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January 25, 2010 4:07 PM  
Julie L. Voorhies,  
Marion County Recorder



Pages: 27

Fee: \$91.50  
By: DMC

Approved 11/22/2005  
Washington Township Assessor  
By: [Signature]  
Real Estate Deputy

27  
[Handwritten initials]

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE ESTATES AT LADYWOOD & LADYWOOD BLUFF**

This Declaration is made as of the 22 day of November, 2005 by Oakfield Development II, L.L.C., an Indiana limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real estate in Marion County, State of Indiana, more particularly described in Exhibit "A." attached hereto and, by this reference, made a part hereof ("Real Estate"); and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community to be known as Ladywood ("Development") and to sell and convey the residential lots and condominiums situated within the platted areas of the Development, and before doing so, desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, easements, assessments, privileges, liens and charges ("Restrictions") under a general plan or scheme of improvement for the benefit and complement of the Lots, condominiums and lands and each Owner of all or part thereof in the Development and future Owners thereof as hereinafter provided in this Declaration; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the power and duty to enforce the covenants and restrictions contained in this Declaration; collect and disburse the assessments and charges imposed and created hereby and hereunder; and promote the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name of The Estates at Ladywood Homeowners Association, Inc., or similar name, for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole, Common Properties, and each of the Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Declarant and upon the Owners and any other Persons having or acquiring any rights, title or interest, legal or equitable, in and to the Real Estate or the Development any part of parts thereof subject to this Declaration and/or the Restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any Real Estate. The Declarant specifically reserves unto itself the right and privilege, prior to the recording of the Plat by the Declarant of all or any portion of the Real

Legal Description Missing At Time Of Recording.

MCR

MARTHA J. BRONACKS  
108178 NOV 23 05  
SUBJECT TO FINAL APPEARANCE FOR TRANSFER

Inst # 2005-0193616  
11/23/05 09:16AM MARION COUNTY RECORDER  
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\*This document is being re-recorded to include the legal description which was omitted when originally recorded

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BILLY J. BREAU  
020887 JAN 25 05  
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Estate, to exclude any Real Estate shown on Exhibit A hereto from the Development, or to include additional real estate therein.

**ARTICLE I.**  
**DEFINITIONS**

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

- (a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended, or any successor act;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Architectural Review Board" shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;
- (e) "Association" shall mean The Estates at Ladywood Homeowners' Association, Inc.
- (f) "Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided in the Articles, By-Laws and this Declaration and each member thereof shall be designated as a "Director";
- (g) "Building" shall mean and refer to a structure having one or more "Dwelling Unit(s)";
- (h) "By-Laws" shall mean and refer to the Code of By-Laws of the Association, as the same may be amended from time to time;
- (i) "Common Expenses" shall mean and refer to expenses of administration of the Association, expenses for upkeep and maintenance of the Common Properties including reserves, all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (j) "Common Properties" shall mean and refer to (i) all 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), (ii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Properties whether located, installed or



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established entirely or partially on Lots or portions of the Real Estate which are not Lots, or both, and (iii) items deemed Common Properties for purposes of maintenance;

- (k) "Declarant" and "Developer" shall mean and refer to Oakfield Development II, LLC, an Indiana limited liability company, and any of its successors and assigns whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder;
- (l) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family, whether such Dwelling Unit is detached or attached to another Dwelling Unit;
- (m) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designed and intended for use as building site for, or developed and improved for use as, a dwelling Unit, as designated by Declarant by its deed of the same to another person. For purposes of this Declaration, a "Lot" shall be any single numbered parcel of land identified as a lot on a recorded subdivision plat of the Real Estate;
- (n) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (o) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include any mortgagee or tenant unless and until such mortgagee or tenant has acquired fee simple title to any Lot, but upon so acquiring title to any Lot such a mortgagee or tenant shall be an Owner;
- (p) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (q) "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;
- (r) "Private Driveway Easements" shall mean the streets other than public streets as shown on any recorded subdivision plat of the Real Estate whether such plat is heretofore or hereafter recorded.
- (s) "Real Estate" shall mean and refer to the parcel of real estate in Marion County, Indiana, described in the first recital clause of this Declaration, and defined therein as the Real Estate, as well as all additional real estate subjected hereto pursuant to Article II, Section 5 of this Declaration;



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- (t) "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;
- (u) "Zoning Covenants" shall mean and refer to the written covenants, as amended, heretofore entered in connection with zoning of the Real Estate, if any, which covenants will be recorded in the Office of the Recorder of Marion County, Indiana, such recorded covenants being incorporated herein by reference, as the same may hereafter be amended in accordance with their terms.

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

**ARTICLE II.**

**Declarations; Common Properties and Rights Therein; Easements**

Section 1. Declarations. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchases of any Lot (i) 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, or (ii) by the act or occupancy of any Lot, shall accept such deed, execute such contract or occupy the Lot subject to each of the Restrictions and agreements herein contained. By acceptance of such deed, execution of such contract or occupancy of the Lot, each Owner, contract purchaser or occupant acknowledges the rights and powers of Declarant and of the Association with respect to these Restrictions, and also for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the other Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

Section 2. Easement to Owners. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. The Private Driveway Easements shall be for the private use of the Owners, and their licensees, invitees and guests for purposes of ingress and egress to Lots and shall not be for general public use. Governmental vehicles, including but not limited to, police, fire and other emergency vehicles, and privately owned delivery trucks shall have the right to enter upon and use such easements for ingress to and egress from public streets in the performance of their duties.

Section 3. Easement to Association. Declarant hereby grants a non-exclusive easement in favor of the Association for the maintenance of the Common Properties (including items deemed Common Properties for maintenance only, which includes but is not limited to Owners; lawns). Such easement shall permit the Board or its agents to enter onto any Lot to maintain, make emergency repairs, or do other work reasonable necessary of the proper maintenance or operation of the Development.



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4

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Section 4. Encroachment Easements. If any Dwelling Unit encroaches upon another Dwelling Unit, Lot or Common Property as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Owner of the encroaching improvement for the encroachment and for the maintenance thereof so long as such encroachment exists.

Section 5. Additional Phases of Development.

- (a) Declarant hereby reserves the right to expand the Real Estate covered hereby by acquiring and developing one (1) or more parcels of real estate adjacent to the Real Estate or additional acquired parcels. Upon acquisition of additional real estate: (i) such real estate shall be included in the definition of Real Estate (ii) lots located therein, the owners thereof and its common area and the common area costs associated therewith shall be included in the definitions of Lots, Owners, Common Properties and Common Expenses, respectively, and (iii) such additional Lots shall be added to the Assessment Schedule;
- (b) Declarant hereby reserves the right to construct a jogging trail and other related facilities for the benefit of the Lots and the Owners. All costs and expenses to construct operate and maintain such facilities shall be included in the definition of Common Expenses;
- (c) All additional real estate and facilities acquired and/or developed pursuant to Section 5 (a) or Section 5 (b), above, shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in this Declaration.

