following insurance: (a) fidelity bond coverage and/or surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board (any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board), and also workers' compensation insurance for all managers, managing agents, officers directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers' and trustees' liability insurance to fund other obligations of the Association, (d) additional insurance against such other hazard's and casualties as is required by law, and (e) and any other insurance the Association deems necessary.

3. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses.

4. In the event of damage or destruction of any portion of the Shared Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Lot Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Association may levy a Special Assessment pursuant to cover the additional costs.

H. Condemnation. - The Association shall represent the Lot Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Shared Common Property or any portion thereof. Each Owner hereby appoints the Association as its attorney-in fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Lot Owners.

I. Books, Records. - As of the Turnover date, upon reasonable notice of any member in good standing, the Association shall be required to make available for inspection all books, records and financial statements of the Association.

6. **Powers: Assessment and Collection** - The Association shall have all the powers set forth in the Declaration, the Association Documents and in the Act, together with all other powers that belong to it by law, including the power to levy Annual Assessments, Lot Assessments and other Special Assessments against the Lots.

7. **Membership and Voting Rights** - Every Lot Owner shall be a member of the Association. For purposes of determining classes of membership (1) a Class A member shall be the owner of any Conveyed Lot; (2) a Class B member shall be the owner of any lot which is not a Conveyed Lot (includes developed platted Lots which have not been conveyed, and also undeveloped platted lots; and (3) each reference to a Lot in this Declaration shall be deemed to either be a Conveyed Lot, a Conveyed Lot containing a completed home (as applicable), or a lot which is not yet a Conveyed Lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

7.1 **Class A.** Every person, group of persons, or entity (other than the Declarant and/or the Builder) who is a record owner of a fee interest in a Conveyed Lot shall, by this Declaration (but specifically subject to the provisions of Paragraph 10 of this Declaration), be subject to assessment by the Association and classified as a Class A member; provided however, that any such person, group, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

7.2 **Class B.** The Class B members shall be the Declarant, and shall be entitled to three (3) votes for each platted Lot owned which is not yet a Conveyed Lot. Declarant shall have the automatic right to plat, record and sell Lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: 1) the Turnover Date, or 2) January 1, 2025. In the event all the Lots have not been conveyed to initial homeowners, or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, all those Class B memberships existing, if any, at time of cancellation shall automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until the Declarant conveys said Lot. However, in no case shall the Builder be required to pay any assessments/dues.

8. **Board Organization and Control** - The initial Board shall consist of one member, initially composed of Bruce Sklare. No later than the Turnover Date, the initial Board shall resign, whereupon the members of the Association shall constitute and appoint their Board as follows:

A. Each of the three individual subdivisions which are included in the Subdivisions shall elect/appoint one Board member, each of whom shall be elected/appointed using procedures and for a term which shall be as set forth in the Association documents.

B. At any point in time later than one (1) year after the initial Board resigns, the Board may determine that instead of a three member board that the Board should consist of either Six (6) or Nine (9) members. In such case, each of the three individual subdivisions which are included in the Subdivisions shall elect/appoint two or three members to represent their 1/3<sup>rd</sup> interest (as applicable), each of whom shall be elected/appointed using procedures and for a term which shall be as set forth in the Association documents.

C. The Board shall adopt procedures for handling any requests or petitions from Owners, and if applicable, the



provisions for the Architectural Control committee as contained in the Declaration of Covenants and Restrictions for each of the Subdivisions shall be used as a guideline.

**9. Covenant Accepting Assessments** - Each owner of any Lot (except the Builder), by acceptance of a Deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (subject to the provisions of Paragraph 10 of this Declaration): 1) annual assessments or charges imposed by the Association, and 2) special assessments for capital improvements, other reasonable expenses of the Association, or the collection of expenses, fees and costs incurred by the Association or the Declarant in enforcing these Restrictions against certain Lot(s) and/or Lot Owner(s) as stated herein and/or in the Bylaws. All such assessments are to be established and collected as provided herein and in the Bylaws of the Association.

**10. Commencement of Assessments/Dues, and the Calculation and Payment of the Initial Assessments/Dues** Assessments/Dues shall commence accruing against a Lot as of the date each Lot with a completed home thereon is conveyed to the initial homeowner, and the obligation to pay such assessments/dues by the Lot Owner shall continue thereafter in perpetuity. The first year's assessment/dues shall be adjusted (pro-rated) according to the number of days remaining in the annual assessment period after the date of the conveyance of the Lot with a completed home thereon is conveyed to the initial homeowner by either the Declarant or the Builder, as applicable. The prorated initial annual assessment shall both be paid to the Association by the initial homeowner at (or at the time of) the closing on the conveyance of the Lot with a completed home thereon to the initial homeowner. The commencement, calculation and payment terms hereinabove shall also apply to a Lot Owner (other than the Builder) who receives a Lot without a completed home directly from the Declarant or the Builder. In such case the Lot Owner shall pay the prorated assessment and the one time initial assessment at (or at the same time as) the closing on said Lot. In all cases, the Lot Owner (other than the Builder) shall pay all assessments/dues after the date commencement date thereof, on or before the due date for same.

**11. Declarant's Exemption from Assessments, and Right to Collect Advances** - The Declarant, as the owner of platted or unplatted Lots, shall be exempt from any and all assessments. The Declarant shall advance any deficits in usual or ordinary expense until such time as the assessments upon Lots with homes thereon is sufficient to meet such expense. However, the Declarant shall have the right to recover any such advances made by Declarant to cover such deficits, from the receipt/collection of any assessments which were assessed prior to the Turnover Date.

**12. Assessment Procedure and Requirement For Uniform Rates** - Unless otherwise authorized by the Board, the Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period and provide the membership due notice thereof. Annual Assessments may be made payable at more frequent periods than one (1) year by resolution of the Board of Directors of the Association. Both Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless said Special Assessment(s) are necessary to reimburse the Association for funds spent related to the enforcement of these covenants against specific Lot(s), whereupon said uniform rate requirement for similarly situated homes shall not apply, or as otherwise specified herein.

**13. Right to Increase Annual Assessments** - Because of uncertainties in usual and ordinary common property expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unforeseeable operating expenses, the Board of Directors of the Association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by normal accounting procedures and distributed to the membership to demonstrate that such increases are attributable to increases in operating expenses and no portion of such increase shall inure to the benefit of the Declarant; and the monies received shall be entirely expended on Association expenses.

The maximum annual assessment per Lot may be increased above the maximum percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose.