Section 6. Division of Common Property. The Development will be developed into three (3) separate sub areas titled Ladywood Bluffs, Ladywood Cottages and Ladywood Gardens. Both Ladywood Bluffs and Ladywood Cottages shall be single-family detached Dwelling Units and Ladywood Gardens shall be a horizontal property regime under Ind. Code Chapter 32-25-1 (the "Condominium Act"). Pursuant to Indiana law, Ladywood Gardens will have a separate set of declarations and covenants as required by the Condominium Act. In the event of any conflict between the covenants and restrictions for Ladywood Gardens and this document, this document shall prevail except in circumstances where the provision of the covenants and restrictions for Ladywood Gardens is required by the Condominium Act.

Common Property other than any Private Driveway Easements within the portion of the Development known as the Ladywood Gardens Horizontal Property Regime shall be governed by and owned by Lot Owners pursuant to the terms and conditions of the Declaration for Ladywood Gardens. Common Property within any other area of the Development outside of the Ladywood Gardens Horizontal Property Regime shall be owned and operated pursuant to the terms of this Declaration.



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5

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**ARTICLE III.**

**Obligations of Declarant as to Common Properties: Dedication**

**Section 1. Agreement to Construct and Convey Common Properties.** Declarant has constructed or provided for, or will construct or provide for, the Common Properties required by, and in accordance with, the Zoning Covenants, and such other Common Properties deemed appropriate by it.

Upon final construction or provision of the Common Properties, Declarant covenants to convey all of its right, title and interest in and to the Common Properties to the Association and all such right, title and interest in and to the Common Properties (whether owned in fee, by leasehold or in the nature of an easement or license) shall thereupon be the property of the Association, whether or not the same may be located entirely or partially on any one or more of the Lots.

**Section 2. Dedication.** The public streets shown on the Plat, if any, excepting the Private Driveway Easements, are hereby dedicated to the public for the use and benefit of the public.

**ARTICLE IV.**

**Association; Membership; Voting; Functions**

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

**Section 2. Voting Rights.** The Association shall have two (2) classes of members (singularly, a "Member", and collectively, the "Members"), with the following voting rights:

- (a) **Class A Members.** Class A Members shall be all Owners, with the exception of the Class B Member, and shall be entitled to one (1) vote for each Lot owned by such member with respect to each matter submitted to a vote of members upon which Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) **Class B Members.** The Class B Member shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as the Class B Member in a written notice mailed or delivered to the resident agent of the Association. The Class B Member shall be the only Member



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6

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eligible to vote on all matters requiring a vote of the Members of the Association until the Applicable Date (as hereinafter defined). The Class B membership shall cease and terminate upon the Applicable Date which is the date seventy-five percent (75%) of the Lots have been sold by Declarant (the "Applicable Date").

**Section 3. Functions.** The Association has been formed for the purpose of providing for the maintenance, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties and to perform such other functions as may be designated for it to perform under this Declaration.

**ARTICLE V.**  
**Board of Directors**

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

**Section 2. Initial Board of Directors.** The initial Board of Directors shall be composed of the persons designated in Articles (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by the Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by the Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by the Declarant to fill a vacancy, shall be deemed a Member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he/she is actually the Owner of a Lot and thereby a Member of the Association).

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

**Section 4. Term of Office and Vacancy.** Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of



7  
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Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring on the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

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

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, and upkeep of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, to be reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but not be limited to:

- (a) maintenance and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance only);
- (b) snow removal from Private Driveways, Easements and public streets dedicated to the public in the Plat;
- (c) assessment and collection from the Owners of the Owner's respective shares of the Common Expenses;
- (d) preparation of the proposed annual budget and the Assessment Schedule, copies of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (e) preparing and delivering annually to the Owners a full accounting for all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;



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8

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- (f) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available at the principal office of the Association for examination by an Owner at any time during normal business hours;
- (g) procuring and maintaining for the benefit of the Association and the Board such insurance coverage as the Board, in its sole discretion, may deem necessary or advisable; and
- (h) paying taxes assessed against, and payable with respect to, the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (i) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, By-Laws or other rules concerning the Development and the books, records and financial statements of the Association. As used herein, "available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances;
- (j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Association's financial statements for the immediately preceding fiscal year.

Section 7. Powers and Authority of the Board of Directors. The Board of Directors shall have such powers and authority as are reasonable and necessary to accomplish the performance of their duties. These powers and authority include, but shall not be limited to, the power and authority:

- (a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after the Applicable Date any such agreement shall be subject to termination by either party without cause and without payment of a termination fee upon ninety (90) days prior written notice to the other party;
- (b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as, in the judgment of the Board of Directors, may be necessary or desirable in connection with the business and affairs of the Association;



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9

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DATE

- (d) to employ, designate, discharge and remove such personnel as, in the judgment of the Board of Directors, may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs from the funds of the Association as Common Expenses;
- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to promulgate, adopt, revise, amend and alter, from time to time, such additional rules and regulations with respect to the use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulation so adopted by the Board shall be promptly delivered to all Owners.

**Section 8. Limitations on Board Action.** The Board's powers and authority are subject to the following limitations:

- (a) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure per contract of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:
  - i. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
  - ii. expenditures necessary to deal with emergency conditions in which the Board of Directors reasonable believes there is insufficient time to call a meeting of the Owners.
- (b) The Board shall not, without the prior written approval of at least sixty-seven percent (67% of the Owners (other than Declarant):
  - i. by act or omission, abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Association (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);
  - ii. except as specifically provided herein, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the



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maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns in the Development;

- iii. use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or upgrading of Common Properties.

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

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

**Section 11. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually or necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement or judgment rendered in any action, suit or proceeding if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for gross negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 12. Bond.** The Board of Directors shall obtain fidelity insurance covering the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary to cover the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums as may be determined by the Board of Directors, and any such coverage shall specifically include protections for any insurance proceeds received for any reason by the

11



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DATE

Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or its Managing Agent at any time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Lots, plus reserve funds.

Section 13. Initial Management. The Initial Board may enter into a management agreement with the Declarant (or a corporation or other entity or entities designated by the Declarant) for a term or terms as determined by the mutual agreement of the Initial Board and the Declarant, under which the Declarant (or such designated corporation, entity or entities) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by the Declarant (or its designee) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, the Declarant (or its designee) shall have, and the Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Association.

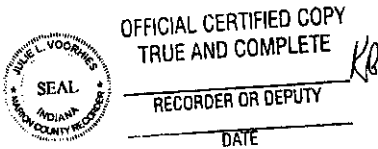
**ARTICLE VI.**  
**Maintenance, Repairs and Replacements**

Section 1. By Owners. Except as provided in Section 2(b) of this Article, or any sub-declaration for a specific area of the Development, each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefore arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. Each Owner shall promptly perform all maintenance and repairs of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Properties.

Section 2. Common Properties Laws by the Association.

- (a) Maintenance, repairs and upkeep of the Common Properties shall be furnished by the Association, as part of its duties, and the cost thereof shall constitute a part of the Common Expenses.
- (b) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
  - (i) Snow removal for the public streets; and

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties (or items deemed Common Properties for purposes of maintenance only as it deems necessary.



- (c) Notwithstanding any obligation or duty of the Association to maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or items deemed as such for purposes of maintenance only) or if maintenance, repairs or replacements shall be required thereby and the cost thereof would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, in such amounts as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of the foregoing shall be added to and become a part of the assessment to which such Owner's Lot is subject.
- (d) The Authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance only, or repairs of or to the Commons Properties and items deemed as Common Properties for purposes of maintenance only, including, but not limited to, access of any easements reserved by the Plat of any portion of the Real Estate for such purposes.

**ARTICLE VII.**

**Real Estate Taxes; Utilities**

**Section 1. Real Estate Taxes.** Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Properties shall be paid by the Association and treated as a Common Expense.

**Section 2. Utilities.** Each Owner shall pay for his or her own utilities which shall be separately metered to each Lot and Dwelling Unit.

**ARTICLE VIII.**

**Architectural Control**

**Section 1. The Architectural Review Board.** As a standing committee of the Association, there shall be, and hereby is, established an architectural review board consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws (the "Architectural Review Board"). Until the Applicable Date, the Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

**Section 2. Purposes.** The Architectural Review Board shall regulate the external design, appearance, use location and maintenance of the Real Estate and of improvements



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located thereon in such manner as to reserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

**Section 3. Conditions.** No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot, Dwelling Unit or other improvements located on any Lot from its natural or improved state existing on the date such Lot and Dwelling Unit was first conveyed in fee by the Declarant to an Owner, shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot by a Lot Owner without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit on a Lot whether such construction occurs before or after the Applicable Date.

**Section 4. Procedures.** In the event the Architectural Review Board fails to approve, modify or disapprove in writing a written application within (60) days after its receipt of such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval shall be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two thirds (2/3) vote of the Directors then serving. The Architectural Review board may establish committees consisting of two (2) or more of its members to perform any of its functions, which committees shall exercise such powers of the Board as may be delegated to them.

**ARTICLE IX.**  
**Assessments**

**Section 1. Annual Accounting.** Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accountant or firm of accountants engaged by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

**Section 2. Proposed Annual Budget and Assessment Schedule.** Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget and assessment schedule setting forth the percentage of expenses to be allocated to each of the Lots (the "Assessment Schedule") for the current fiscal year and shall furnish copies of such proposed budget and Assessment Schedule to each Owner prior to or with the notice to Owners of such annual meeting. The annual budget and Assessment Schedule shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. At the annual meeting of the Owners, the proposed Assessment Schedule must be approved in whole by a majority vote of the Owners. If such

14



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DATE

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approval is not obtained, Regular Assessments and any Special Assessments shall be allocated based upon the most recently approved. The annual budget, the Regular Assessments and all other sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Properties which replacement reserve fund shall be used for such purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties shall be maintained by the Association in an interest bearing account with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana and insured by a Federal depository agency as selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the assessments herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

**Section 3. Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirements for the Common Expenses in the current fiscal year as set forth in such budget and contain a proposed assessment against each Lot. The preceding notwithstanding, all Owners of Condominium Units (as that term is defined in the Ladywood Horizontal Property Regime Declarations) shall not be required to pay for private streets outside of the Ladywood Horizontal Property Regime, and Common Expenses for private streets outside of the Ladywood Horizontal Property Regime shall be assessed only against the Owners abutting such street.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget for such year by the Owners, to reflect the assessment against each Lot for the entire year, based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance annually; provided, however, Declarant is authorized to collect an amount equal to the prorated annual assessment due for the period from closing until January 1<sup>st</sup> of the next year. Payment of the annual installment of the Regular Assessment shall be made to the Board of Directors of the Managing Agent, as directed by the Board of Directors. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal quarterly or semi-annual installments rather than an annual installment. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget.

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the

15



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DATE

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temporary budget, such excess shall be paid within thirty (30) days of the issuance of written notice to Owners of such excess.

- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be made by a cash payment or refund to the Owners who have previously paid such Regular Assessments on or before the fifteenth (15<sup>th</sup>) day of the second (2<sup>nd</sup>) full month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot and Dwelling Unit as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by such date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot and Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot and Dwelling Unit from payment of the Regular Assessment for such Lot and Dwelling Unit from payment of the Regular Assessment for such Lot and Dwelling Unit as finally determined, and such Owner and his successor as Owner of such Lot and Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all Persons to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semi-annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

Section 4. Special Assessments. From time to time, Common Expenses of an unusual, extraordinary or capital nature not included in the budget or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot and Dwelling Unit, prorated based upon the percentages assigned to each Lot pursuant to the Assessment Schedule (herein called "Special Assessment"); provided, that any such assessment shall have the consent of fifty-one percent (51%) of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose. Without limiting the generality of the foregoing, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repairs or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

16



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- (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expense of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance only, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Lot owned by him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessment or Special Assessment, when due, the Board may in its discretion, accelerate the entire balance of the unpaid assessments and declare the same immediately due and payable, notwithstanding any other provision hereof to the contrary. In any action to foreclose the lien for any assessments provided for in this Declaration, the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits there from for the benefit of the Association to be applied to the unpaid Regular Assessments and/or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment, without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment and/or Special Assessment whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expense of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid, at a rate per annum equal to the "prime or base interest rate" then being charged by National City Bank, Indianapolis, Indiana to its largest and best corporate customers (or if such Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana, as designated by the Board) plus two percent (2.0%).
- (b) The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage on any Lot or Dwelling Unit. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any Person at a public sale in the manner

17



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DATE

provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any regular Assessment or Special Assessment as to such installments which become due prior to such sale, transfer or conveyance; provided, however, the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien thereof. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which such unpaid share arose).

**Section 6. Initial Budgets and Assessments.** Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget, Assessment Schedule and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence by the Owners. An initial fee of Two Hundred Fifty Dollars and No/100 (\$250.00) shall be assessed to each single family dwelling which shall be prorated depending on time of closing for that year. In addition, a one (1) time capital assessment fee of Five Hundred Dollars and No/100 (\$500.00) per Lot shall be paid to the Association upon the sale of a Lot by Declarant to a third-party Owner. This capital assessment fee shall not be prorated.

All Regular Assessments shall be determined for each year by the Initial Board, in its sole discretion, based upon the estimated cash requirements for the Common Expenses for such year.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date, the Declarant, or any builder or developer having title to a Lot, shall not be required to pay any Regular or Special Assessments.

## ARTICLE X. Mortgages

**Section 1. Notice to Association.** Any Owner, who places a first mortgage lien upon his Lot or Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Association of such lien and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the term of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown on such record in the time provided. Unless notification of any such mortgage lien and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled by virtue of this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

18



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DATE

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

**Section 2. Notice of Certain Actions or Conditions.** The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of:

- i. any condemnation loss or any casualty loss which affects a material portion of the Development or any Dwelling Unit on which there is a first mortgage;
- ii. any default in the performance by its borrower Owner of any obligations of such borrower Owner under this Declaration or the By-Laws which is not cured within sixty (60) days;
- iii. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- iv. any proposed action which would require the consent or approval of Mortgagees.

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

**Section 4. Unpaid Taxes and Insurance.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) for any Common Expenses (excluding items deemed Common Properties for maintenance only), and the Mortgagees making such payments shall be entitled to immediate reimbursement therefore by the Association.