**14. Liens, Charges and Subordination** - Any charge levied or assessed against any Lot, together with interest, reasonable attorney's fees and other charges and costs hereinafter provided, shall become and remain a lien upon that Lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the Lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the Board of Directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the Board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the Lot or Lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay the expense or costs, including reasonable attorney's fees, incurred by the Association in collecting same. Every owner of a Lot in the subdivision and any person who may acquire any interest in such Lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said Lot at the time of the acquisition of such interest are valid liens and shall be paid; and shall be held to have conclusively covenanted to pay the Association all charges that the Association shall make pursuant to these covenants and restrictions.

The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. In addition, no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association of the payment status of the assessments on a specified Lot, and/or that certain assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and for the improvement and maintenance of the properties owned or operated by the Association.

**15. Suspension of Privileges** - Notwithstanding any other provision contained herein or in the Bylaws, the Board shall have the right to suspend the voting rights, if any, and the right to use the Shared Common Areas and facilities of the Association, of any member; ( i) for any period during which any of the Association's charges owed by the member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the Board ; and (iii) during the period of any violation of the Articles of Incorporation, Bylaws, the provisions of the Development Statement, the Restrictions, or the rules and regulations of the Association.

**16. Limits on the Association's Rights Against First Mortgagees** - Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each first mortgage owned) or the Class A members have given their prior written approval, the Association shall not:

A. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Shared Common Area (s) or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Shared Common Area shall not be deemed a transfer within the meaning of this clause.

B. Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

C. By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the maintenance of the Shared Common Area or improvements thereupon.

D. Fail to maintain extended coverage insurance on any insurable improvements on the Shared Common Area(s) on a current replacement cost basis, and in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost).

E. Use hazard insurance proceeds for losses to shared common property for other than the repair, replacement or reconstruction of such improvements.

F. Adopt or amend any constituent document so as to give a Lot Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to the homeowner/ mortgagor of insurance proceeds or condemnation awards for losses to or a taking of Shared Common Property/Common Area.

**17. Rights of First Mortgagees**

A. A First Mortgagee, or their successors or assigns, shall have the right to examine the books and records of the Association upon reasonable advance notice.

B. A First Mortgagee may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any Shared Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Shared Common Area, and a First Mortgagee making such payment (s) shall be owed immediate reimbursement therefore from the Association.

**18. Sight Visibility.** - Regardless of Committee approval or any other provision of this Declaration, 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 portion of the Shared Common Area which is located within the triangular area formed by the street property lines and a line connecting points twenty-five feet (25') from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any portion of the Shared Common Area located within ten feet (10') from intersection of a street line with the edge of a driveway pavement or alley line. No tree or landscaping 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.

**19. Enforcement of Restrictions** - In the event there shall be any violation or attempted violation of any of the Restrictions, it shall be lawful for the Declarant, the Association, or for any person owning any real property in the Development, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Declarant nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these covenants and restrictions. 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 Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of the Restrictions.

**20. Additional Acquired Property** - This Declaration shall apply to all sections of the Development, as each section is platted; including but not limited to any additional real estate which is added to the development after the date of this Declaration. Any and all plat(s) for any section(s) of the Development shall be subject to this Declaration simply by reference to this Declaration, in each such Plat. However, even in the absence of such reference or even a Plat being recorded which includes the Shared Common Property or only portions thereof, all sections and lots within the Development shall be deemed subject to this Declaration.

**21. Rights to Amend** - The Declaration may be amended as follows:

A. Amendment by the Declarant. Until the Turnover Date, the Declarant/Developer may in its sole and absolute discretion unilaterally amend this Declaration at any time without the consent of any other Lot Owners.

Any such amendment may impose covenants, conditions, restrictions and easements upon the Development in addition to those set forth herein, including, without limitations, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the development. After the Turnover Date, the Developer may unilaterally amend this Declaration, without the consent of any other Lot Owners, if such amendment is (1) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order; (2) necessary to enable a title insurance company to issue title insurance coverage on the lots or the Shared Common Area; (3) necessary to conform to the requirements of the United States Federal Housing Administration; or (4) necessary to correct errors, provided however that any such amendment shall not materially and adversely effect the title to any Lot unless the Lot Owner has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of the Developer/Declarant without the written consent of the Declarant/ Developer, or the assignees of such right or privilege.

B. Amendment by the Lot Owners. Except as provided otherwise in this Declaration, amendments to this declaration shall be proposed and adopted in the following manner: (1) Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered. (2) A resolution to adopt a proposed amendment may be proposed by the Board, or Lot Owner having any aggregate total of at least 2/3's of the votes of all Lot Owners (in person or by proxy); (3) The resolution concerning a proposed amendment must be adopted by a designated vote (in person or by proxy) of not less than 2/3's of the Lot Owners at a meeting duly called and held in accordance with the provisions of the Association Documents.

28. Titles - The underlined titles preceding the various paragraphs and subparagraphs of the 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 to give effect the purposes herein, 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.

29. Severability - Every one of the provisions of the Declaration is hereby declared to be independent of, and severable from, the rest of the provisions and of and from every other one of the provisions, and of and from every combination of the provisions herein. Therefore, if any of the provisions herein 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 the quality of running with the land of any other provision.

30. Term - This Declaration shall bind and run with the land for a term of thirty (30) years from and after the date that this Declaration is filed for recording in the Office of the Recorder of Marion County, Indiana, and thereafter shall automatically renew forever for successive periods of ten (10) years each.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 28 day of JULY, 2009,

Bay Communities, LLC

By Bruce Sklare  
Bruce Sklare, as Member

STATE OF INDIANA )  
                                  )  
COUNTY OF MARION )

SS:

Before me, a Notary Public in and for County and State, personally appeared Bruce. Sklare, known to me to be an authorized member of Bay Communities, LLC, who acknowledged execution of the foregoing Declaration for

and on behalf of said entity.

Witness my hand and notarial seal this 26<sup>th</sup> day of July, 2009.

My Commission Expires

11/07/11



[Signature]  
Notary Public, Signature

David A. Retherford  
Notary Public, Printed

Monro  
County of Residence

Prepared by: David A. Retherford, Attorney at Law, Inc., 8801 Southeastern Avenue, Indianapolis, IN - 46239

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law."

[Signature]  
Bruce Sklare

Exhibit A

TRACT 1

Part of Section 33, Township 15 North, Range 5 East of the Second Principle Meridian in Franklin Township, Marion County, Indiana, more particularly described as follows:

Beginning at the Southeast corner of the West half of the Southeast Quarter of Section 33, thence on and along the East line of said West half of the Southeast Quarter section North 00 degrees 06 minutes 47 seconds West (State Plane Bearing) 1421.34 feet to the Northeast corner of Wolf Run Section Five as platted per Inst. No. 2006-72288 and the True Point of Beginning, thence South 89 degrees 53 minutes 13 seconds West 183.39 feet; thence South 77 degrees 38 minutes 36 seconds West 137.02 feet; thence North 40 degrees 18 minutes 49 seconds West 177.91 feet; thence North 70 degrees 01 minutes 07 seconds West 137.77 feet; thence North 29 degrees 05 minutes 49 seconds East 127.52 feet; thence North 75 degrees 50 minutes 45 seconds East 175.43 feet; thence North 75 degrees 48 minutes 11 seconds East 145.88 feet; thence North 74 degrees 12 minutes 47, seconds East 194.82 feet to a point on the aforesaid East line of the West half of the Southeast Quarter of Section 33; thence on and along the East line of said West half of the Southeast Quarter South 00 degrees 06 minutes 47 seconds East 396.08 feet to the True Point of Beginning. Containing 3.62 acres more or less.

TRACT 2

Part of Section 33, Township 15 North, Range 5 East of the Second Principal Meridian in Franklin Township, Marion County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of the Southwest Quarter of the Northeast Quarter of said Section 33; thence South 00 degrees 05 minutes 32 seconds West on and along the East line of the Southwest Quarter of said Northeast Quarter 1311.48 feet to the Southeast corner of said Southwest Quarter of said Northeast Quarter of said Section 33; thence South 00 degrees 06 minutes 47 seconds East on and along the East line of the Northwest Quarter of the Southeast Quarter Section 629.60 feet to a point marking the Southeast corner of Hunter's Crossing Estates Section One as recorded in the Office of the Recorder of Marion County, Indiana as Instrument Number 2005-0074759, also recorded as Instrument Number 2004-0222255, recorded November 30, 2004, a Limited Warranty Deed to a certain 45.086 tract of real estate conveyed to Davis Homes L.L.C., the next eight ( 8 ) calls being along the southerly boundary of stated Instrument Number 2005-0074759 and Instrument Number 2004-0222255; thence North 89 degrees 59 minutes 48 seconds West 70.00 feet; thence North 00 degrees 06 minutes 47 seconds West 35.46 feet; thence South 89 degrees 53 minutes 13 seconds West 123.73 feet thence North 00 degrees 06 minutes 47 seconds West 122.10 feet; thence North 89 degrees 55 minutes 24 seconds West 71.27 feet; thence North 00 degrees 06 minutes 47 seconds West 74.92 feet; also recorded as North 00 degrees 06 minutes 47 seconds West 75.01 feet per plat of Hunter's Crossing Estates Section One as stated; thence North 31 degrees 35 minutes 02 seconds West 138.31 feet; thence North 88 degrees 24 minutes 57 seconds West 467.58 feet, to the POINT of BEGINNING of the following described real estate, the next eleven ( 11 ) calls are along the Southerly boundary of said Instrument Number 2004-0222255; thence South 40 degrees 00 minutes 11 seconds West 125.29 feet; thence South 74 degrees 29 minutes 00 seconds West 90.30 feet; thence South 88 degrees 07 minutes 20 seconds West 20.00 feet; thence North 71 degrees 19 minutes 08 seconds West 127.74 feet; thence North 29 degrees 05 minutes 18 seconds West 110.20 feet; thence North 01 degrees 52 minutes 40 seconds West 118.72 feet; thence South 72 degrees 05 minutes 04 seconds West 148.51 feet; thence South 82 degrees 31 minutes 24 seconds West 106.23 feet; thence South 07 degrees 11 minutes 56 seconds East 212.41 feet; this call also recorded as South 07 degrees 07 minutes 55 seconds East 214.39 feet per Plat of Hunter's Crossing Estates Section Two as recorded in the Office of the Recorder of Marion County, Indiana as Instrument Number 2006-0169662 recorded November 06, 2006; thence South 71 degrees 18 minutes 42 seconds West 124.67 feet; this call also recorded as South 72 degrees 09 minutes 12 seconds West 124.04 feet per Plat of Hunter's Crossing Estates Section Two as recorded in the Office of the Recorder of Marion County, Indiana as Instrument Number 2006-0169662 recorded November 06, 2006; thence North 89 degrees 04 minutes 21 seconds West 221.04 feet to the Southwest corner of said Instrument Number, 2004-0222255 said point being the Southeast corner of a certain 50.00 acre tract of real estate as recorded in the Office of the Recorder of Marion County, Indiana as Instrument Number 2005-0207516, deeded to Davis Homes L.L.C., recorded December 19, 2005; thence South 12 degrees 24 minutes 27 seconds East 376.21 feet to a point on a northwesterly point of intersection of Wolf Run Section One, as recorded in the Office of the Recorder of Marion County, Indiana as Instrument Number 2004-152004 recorded August 03 2004, also recorded as Instrument Number 2003-0275302, as a Corporate Limited Warranty Deed to Bay Communities, LLC, recorded December 30, 2003 as Instrument Number 2003-0275302; the next three ( 3 ) calls are on and along the northerly line of said Instrument Number 2004-152004 and Instrument Number 2003-0275302; thence North 77 degrees 02 minutes 00 seconds East 157.29 feet; thence South 50 degrees 43 minutes 28 seconds East 159.65 feet; thence North 81 degrees 54 minutes 04 seconds East 87.57 feet to a point marking a northeast corner of stated Instrument Number 2004-152004; thence, the next five ( 5 ) calls are on and along the northerly lines of the aforesaid Instrument Number 2003-0275302; thence North 38 degrees 05 minutes 46 seconds East 162.25 feet; thence North 83 degrees 54 minutes 33 seconds East 162.25 feet; thence South 85 degrees 17 minutes 45 seconds East 110.30 feet; thence North 69 degrees 25 minutes 32 seconds East 98.76 feet; thence South 60 degrees 22 minutes 36 seconds East 68.00 feet; thence leaving said northerly line of Instrument Number 2003-0275302, North 04 degrees 46 minutes 02 seconds West 453.66 feet to the POINT of BEGINNING, containing 9.15 acres, more or less.