**ARTICLE XI.**  
**Insurance**

**Section 1. Public Liability Insurance.** The Association shall also purchase a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Association, the

19



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DATE \_\_\_\_\_

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 Real Estate or the Development. Such public liability insurance policy shall contain "severability of interest" clauses or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 2. Casualty Insurance.

- (a) The Association shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" or its equivalent affording first and extended coverage insuring all Common Properties owned by the Association, including, but not limited to, utilities and recreational equipment in an amount equal to the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage for the Common Properties. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board may cause such full replacement value to be determined by a qualified appraiser. The costs of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Mortgagee of each Owner.
- (b) The sole duty of the Board in connection with any insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration. Such casualty insurance policies and "all risk" coverage's, except flood and earthquake coverage's, if obtained, shall (to the extent that same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, the Owners, their Directors, its agents and employees, the Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further to the extent obtainable upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

Section 3. Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability



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DATE

insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

**Section 4. General Provisions.** The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner and Mortgagee whose interest may be affected thereby, which notice shall be promptly furnished to each Owner and Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Owner and Mortgagee of each Lot and Dwelling Unit.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a Mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards by made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

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

#### **ARTICLE XII**

#### **Casualty and Restoration: Condemnation; Termination**

**Section 1. Casualty and Restoration.** In the event of damage to or destruction of the structure or exterior of any of the Common Properties due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The



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21

KB

DATE

proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

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

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

Encroachments upon any Lot which may be created as a result of such reconstruction of repair of any Common Properties shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Lot such encroachment exists.

Section 2. Total or Partial Condemnation. In the event of the condemnation of all or any part of the Common Properties, Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties.

**ARTICLE XIII,**  
**Specific Restrictions**

Section 1. Specific Restrictions. The following are specific restrictions that are binding upon the Architectural Review Board, run with the Real Estate and may not be amended except by appropriate amendment of these Declarations. It is the intent of these Declarations to specifically restrict the Development as follows:

- (a) Land Use. All Lots shall be used for residential purposes unless designated for other use on the Plat. No temporary or mobile-living facility shall be used on any Lot at any time.
- (b) Subdividing Lots. No Lot or Lots shall be re-subdivided by the Owner.
- (c) Water and Sewage System. No individual water supply system or sewage system shall be permitted on any Lot. The water and sewage disposal systems constructed by the Developer, the Association or the City of Indianapolis, Indiana shall be the only means of water supply and sewage disposal.

Section 2. Use of Development Property.



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(a) Protective Covenants.

- i. Nuisances. No noxious or offensive trade or activity shall be conducted upon any Lot nor shall anything be done thereon which may become a nuisance or annoyance to the neighborhood or the Owner of a Lot. No commercial business, trade or activity of any commercial nature shall be carried on upon a residential Lot in the Development. No junk or disabled motor vehicles, whether licensed or unlicensed, shall be kept upon any Lot in the Development for a period exceeding fifteen (15) days. The keeping of poultry, cows, hogs, goats, horses or livestock of any nature is strictly prohibited. Dogs shall be kept under the control of Owners at all times, by leash, pens or other means and shall not be permitted to wander through the Development. No Lot shall be used for the storage of any property or thing that will cause such Lot to appear unclean or untidy or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any Lot that will emit fire or obnoxious odors or that will cause any noise which might disturb the peace, quiet, comfort or serenity of the Owners. There shall be no discharge of any firearms and there shall be no hunting with firearms or bows and arrows or otherwise upon any part of the Development.
- ii. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, nor may garbage or rubbish be buried on such Lots. Rubbish, garbage and other waste shall be kept in sanitary containers concealed from the streets, parks and fairways and in such manner as to avoid an unsightly appearance until removed from the premises by a garbage and rubbish removal service or the Owner. All equipment for the storage or disposal of garbage and rubbish shall be kept in a clean and sanitary condition at all times. Burning of trash, leaves or other refuse is prohibited.
- iii. Vacant Lots. Owners of vacant Lots shall be required to maintain, at the Owner's expense, their Lots in a clean, neat, sanitary, attractive and uncluttered manner. Weeds shall be cut as necessary to preserve a clean appearance. If the Owner fails or refuses to maintain said Lot, the Association shall have the right to enter upon such Lot and perform such work as necessary, charging the Lot Owner any cost of such maintenance.
- iv. Signs. Each Lot may display a marker containing only the resident's name and the Owner's name and address. No signs advertising products, services, professions, facilities or real estate shall be displayed on any Lot at any time. No sign shall exceed five (5) square feet unless approved by the Architectural Review Board.



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DATE

v. Other Restrictions. In addition to the provisions of this Article, the Board of Directors may adopt general rules and regulations to implement the purposes set forth in this Declaration, including but not limited to, rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, and planting, maintenance and removal of vegetation in the Development. The Board of Directors may adopt general rules and regulations appropriate to each Lot, which rules and regulations may vary among Lots. Such general rules may be amended by a two-thirds (2/3) vote of the Board of Directors.

vi. Exceptions. The Board of Directors may authorize exceptions to or variances from the general rules and regulations adopted pursuant to subsection (v) if the Board of Directors can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Lot. Each Owner shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair and free of debris including, without limitation, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board or Board of Directors. In the event an Owner of any Lot in the Development shall fail to maintain the premises and the improvements situated on a Lot, as provided herein, the Association, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

Section 3. Easements. All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any sewer or utility easement, if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Marion County, Indiana.

Section 4. Enforcement. The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Developer nor the Association shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. In addition, the Board of Directors shall



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have the discretion to establish and amend fines for infractions of the requirements set forth in this Declaration. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

Section 5. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 6. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners and the Association, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2025, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by majority vote of those Persons who are then the Owners of Lots in the Development; provided, however, the lapse or amendment of the terms and conditions of this Declaration shall not in any manner affect or amend the terms of the Declaration for the Ladywood Gardens Horizontal Property Regime, which terms and conditions shall not be affected by such lapse or amendment, but instead shall continue unaffected.

Section 7. Severability. All provisions and restrictions in this Declaration are hereby declared to be independent of, and severable from, the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions, and of and from every combination of the provisions and restrictions. Therefore, if any of the provisions and restrictions 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 "running" quality of any other one of the provisions and restrictions.

Section 8. Amendment by Declarant Only. Notwithstanding any other provision of this Declaration, the Declarant shall have the right acting along and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other persons, to amend or supplement this Declaration or other documents from time to time if (i) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages; or (iii) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any amendments described in this Section 8 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Dwelling Unit and



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acceptance thereof shall be deemed to be grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 8 shall terminate at such time as Declarant no longer holds or controls title to any part or portion of the Real Estate.

**IN WITNESS WHEREOF, OAKFIELD DEVELOPMENT II, LLC, an Indiana limited liability company, has caused this Declaration to be executed as of the date first written above.**

OAKFIELD DEVELOPMENT II, LLC  
An Indiana limited liability company

By: [Signature]  
Ryan G. Thomas, Member

STATE OF INDIANA )  
COUNTY OF HAMILTON ) SS

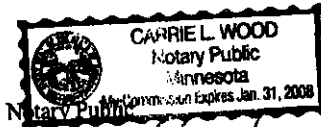
Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Ryan G. Thomas*, a Member of Oakfield Development II, LLC, an Indiana limited liability company, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of the Ladywood Bluff Subdivision.