6  
KB

Cross Reference: Instrument Nos. 2005-0074760, 2005-0074759, 2006-0169662, and 2009-0065335

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HUNTERS CROSSING ESTATES**

**THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HUNTERS CROSSING ESTATES** (hereinafter, the "Amendment"), made as of the 29<sup>th</sup> day of October, 2009, by DAVIS HOMES, LLC, an Indiana limited liability company (the "Declarant"), evidences the following:

**WITNESSETH:**

**WHEREAS**, On May 13, 2005, Declarant recorded the Declaration of Covenants, Conditions and Restrictions of Hunters Crossing Estates in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2005-0074760 (the "Declaration");

**WHEREAS**, On May 13, 2005, Declarant recorded the Final Plat for Hunters Crossing Estates Section One in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2005-0074759 ("Section One Plat");

**WHEREAS**, On November 6, 2006, Declarant recorded of the Final Plat for Hunters Crossing Estates Section Two in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2006-0169662 ("Section Two Plat");

**WHEREAS**, On June 11, 2009, Declarant recorded the Certificate of Correction in the Office of the Recorder of Marion County, Indiana, as Instrument No. 2009-0065335;

**WHEREAS**, pursuant to Section 27(A) of the Declaration, Declarant may amend the Declaration;

**WHEREAS**, Declarant now desires to amend the Declaration consistent with the terms set forth herein;

**NOW, THEREFORE**, for and in consideration of the premises, Declarant hereby makes this Amendment and sets forth and declares the following:

1. **Incorporation of Recitals**. Each of the above recitals are hereby made a part of and incorporated into this Amendment.
2. **Definitions**. Unless specifically defined herein, capitalized words used herein shall have the same meanings ascribed to them in the Declaration.
3. **Recitals**. The first recital of the Declaration is hereby deleted in its entirety and replaced with the following:

**WHEREAS**, In May, 2005, Declarant was the owner of certain lands situated in the Marion County, Indiana as more particularly set forth in the Section One Plat , along with other real estate that may be added and encumbered by this Declaration, all eventually to be subdivided as the "Hunters Crossing Estates Subdivision" (the "Development"), all as shall be more particularly described in one or more plats to be recorded in one or more sections in the Office of the Recorder of Marion County, Indiana; and

4. **Association.** The definition of "Association" set forth in Section 1(E) of the Declaration is hereby deleted in its entirety and replaced with the following:

E. "Association" - Hunters Crossing Estates Community Association, Inc. an Indiana non-profit corporation, its successors and assigns.

5. **Builder.** The definition of "Builder" set forth in Section 1(H) of the Declaration is hereby deleted in its entirety and replaced with the following:

H. "Builder" - the person or entity who actually constructs the home built on the respective Lot.

6. **Turnover Date.** The definition of "Turnover Date" set forth in Section 1(FF) of the Declaration is hereby deleted in its entirety and replaced with the following:

FF. "Turnover Date" - the date upon which the Developer/Declarant turns over control of the Association to the Lot Owners, which date shall be October 29, 2009.

7. **Westport Homes.** The Declaration is hereby amended to add the following definition to Section 1 of the Declaration:

GG. "Westport" - Westport Homes, Inc., an Indiana corporation, its successors, assigns and affiliates.

8. **Rights and Obligations of Association.** Section 6 of the Declaration is hereby amended by replacing "Hunters Crossing Estates HOA, Inc. (the "Association")" with "Association" in the first sentence.

9. **Additional Acquired Property.** Section 26 of the Declaration is hereby deleted in its entirety and replaced with the following:

26. **Additional Acquired Property.** This Declaration, as amended from time to time, shall apply to all sections of the Development, as the plat for each such section is recorded; including but not limited to any additional real estate which is added to the development by Westport after the date of this Declaration. Any and all plats for any sections of the Development shall be subject to this Declaration by cross referencing the Instrument Number for this Declaration in each such Plat.



10. **Rights to Amend.** Section 27 of the Declaration is hereby deleted in its entirety and replaced with the following:

27. **Rights to Amend.** - This Declaration may be amended as follows:

A. **Amendment by the Westport.** Westport may, so long as it is the owner of any Lot(s) in the Development, in its sole and absolute discretion, unilaterally amend this Declaration at any time without the consent of any other Lot Owner, provided, however, that any such amendment shall not increase the obligations of Lot Owners or impose additional restraints on the use of the Lots by Lot Owners.

B. **Amendment by the Lot Owners.** Except as provided otherwise in this Declaration, and after Westport no longer owns a Lot in the Development, amendments to this Declaration shall be proposed and adopted in the following manner: (1) notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered; (2) a resolution to adopt a proposed amendment may be proposed by the Board, or Lot Owners having any aggregate total of at least two-thirds (2/3<sup>rds</sup>) of the votes of all Lot Owners; (3) the resolution concerning the proposed amendment must be adopted by a designated vote of not less than two-thirds (2/3<sup>rds</sup>) of the Lot Owners at a meeting duly called and held in accordance with the provisions of the Association Documents. Notwithstanding anything in this Declaration to the contrary, so long as Westport is the owner of any Lot(s) in the Development, no amendment may remove, revoke, or modify any right, privilege, obligation or liability of Westport without the prior written consent of Westport, which consent may be withheld or denied in its sole and absolute discretion.

11. **Architectural Control.** Section 18 of the Declaration is hereby amended to provide that so long as Westport is the owner of any Lot(s) in the Development (including any future sections of the Development) and, notwithstanding the Turnover Date, Westport shall appoint all members of the Committee.

12. **Rights and Obligations of Westport Homes.** The Declaration is hereby amended to add the following language as Section 31:

31. **Westport Homes.** - Westport, its successors or assigns, will be the Builder for Lots it, from time to time, owns in the Development.

A. **Beneficial Rights of Westport.** Westport, so long as it is the owner of any Lot(s) in the Development, is afforded any and all rights, privileges and benefits, but none of the obligations or liabilities, of the Declarant and/or Developer as set forth in this Declaration. Westport is not assuming any obligation of the Declarant. Such beneficial rights, include, without limitation, the following:

1. Drainage, Utility and Other Plat Easements. The right to negotiate and grant additional easements as set forth in Section 3 of this Declaration.

2. Signs. The exemption from the sign restrictions set forth in Section 4(D) of this Declaration.

3. Common Property/Common Area. The right to convey to the Association a full, partial or shared interest in any real estate or personal property, or any interest therein in the nature of an easement as provided in Section 6(A) of this Declaration.

4. Membership Voting Rights. The membership voting rights of Developer/Declarant and/or Builder as outlined in Section 8 of this Declaration.

5. Developer/Declarant's Exemption from Assessments, and Right to Collect Advances. Except only with respect to the obligations related to Amenities Construction and Common Area Maintenance set forth in Section 31(B), below, the exemption from any and all Assessments as set forth in Section 11 of this Declaration.

6. Improvements by Developer/Declarant. The exemption from the review and approval of the Committee for all improvements installed or constructed by it or its partners, members, shareholders, successors and/or assigns (as applicable) as set forth in Section 18(G) of this Declaration.

B. Amenities and Common Area Maintenance Assessments. Westport has agreed to construct certain improvements in the Development consisting of a pool and pool house (collectively, the "Amenities Construction"). Additionally, Westport has agreed to provide electricity, utilities, water, and landscaping, only, for the Common Areas ("Common Area Maintenance"). Westport may, at its sole and absolute discretion, stop providing Common Area Maintenance at any time, upon thirty (30) days notice to the Association. Westport shall not be liable for Annual Assessments with respect to Lots owned by Westport in the Development, so long as Westport continues to pay for Common Area Maintenance.

C. Exemptions. Notwithstanding anything in this Declaration to the contrary, Westport is explicitly exempt from the following provisions of this Declaration:

1. Rules and Regulations. Westport is hereby exempted from complying with any Rules and Regulations adopted by the Association as set forth in Section 6(E) of this Declaration.

2. Drains and Sump Pump Discharges. Westport is hereby exempted from any liability for drainage easements or discharging of water as set forth in Section 6(T) of this Declaration.

3. Advancement of Deficits. Westport is hereby exempted from advancing any deficits for Assessments upon Lots as set forth in Section 11 of this Declaration.

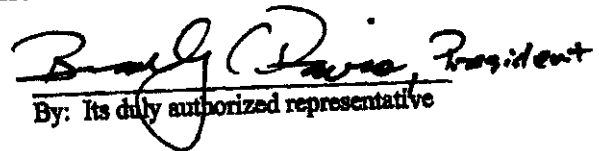
4. Architectural Control. Westport is hereby exempted from any requirement to obtain the approval of the Committee for any activity in the Development as set forth in Section 18 of this Declaration.

13. All other Terms Binding. Except as provided herein, all other terms and provisions of the Declaration shall remain unchanged and continue in effect, provided, however, should any term or condition contained in this Amendment conflict with any term or provision contained in the Declaration, the terms and conditions of this Amendment shall control.

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed the day and year first above written.

DAVIS HOMES, LLC, an Indiana limited liability company

By: Davis Holding Corporation, Managing Member

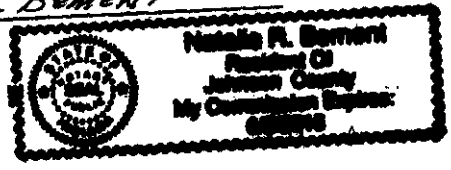
  
By: Its duly authorized representative

STATE OF INDIANA )  
COUNTY OF Madison ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Bradley A. Davis, the President of Davis Holdings Corporation, the Managing Member of DAVIS HOMES, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Amendment to Declaration of Covenants, Conditions and Restrictions of Hunters Crossing Estates, for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 29<sup>th</sup> October day of September, 2009.

Natalie R. Bennett  
Notary Public  
Natalie R. Bennett  
Printed



My Commission Expires:

June 3, 2016  
My County of Residence:  
Johnson

This instrument was prepared by Lante K. Earnest, TABBERT HAHN EARNEST & WEDDLE, LLP, One Indiana Square, Suite 1900, Indianapolis, Indiana 46204, (317) 639-5444.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in the document, unless required by law. Lante K. Earnest

# FINAL PLAT FOR HUNTERS CROSSING ESTATES SECTION ONE

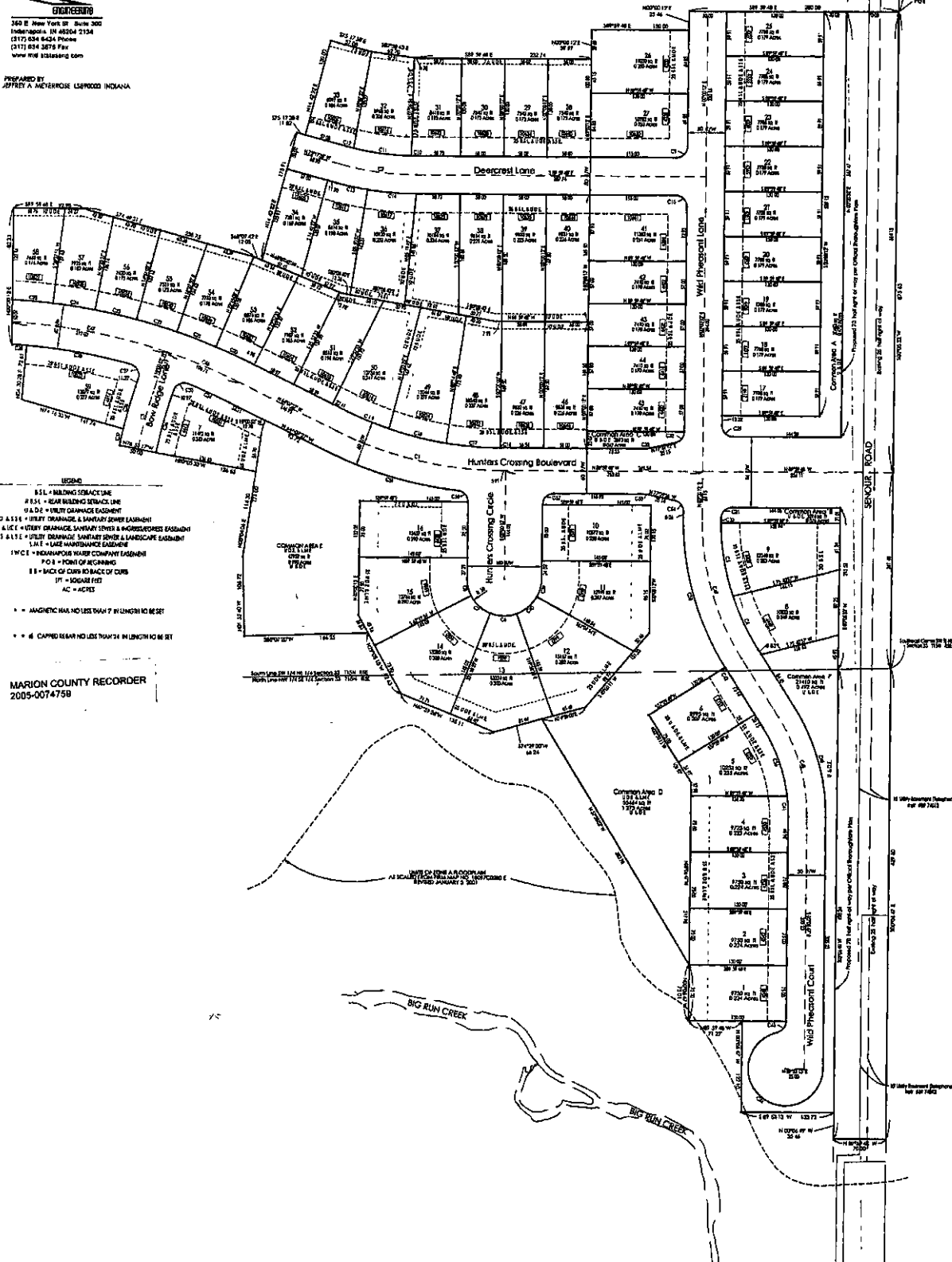
SECTION 33, TOWNSHIP 15 RANGE 05 EAST  
TOWNSHIP OF FRANKLIN  
MARION COUNTY INDIANA  
2004 - PLT - 064