Witness my hand and Notarial Seal this 22 day of Nov,  
2009

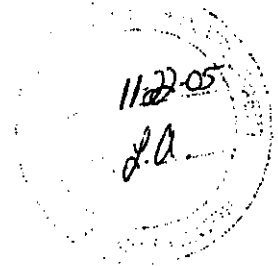
My Commission Expires:

1/31/08

Residing in Crown Wing County



[Signature]  
Printed Name  
Carrie L. Wood



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## Exhibit "A"

Part of the Northeast Quarter and Part of the Southeast Quarter of Section 9, Township 16 North, Range 4 East, Second Principal Meridian, Washington Township, Marion County, Indiana, more particularly described as follows:

Beginning on the South line of said Northeast Quarter at a point South 89 degrees 23 minutes 54 seconds West (Assumed Bearing) 780.00 feet from the Southeast corner of said Northeast Quarter; thence continuing along said South line South 89 degrees 23 minutes 54 seconds West 17.87 feet to a railroad spike at the Southwest corner of the 9.836 acre tract of land described in Instrument Number 2002-78169 in the Office of the Recorder of said Marion County; the following five (5) courses are along the Southwestern line of said 9.836 acre tract; thence (1) North 53 degrees 48 minutes 05 seconds West 110.30 feet to a railroad spike; thence (2) North 30 degrees 51 minutes 05 seconds West 190.75 feet to a railroad spike; thence (3) North 32 degrees 35 minutes 06 seconds West 194.55 feet to a railroad spike; thence (4) North 47 degrees 34 minutes 06 seconds West 328.15 feet to a 5/8 inch rebar with yellow cap on the East line of the West Half of said Northeast Quarter; thence (5) North 00 degrees 03 minutes 56 seconds East 23.35 feet along said East line to a railroad spike, which point is the Southeast corner of the 3.00-acre tract of land described in Instrument Number 2004-0198119 in said Recorder's Office; thence North 40 degrees 16 minutes 56 seconds West 55.11 feet; thence North 23 degrees 23 minutes 50 seconds West 30.89 feet; thence Northwesterly 49.63 feet along an arc to the left and having a radius of 161.98 feet and subtended by a long chord having a bearing of North 32 degrees 10 minutes 27 seconds West and a length of 49.44 feet; thence North 40 degrees 57 minutes 00 seconds West 169.87 feet; thence Northwesterly 14.47 feet along an arc to the right and having a radius of 38.00 feet and subtended by a long chord having a bearing of North 30 degrees 02 minutes 19 seconds West and a length of 14.39 feet; thence North 48 degrees 44 minutes 40 seconds East 236.35 feet; thence Northeasterly 17.80 feet along an arc to the right and having a radius of 266.56 feet and subtended by a long chord having a bearing of North 60 degrees 54 minutes 43 seconds East and a length of 17.80 feet to said East line of the West Half; thence North 00 degrees 03 minutes 56 seconds East 38.78 feet along said East line to the centerline of Millersville Road; thence along said centerline Southwesterly 41.13 feet along an arc to the left and having a radius of 301.56 feet and subtended by a long chord having a bearing of South 62 degrees 17 minutes 30 seconds West and a length of 41.10 feet; thence South 48 degrees 44 minutes 40 seconds West 278.93 feet along said centerline to the North corner of the 1.73-acre tract of land described in Instrument Number 2003-274232 in said Recorder's Office; thence South 40 degrees 57 minutes 01 second East 218.79 feet along the Northeastern line of said 1.73-acre tract; thence along said northeastern line Southeasterly 34.05 feet along an arc to the right and having a radius of 125.00 feet and subtended by a long chord having a bearing of South 33 degrees 08 minutes 50 seconds East and a length of 33.94 feet to the East corner of said 1.73-acre tract; thence South 48 degrees 31 minutes 47 seconds West 264.18 feet along the Southeastern line of said 1.73-acre tract to the South corner of said 1.73-acre tract; thence North 68 degrees 39 minutes 33 seconds West 69.01 feet along a Southern line of said 1.73-acre tract to a West corner of said 1.73-acre tract; thence South 48 degrees 31 minutes 47 seconds West 136.47 feet to the Southwestern line of the 3.68-acre tract of land described in said Instrument Number 2004-0198119; thence South 41 degrees 47 minutes 11 seconds East 161.39 feet along said Southwestern line to the South corner of said 3.68-acre tract; thence South 48 degrees 31 minutes 47 seconds West 11.53 feet along a South line of a 1.092-acre tract of land described in Instrument Number 66-7085 in said Recorder's Office; thence south 33 degrees 16 minutes 33 seconds West 58.27 feet along a South line of said 1.092-acre tract; thence South 68 degrees 36 minutes 21 seconds East 220.88 feet along the North line projected Westerly and the North line of a tract of land described in Deed Book 2015 Page 678 in said Recorder's Office; thence South 11 degrees 51 minutes 21 seconds East 138.80 feet along the East line of said tract of land; thence South 23 degrees 36 minutes 21 seconds East 120.00 feet along the East line of a tract of land described in Instrument Number 69-29491 in said Recorder's Office; thence South 41 degrees 15 minutes 53 seconds East 111.40 feet along the East line of a tract of land described in Instrument Number 75-55218 in said Recorder's Office; thence South 43 degrees 39 minutes 32 seconds East 172.47 feet along the East line of a tract of land described in Instrument Number 72-61117 in said Recorder's Office and to the Northwest corner of a tract of land described in Instrument Number 65-6110 in said Recorder's Office; thence North 89 degrees 23 minutes 54 seconds East 100.00 feet along the North line of said tract to the West line of a tract of land described in Instrument Number 64-57081 in said Recorder's Office; thence North 00 degrees 00 minutes 29 seconds West 82.61 feet along said West line and a West line of a tract of land described in Deed Book 2032 Page 602 in said Recorder's Office; thence North 89 degrees 23 minutes 54 seconds East 70.00 feet along a North line of said tract; thence North 00 degrees 00 minutes 29 seconds West 67.00 feet along a West line of said tract to the North line of said tract; thence North 80 degrees 59 minutes 31 seconds East 259.28 feet along said North line and the North line of a tract of land described in Deed Book 1999 Page 186 in said Recorder's Office to the West line of Laurel Hall Subdivision, Part Two, the plat of which is recorded in Plat Book 29 Page 359 and the amended plat thereof in Plat Book 30 Page 1 in said Recorder's Office; thence North 26 degrees 58 minutes 48 seconds East 70.51 feet along said West line to the Point of Beginning. Containing 10.554 acres, more or less.