CURRENT ZONING DISTRICT (DP)  
ZONING CASE NUMBER (2003-ZON-060, 2003-DP-008)

**Mid-States**  
ENGINEERING

360 E New York St Suite 300  
Indianapolis, IN 46204 2134  
(317) 634-8424 Phone  
(317) 634-3876 Fax  
www.ms-engineering.com

PREPARED BY  
JEFFREY A MEYER/ROSE LSP0006 INDIANA



- BSL - BUILDING SIDEWALK LINE
  - PSL - REAR YARDING SIDEWALK LINE
  - SLC - UTILITY DRAINAGE EASEMENT
  - UDS1 & UDC - UTILITY DRAINAGE & SANITARY SEWER EASEMENT
  - UDS2 & UDC - UTILITY DRAINAGE, SANITARY SEWER & LANDSCAPE EASEMENT
  - UDS3 & UDC - UTILITY DRAINAGE, SANITARY SEWER & LANDSCAPE EASEMENT
  - UAC - UTILITY DRAINAGE EASEMENT
  - WCC - INDIANAPOLIS WATER COMPANY EASEMENT
  - POB - POINT OF BEGINNING
  - BB - BACK OF CURB TO BACK OF CURB
  - SI - SIDEWALK
  - AC - ACRES
- = MAGNETIC MARK, NO LESS THAN 7" IN LENGTH TO BE SET
  - = 4" CAPPED BEAR, NO LESS THAN 24" IN LENGTH TO BE SET

MARION COUNTY RECORDER  
2005-0074759



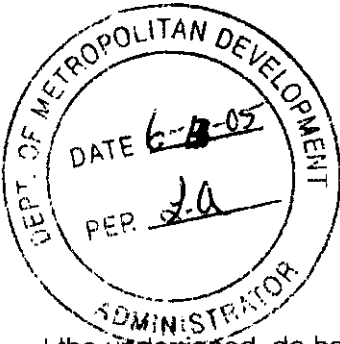
# Mid-States ENGINEERING

350 E. New York St., Suite 300  
 Indianapolis, IN 46204  
 (317) 634-6434 Phone  
 (317) 634-3576 FAX

www.mid-stateseng.com

**FILED**  
 JUN 13 2005  
 FRANKLIN TOWNSHIP  
 ASSESSOR

2



**SURVEYOR'S CERTIFICATE OF CORRECTION**

**MID-STATES ENGINEERING, LLC**

I the undersigned, do hereby certify that I am a Registered Land Surveyor with Mid-States Engineering, LLC who prepared the secondary plat of Hunters Crossing Estates Section One, a subdivision in Marion County, Indiana, the plat of which was recorded on May 13, 2005 as Instrument Number 2005-0074759 in the Office of the Recorder of Marion County, Indiana. Said plat was certified by Jeffrey A. Meyerrose on April 26, 2005.

I further certify that the plat was inadvertently recorded without the Base Flood Elevation (B.F.E.) for Lot 1.

Said plat should be amended to reflect the Base Flood Elevation (B.F.E.) for Lot 1 of 793.39, see EXHIBIT "A".

Certified this 10<sup>th</sup> day of June, 2005



*[Handwritten Signature]*  
 Jeffrey A. Meyerrose, LS  
 Registered Land Surveyor 890003-IN

MARTHA A. HOPKINS  
 MARION COUNTY RECORDER  
 890003 JUN 14 05

State of Indiana )  
 ) SS:  
 County of MARION

Before me, the undersigned Notary Public, in and for the County and State, personally appeared Jeffrey A. Meyerrose, LS, a Registered Land Surveyor, and acknowledged the execution of the foregoing instrument as his voluntary act and deed for said company, for the purpose therein expressed.

Witness my Hand and Notarial Seal this 10th day of June, 2005.

March 21, 2008  
 My Commission Expires



*[Handwritten Signature]*  
 Notary Public

Marion  
 County of Residence

Susan R. Schoenegg  
 Printed Name

THIS INSTRUMENT PREPARED BY MID-STATES ENGINEERING, LLC

**MID-STATES ENGINEERING, LLC 350 E. New York Street, Suite 300, Indianapolis, IN 46204  
 (317) 634-6434**

06/14/05 11:46AM NANDA MARTIN MARION CTY RECORDER JDH 12.00 PAGES: 2  
 Inst # 2005-0092455

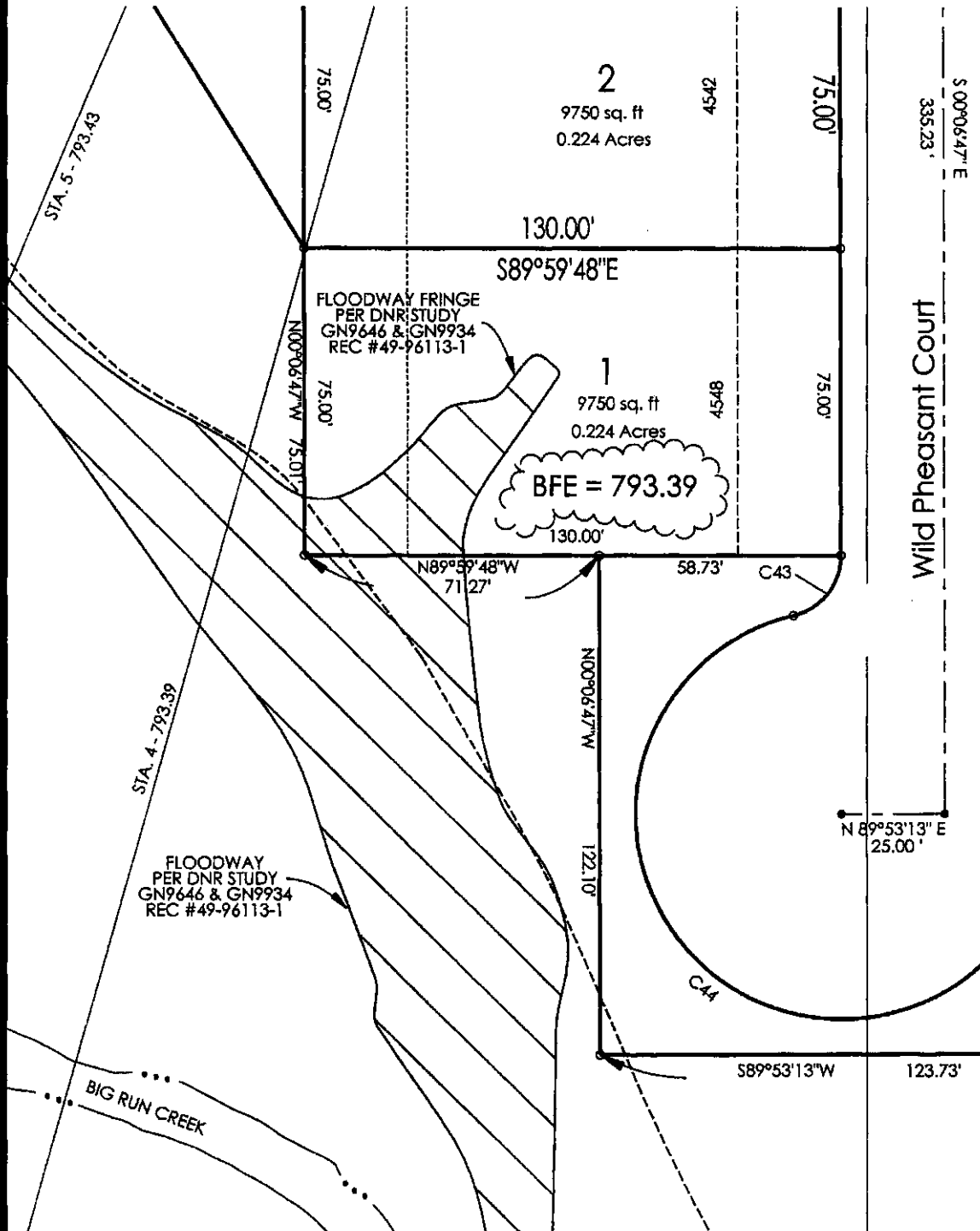
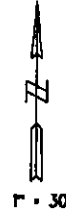