Approved 11/22/2005  
Washington Township Assessor  
By: [Signature]  
Real Estate Deputy

(26)  
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**MASTER DECLARATION OF CONVENANTS, CONDITIONS AND RESTRICTIONS OF THE ESTATES AT LADYWOOD & LADYWOOD BLUFF**

This Declaration is made as of the 22 day of November, 2005 by Oakfield Development II, L.L.C., an Indiana limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real estate in Marion County, State of Indiana, more particularly described in Exhibit "A." attached hereto and, by this reference, made a part hereof ("Real Estate"); and

WHEREAS, Declarant desires and intends to create on the Real Estate a residential community to be known as Ladywood ("Development") and to sell and convey the residential lots and condominiums situated within the platted areas of the Development, and before doing so, desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, easements, assessments, privileges, liens and charges ("Restrictions") under a general plan or scheme of improvement for the benefit and complement of the Lots, condominiums and lands and each Owner of all or part thereof in the Development and future Owners thereof as hereinafter provided in this Declaration; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the power and duty to enforce the covenants and restrictions contained in this Declaration; collect and disburse the assessments and charges imposed and created hereby and hereunder; and promote the health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Indiana a nonprofit corporation under the name of The Estates at Ladywood Homeowners Association, Inc., or similar name, for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole, Common Properties, and each of the Lots situated therein. All of the Restrictions shall run with the land and shall be binding upon the Declarant and upon the Owners and any other Persons having or acquiring any rights, title or interest, legal or equitable, in and to the Real Estate or the Development any part of parts thereof subject to this Declaration and/or the Restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any Real Estate. The Declarant specifically reserves unto itself the right and privilege, prior to the recording of the Plat by the Declarant of all or any portion of the Real

Legal Description Missing  
At Time Of Recording.

MCR

PLATTED FOR RECORDING  
NOV 22 2005  
11/22/05 09:46AM RANDA MARTIN MARION CTY RECORDER

Inst. # 2005-0193616  
LW 59.00 PAGES: 26

Estate, to exclude any Real Estate shown on Exhibit A hereto from the Development, or to include additional real estate therein.

**ARTICLE I.**  
**DEFINITIONS**

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

- (a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended, or any successor act;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Article IV, Section 2(b) of this Declaration;
- (c) "Architectural Review Board" shall mean and refer to that committee or entity established pursuant to Article VIII, Section 1 of this Declaration for the purposes herein stated;
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time;
- (e) "Association" shall mean The Estates at Ladywood Homeowners' Association, Inc.
- (f) "Board" or "Board of Directors" shall mean and refer to the governing body of the Association elected, selected or appointed as provided in the Articles, By-Laws and this Declaration and each member thereof shall be designated as a "Director";
- (g) "Building" shall mean and refer to a structure having one or more "Dwelling Unit(s)";
- (h) "By-Laws" shall mean and refer to the Code of By-Laws of the Association, as the same may be amended from time to time;
- (i) "Common Expenses" shall mean and refer to expenses of administration of the Association, expenses for upkeep and maintenance of the Common Properties including reserves, all sums lawfully assessed against the Owners by the Association, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (j) "Common Properties" shall mean and refer to (i) all 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), (ii) to the extent hereinafter established, such improvements located, installed or established in, to, on, under, across or through the Real Estate as are herein declared to be Common Properties whether located, installed or

established entirely or partially on Lots or portions of the Real Estate which are not Lots, or both, and (iii) items deemed Common Properties for purposes of maintenance;

- (k) "Declarant" and "Developer" shall mean and refer to Oakfield Development II, LLC, an Indiana limited liability company, and any of its successors and assigns whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder;
- (l) "Dwelling Unit" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family, whether such Dwelling Unit is detached or attached to another Dwelling Unit;
- (m) "Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Properties) designed and intended for use as building site for, or developed and improved for use as, a dwelling Unit, as designated by Declarant by its deed of the same to another person. For purposes of this Declaration, a "Lot" shall be any single numbered parcel of land identified as a lot on a recorded subdivision plat of the Real Estate;
- (n) "Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;
- (o) "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot, but in any event shall not include any mortgagee or tenant unless and until such mortgagee or tenant has acquired fee simple title to any Lot, but upon so acquiring title to any Lot such a mortgagee or tenant shall be an Owner;
- (p) "Person" shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof;
- (q) "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;
- (r) "Private Driveway Easements" shall mean the streets other than public streets as shown on any recorded subdivision plat of the Real Estate whether such plat is heretofore or hereafter recorded.
- (s) "Real Estate" shall mean and refer to the parcel of real estate in Marion County, Indiana, described in the first recital clause of this Declaration, and defined therein as the Real Estate, as well as all additional real estate subjected hereto pursuant to Article II, Section 5 of this Declaration;

- (t) "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;
- (u) "Zoning Covenants" shall mean and refer to the written covenants, as amended, heretofore entered in connection with zoning of the Real Estate, if any, which covenants will be recorded in the Office of the Recorder of Marion County, Indiana, such recorded covenants being incorporated herein by reference, as the same may hereafter be amended in accordance with their terms.

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

**ARTICLE II.**  
**Declarations; Common Properties and Rights Therein; Easements**

Section 1. Declarations. Declarant hereby expressly declares that the Real Estate shall be held, transferred, and occupied subject to the Restrictions. Subsequent owners or contract purchasers of any Lot (i) 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, or (ii) by the act or occupancy of any Lot, shall accept such deed, execute such contract or occupy the Lot subject to each of the Restrictions and agreements herein contained. By acceptance of such deed, execution of such contract or occupancy of the Lot, each Owner, contract purchaser or occupant acknowledges the rights and powers of Declarant and of the Association with respect to these Restrictions, and also for himself, his heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Association, and the Owners and subsequent Owners of each of the other Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

Section 2. Easement to Owners. Declarant hereby grants a non-exclusive easement in favor of each Owner for the use, enjoyment and benefit of the Common Properties, subject to all of the Restrictions of this Declaration, and such easement shall be an easement running with and appurtenant to each Lot. The Private Driveway Easements shall be for the private use of the Owners, and their licensees, invitees and guests for purposes of ingress and egress to Lots and shall not be for general public use. Governmental vehicles, including but not limited to, police, fire and other emergency vehicles, and privately owned delivery trucks shall have the right to enter upon and use such easements for ingress to and egress from public streets in the performance of their duties.

Section 3. Easement to Association. Declarant hereby grants a non-exclusive easement in favor of the Association for the maintenance of the Common Properties (including items deemed Common Properties for maintenance only, which includes but is not limited to Owners; lawns). Such easement shall permit the Board or its agents to enter onto any Lot to maintain, make emergency repairs, or do other work reasonable necessary of the proper maintenance or operation of the Development.

Section 4. Encroachment Easements. If any Dwelling Unit encroaches upon another Dwelling Unit, Lot or Common Property as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement shall be deemed to exist and run to the Owner of the encroaching improvement for the encroachment and for the maintenance thereof so long as such encroachment exists.

Section 5. Additional Phases of Development.

- (a) Declarant hereby reserves the right to expand the Real Estate covered hereby by acquiring and developing one (1) or more parcels of real estate adjacent to the Real Estate or additional acquired parcels. Upon acquisition of additional real estate: (i) such real estate shall be included in the definition of Real Estate (ii) lots located therein, the owners thereof and its common area and the common area costs associated therewith shall be included in the definitions of Lots, Owners, Common Properties and Common Expenses, respectively, and (iii) such additional Lots shall be added to the Assessment Schedule;
- (b) Declarant hereby reserves the right to construct a jogging trail and other related facilities for the benefit of the Lots and the Owners. All costs and expenses to construct operate and maintain such facilities shall be included in the definition of Common Expenses;
- (c) All additional real estate and facilities acquired and/or developed pursuant to Section 5 (a) or Section 5 (b), above, shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens set forth in this Declaration.