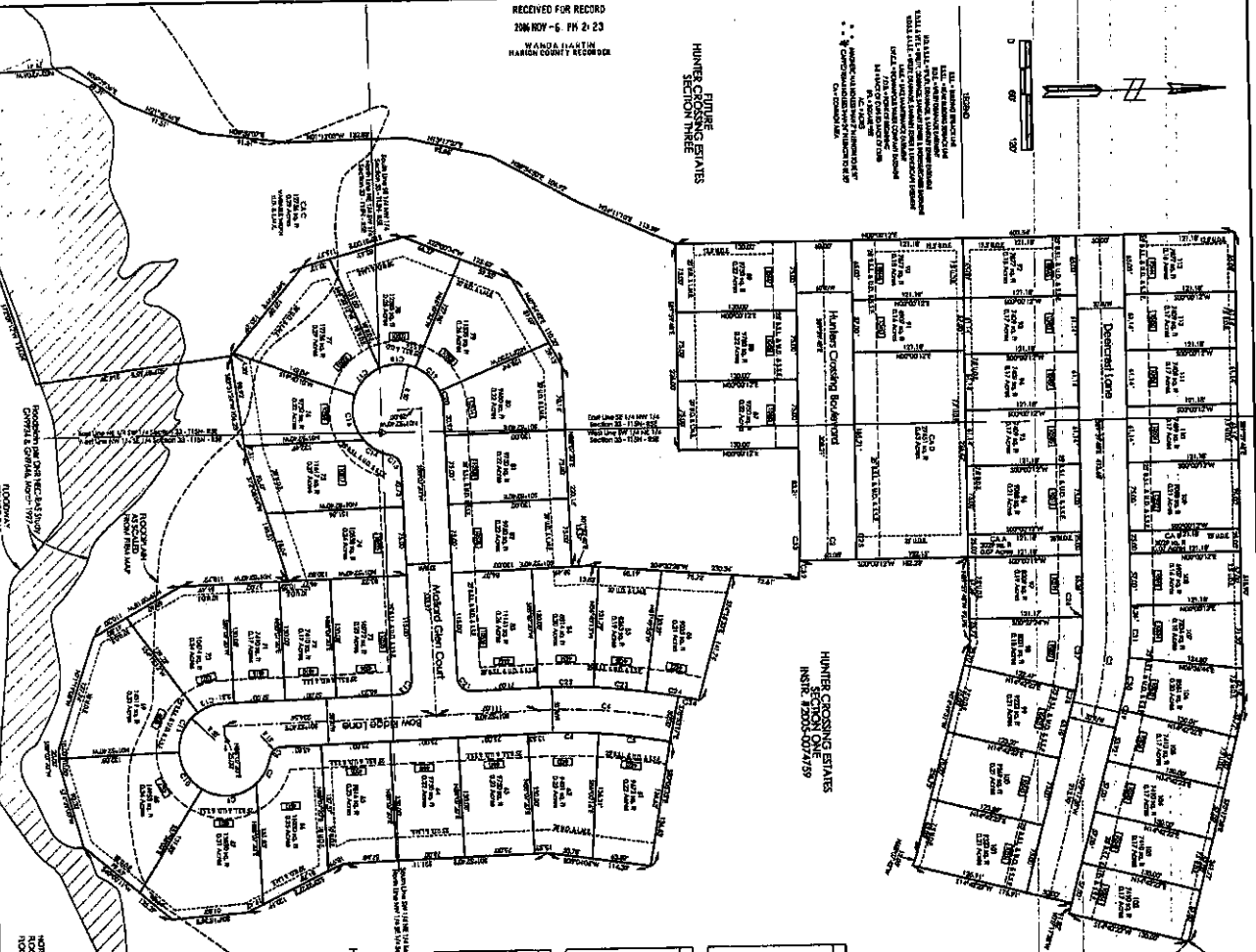
EXHIBIT A



RECEIVED FOR RECORD  
2006 NOV - 6 PM 2:23  
HARRISON COUNTY RECORDER

HUNTERS CROSSING ESTATES  
SECTION THREE

1. ALL INFORMATION ON THIS PLAN IS THE PROPERTY OF THE DESIGNER AND SHOULD BE KEPT IN CONFIDENCE.  
2. NO PART OF THIS PLAN IS TO BE REPRODUCED, COPIED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE DESIGNER.  
3. THE DESIGNER ASSUMES NO LIABILITY FOR DAMAGES, LOSSES OR EXPENSES OF ANY KIND, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR FROM THIS PLAN, WHETHER SUCH DAMAGES, LOSSES OR EXPENSES ARE CAUSED IN WHOLE OR IN PART BY NEGLIGENCE OR OTHERWISE.  
4. THIS PLAN IS THE PROPERTY OF THE DESIGNER AND SHOULD BE KEPT IN CONFIDENCE.  
5. THE DESIGNER ASSUMES NO LIABILITY FOR DAMAGES, LOSSES OR EXPENSES OF ANY KIND, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR FROM THIS PLAN, WHETHER SUCH DAMAGES, LOSSES OR EXPENSES ARE CAUSED IN WHOLE OR IN PART BY NEGLIGENCE OR OTHERWISE.



HUNTERS CROSSING ESTATES  
SECTION ONE  
INSR. #2006-0074189

HUNTERS CROSSING ESTATES  
SECTION TWO  
INSR. #2006-0074189

NOTE: HUNTERS CROSSING ESTATES SECTION ONE AND SECTION TWO ARE SUBJECT TO THE HUNTERS CROSSING ESTATES PLANNED DEVELOPMENT AGREEMENT WITH THE HARRISON COUNTY BOARD OF COMMISSIONERS, DATED JANUARY 7, 2003.

TITLE: HUNTERS CROSSING ESTATES SECTION ONE AND SECTION TWO

| SECTION | LOT NO. | AREA (SQ. FT.) | APPROX. DIMENSIONS (FT.) | REMARKS |
|---------|---------|----------------|--------------------------|---------|
| 1       | 1       | 10,000         | 100 x 100                |         |
| 1       | 2       | 10,000         | 100 x 100                |         |
| 1       | 3       | 10,000         | 100 x 100                |         |
| 1       | 4       | 10,000         | 100 x 100                |         |
| 1       | 5       | 10,000         | 100 x 100                |         |
| 1       | 6       | 10,000         | 100 x 100                |         |
| 1       | 7       | 10,000         | 100 x 100                |         |
| 1       | 8       | 10,000         | 100 x 100                |         |
| 1       | 9       | 10,000         | 100 x 100                |         |
| 1       | 10      | 10,000         | 100 x 100                |         |
| 1       | 11      | 10,000         | 100 x 100                |         |
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| 1       | 15      | 10,000         | 100 x 100                |         |
| 1       | 16      | 10,000         | 100 x 100                |         |
| 1       | 17      | 10,000         | 100 x 100                |         |
| 1       | 18      | 10,000         | 100 x 100                |         |
| 1       | 19      | 10,000         | 100 x 100                |         |
| 1       | 20      | 10,000         | 100 x 100                |         |
| 1       | 21      | 10,000         | 100 x 100                |         |
| 1       | 22      | 10,000         | 100 x 100                |         |
| 1       | 23      | 10,000         | 100 x 100                |         |
| 1       | 24      | 10,000         | 100 x 100                |         |
| 1       | 25      | 10,000         | 100 x 100                |         |
| 1       | 26      | 10,000         | 100 x 100                |         |
| 1       | 27      | 10,000         | 100 x 100                |         |
| 1       | 28      | 10,000         | 100 x 100                |         |
| 1       | 29      | 10,000         | 100 x 100                |         |
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| 1       | 82      | 10,000         | 100 x 100                |         |
| 1       | 83      | 10,000         | 100 x 100                |         |
| 1       | 84      | 10,000         | 100 x 100                |         |
| 1       | 85      | 10,000         | 100 x 100                |         |
| 1       | 86      | 10,000         | 100 x 100                |         |
| 1       | 87      | 10,000         | 100 x 100                |         |
| 1       | 88      | 10,000         | 100 x 100                |         |
| 1       | 89      | 10,000         | 100 x 100                |         |
| 1       | 90      | 10,000         | 100 x 100                |         |
| 1       | 91      | 10,000         | 100 x 100                |         |
| 1       | 92      | 10,000         | 100 x 100                |         |
| 1       | 93      | 10,000         | 100 x 100                |         |
| 1       | 94      | 10,000         | 100 x 100                |         |
| 1       | 95      | 10,000         | 100 x 100                |         |
| 1       | 96      | 10,000         | 100 x 100                |         |
| 1       | 97      | 10,000         | 100 x 100                |         |
| 1       | 98      | 10,000         | 100 x 100                |         |
| 1       | 99      | 10,000         | 100 x 100                |         |
| 1       | 100     | 10,000         | 100 x 100                |         |

WINDY HILLS, LLC  
3175 WINDY HILLS DRIVE  
HARRISON COUNTY, ALABAMA 36688  
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DATE: 11/06/06

DEPT. OF METROPOLITAN DEVELOPMENT SERVICES  
2005 - 01 - 007

FINAL PLAN FOR  
HUNTERS CROSSING ESTATES  
SECTION TWO  
SECTION 23, TOWNSHIP 13 S RANGE 09 EAST  
MARION COUNTY, ALABAMA

INSR. #2006-0074189

PLANNED DEVELOPMENT

DATE OF PLAN: 11/06/06  
DATE OF ASSESSMENT: 01/07/06  
APPROVED: [Signature]  
FILED: [Signature]  
REVISIONS: [Signature]

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HUNTERS CROSSING ESTATES  
SECTION TWO  
INSR. #2006-0074189

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WINDY HILLS, LLC  
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PAGE 1 OF 1  
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2006-0169862

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FINAL PLAN FOR  
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SECTION 23, TOWNSHIP 13 S RANGE 09 EAST  
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