Section 6. Division of Common Property. The Development will be developed into three (3) separate sub areas titled Ladywood Bluffs, Ladywood Cottages and Ladywood Gardens. Both Ladywood Bluffs and Ladywood Cottages shall be single-family detached Dwelling Units and Ladywood Gardens shall be a horizontal property regime under Ind. Code Chapter 32-25-1 (the "Condominium Act"). Pursuant to Indiana law, Ladywood Gardens will have a separate set of declarations and covenants as required by the Condominium Act. In the event of any conflict between the covenants and restrictions for Ladywood Gardens and this document, this document shall prevail except in circumstances where the provision of the covenants and restrictions for Ladywood Gardens is required by the Condominium Act.

Common Property other than any Private Driveway Easements within the portion of the Development known as the Ladywood Gardens Horizontal Property Regime shall be governed by and owned by Lot Owners pursuant to the terms and conditions of the Declaration for Ladywood Gardens. Common Property within any other area of the Development outside of the Ladywood Gardens Horizontal Property Regime shall be owned and operated pursuant to the terms of this Declaration.



### **ARTICLE III.**

#### **Obligations of Declarant as to Common Properties; Dedication**

Section 1. Agreement to Construct and Convey Common Properties. Declarant has constructed or provided for, or will construct or provide for, the Common Properties required by, and in accordance with, the Zoning Covenants, and such other Common Properties deemed appropriate by it.

Upon final construction or provision of the Common Properties, Declarant covenants to convey all of its right, title and interest in and to the Common Properties to the Association and all such right, title and interest in and to the Common Properties (whether owned in fee, by leasehold or in the nature of an easement or license) shall thereupon be the property of the Association, whether or not the same may be located entirely or partially on any one or more of the Lots.

Section 2. Dedication. The public streets shown on the Plat, if any, excepting the Private Driveway Easements, are hereby dedicated to the public for the use and benefit of the public.

### **ARTICLE IV.**

#### **Association; Membership; Voting; Functions**

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

Section 2. Voting Rights. The Association shall have two (2) classes of members (singularly, a "Member", and collectively, the "Members"), with the following voting rights:

- (a) Class A Members. Class A Members shall be all Owners, with the exception of the Class B Member, and shall be entitled to one (1) vote for each Lot owned by such member with respect to each matter submitted to a vote of members upon which Class A members are entitled to vote. When more than one (1) Person constitutes the Owner of a particular Lot, all such Persons shall be Members of the Association, but all of such Persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) Class B Members. The Class B Member shall be the Declarant and all successors and assigns of the Declarant designated by the Declarant as the Class B Member in a written notice mailed or delivered to the resident agent of the Association. The Class B Member shall be the only Member

eligible to vote on all matters requiring a vote of the Members of the Association until the Applicable Date (as hereinafter defined). The Class B membership shall cease and terminate upon the Applicable Date which is the date seventy-five percent (75%) of the Lots have been sold by Declarant (the "Applicable Date").

Section 3. Functions. The Association has been formed for the purpose of providing for the maintenance, administration, operation and ownership of the Common Properties, to pay taxes assessed against and payable with respect to the Common Properties, to pay any other necessary expenses and costs in connection with the Common Properties and to perform such other functions as may be designated for it to perform under this Declaration.

## ARTICLE V. Board of Directors

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

Section 2. Initial Board of Directors. The initial Board of Directors shall be composed of the persons designated in Articles (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by the Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles, the By-Laws or the Act (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reasons or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by the Declarant, who shall thereafter be deemed a member of the Initial Board. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by the Declarant to fill a vacancy, shall be deemed a Member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he/she is actually the Owner of a Lot and thereby a Member of the Association).

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

Section 4. Term of Office and Vacancy. Subject to the provision of Section 2 of this Article V, one-third (1/3) of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, one-third (1/3) of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one-third (1/3) of the Board of

Directors shall be elected for a three (3) year term, one-third (1/3) for a two (2) year term, and one-third (1/3) for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 2 of this Article V as to the Initial Board, any vacancy or vacancies occurring on the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with Section 5 of this Article V. The Director so filling a vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

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

Section 6. Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and being responsible for the functions and duties of the Association, including but not limited to, providing for the administration of the Real Estate, the management, maintenance, and upkeep of the Common Properties (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, to be reasonable and customary. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but not be limited to:

- (a) maintenance and upkeep of the Common Properties (or items deemed Common Properties for purposes of maintenance only);
- (b) snow removal from Private Driveways, Easements and public streets dedicated to the public in the Plat;
- (c) assessment and collection from the Owners of the Owner's respective shares of the Common Expenses;
- (d) preparation of the proposed annual budget and the Assessment Schedule, copies of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (e) preparing and delivering annually to the Owners a full accounting for all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;

- (f) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Properties and the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers shall be available at the principal office of the Association for examination by an Owner at any time during normal business hours;
- (g) procuring and maintaining for the benefit of the Association and the Board such insurance coverage as the Board, in its sole discretion, may deem necessary or advisable; and
- (h) paying taxes assessed against, and payable with respect to, the Common Properties and paying any other necessary expenses and costs in connection with the Common Properties;
- (i) making available to Owners and Mortgagees, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, By-Laws or other rules concerning the Development and the books, records and financial statements of the Association. As used herein, "available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances;
- (j) making available to any Mortgagee or any holder, insurer or guarantor of a first mortgage, upon request, a copy of the Association's financial statements for the immediately preceding fiscal year.

Section 7. Powers and Authority of the Board of Directors. The Board of Directors shall have such powers and authority as are reasonable and necessary to accomplish the performance of their duties. These powers and authority include, but shall not be limited to, the power and authority:

- (a) to employ a Managing Agent to assist the Board in performing its duties; provided that no employment agreement with the Declarant (or a corporation or other entity affiliated with the Declarant) as Managing Agent or for any other service shall be for more than three (3) years after the Applicable Date and after the Applicable Date any such agreement shall be subject to termination by either party without cause and without payment of a termination fee upon ninety (90) days prior written notice to the other party;
- (b) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as, in the judgment of the Board of Directors, may be necessary or desirable in connection with the business and affairs of the Association;

- (d) to employ, designate, discharge and remove such personnel as, in the judgment of the Board of Directors, may be necessary for the maintenance, upkeep, repair and replacement of the Common Properties;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs from the funds of the Association as Common Expenses;
- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to promulgate, adopt, revise, amend and alter, from time to time, such additional rules and regulations with respect to the use, occupancy, operation and enjoyment of the Real Estate and the Common Properties (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulation so adopted by the Board shall be promptly delivered to all Owners.

Section 8. Limitations on Board Action. The Board's powers and authority are subject to the following limitations:

- (a) After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure per contract of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:
  - i. proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
  - ii. expenditures necessary to deal with emergency conditions in which the Board of Directors reasonable believes there is insufficient time to call a meeting of the Owners.
- (b) The Board shall not, without the prior written approval of at least sixty-seven percent (67% of the Owners (other than Declarant):
  - i. by act or omission, abandon, partition, subdivide, encumber, sell or transfer the Common Properties owned by the Association (provided, the granting of easements for public utilities or for other public purposes shall not be deemed a transfer within the meaning of this clause);
  - ii. except as specifically provided herein, change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the

maintenance of side walls in the Common Properties or common fences, or the upkeep of lawns in the Development;

- iii. use hazard insurance proceeds for losses to any of the Common Properties for other than the repair, replacement or upgrading of Common Properties.

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

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

Section 11. Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any Person, his heirs, assigns and legal representatives, made a party to any action suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually or necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Director the reasonable costs of settlement or judgment rendered in any action, suit or proceeding if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for gross negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of or liable for gross negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 12. Bond. The Board of Directors shall obtain fidelity insurance covering the Managing Agent (if any), the treasurer of the Association, and such other officers as the Board deems necessary to cover the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication and other acts of fraud or dishonesty, in such sums as may be determined by the Board of Directors, and any such coverage shall specifically include protections for any insurance proceeds received for any reason by the

Board. The expense of any such bonds shall be a Common Expense. The amount of the bonds shall be based upon the judgment of the board of Directors and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or its Managing Agent at any time during the term of the bond. In no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Lots, plus reserve funds.

Section 13. Initial Management. The Initial Board may enter into a management agreement with the Declarant (or a corporation or other entity or entities designated by the Declarant) for a term or terms as determined by the mutual agreement of the Initial Board and the Declarant, under which the Declarant (or such designated corporation, entity or entities) will provide supervision, fiscal and general management and maintenance of the Common Properties and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by the Declarant (or its designee) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties, obligations and functions. Notwithstanding anything to the contrary contained in this Declaration, so long as such management agreement remains in effect, the Declarant (or its designee) shall have, and the Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Real Estate and Common Properties and to perform all the functions of the Association.

## **ARTICLE VI.**

### **Maintenance, Repairs and Replacements**

Section 1. By Owners. Except as provided in Section 2(b) of this Article, or any sub-declaration for a specific area of the Development, each Owner shall, at his own expense, be responsible for, and shall promptly perform as the need therefore arises, all maintenance, repairs, decoration and replacement of his own Dwelling Unit, both interior and exterior. In addition, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. Each Owner shall promptly perform all maintenance and repairs of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit or any part of the Common Properties.

### Section 2. Common Properties Laws by the Association.

- (a) Maintenance, repairs and upkeep of the Common Properties shall be furnished by the Association, as part of its duties, and the cost thereof shall constitute a part of the Common Expenses.
- (b) The Association, as part of its duties, and as part of the Common Expenses, shall provide for:
  - (i) Snow removal for the public streets; and

The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Properties (or items deemed Common Properties for purposes of maintenance only as it deems necessary.

- (c) Notwithstanding any obligation or duty of the Association to maintain any of the Common Properties (or items deemed Common Properties for purposes of maintenance only), if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Properties (or items deemed as such for purposes of maintenance only) or if maintenance, repairs or replacements shall be required thereby and the cost thereof would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, in such amounts as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not-paid by such Owner upon demand by the Association, the cost of the foregoing shall be added to and become a part of the assessment to which such Owner's Lot is subject.
- (d) The Authorized representatives of the Association, the Board and the Managing Agent for the Association (if any) shall be entitled to reasonable access to any Lot as may be required in connection with maintenance only, or repairs of or to the Commons Properties and items deemed as Common Properties for purposes of maintenance only, including, but not limited to, access of any easements reserved by the Plat of any portion of the Real Estate for such purposes.

**ARTICLE VII.**  
**Real Estate Taxes; Utilities**

Section 1. Real Estate Taxes. Real estate taxes on each Lot, and on any Dwelling Unit or other improvements on each Lot, are to be separately assessed and taxed to each Lot and shall be paid by the Owner of such Lot. Any real estate taxes or other assessments against the Common Properties shall be paid by the Association and treated as a Common Expense.

Section 2. Utilities. Each Owner shall pay for his or her own utilities which shall be separately metered to each Lot and Dwelling Unit.

**ARTICLE VIII.**  
**Architectural Control**

Section 1. The Architectural Review Board. As a standing committee of the Association, there shall be, and hereby is, established an architectural review board consisting of three (3) or more Persons as may, from time to time, be provided in the By-Laws (the "Architectural Review Board"). Until the Applicable Date, the Declarant shall appoint the members of the Architectural Review Board. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors.

Section 2. Purposes. The Architectural Review Board shall regulate the external design, appearance, use location and maintenance of the Real Estate and of improvements



located thereon in such manner as to reserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

Section 3. Conditions. No improvements, alterations, repairs, change of colors, excavations, changes in grade or other work which in any way alters the exterior of any Lot, Dwelling Unit or other improvements located on any Lot from its natural or improved state existing on the date such Lot and Dwelling Unit was first conveyed in fee by the Declarant to an Owner, shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot by a Lot Owner without the prior written approval of the Architectural Review Board; provided this restriction shall not be applicable to the original construction of a Dwelling Unit on a Lot whether such construction occurs before or after the Applicable Date.

Section 4. Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing a written application within (60) days after its receipt of such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval shall be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two thirds (2/3) vote of the Directors then serving. ~~The Architectural Review board may establish~~ committees consisting of two (2) or more of its members to perform any of its functions, which committees shall exercise such powers of the Board as may be delegated to them.

## ARTICLE IX. Assessments

Section 1. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by an accountant or firm of accountants engaged by the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 2. Proposed Annual Budget and Assessment Schedule. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget and assessment schedule setting forth the percentage of expenses to be allocated to each of the Lots (the "Assessment Schedule") for the current fiscal year and shall furnish copies of such proposed budget and Assessment Schedule to each Owner prior to or with the notice to Owners of such annual meeting. The annual budget and Assessment Schedule shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. At the annual meeting of the Owners, the proposed Assessment Schedule must be approved in whole by a majority vote of the Owners. If such

approval is not obtained, Regular Assessments and any Special Assessments shall be allocated based upon the most recently approved. The annual budget, the Regular Assessments and all other sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Properties which replacement reserve fund shall be used for such purposes and not for usual and ordinary repair expenses of the Common Properties. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Properties shall be maintained by the Association in an interest bearing account with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana and insured by a Federal depository agency as selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the assessments herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

~~Section 3. Regular Assessments.~~ The annual budget as adopted by the Owners shall, based on the estimated cash requirements for the Common Expenses in the current fiscal year as set forth in such budget and contain a proposed assessment against each Lot. The preceding notwithstanding, all Owners of Condominium Units (as that term is defined in the Ladywood Horizontal Property Regime Declarations) shall not be required to pay for private streets outside of the Ladywood Horizontal Property Regime, and Common Expenses for private streets outside of the Ladywood Horizontal Property Regime shall be assessed only against the Owners abutting such street.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget for such year by the Owners, to reflect the assessment against each Lot for the entire year, based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance annually; provided, however, Declarant is authorized to collect an amount equal to the prorated annual assessment due for the period from closing until January 1<sup>st</sup> of the next year. Payment of the annual installment of the Regular Assessment shall be made to the Board of Directors of the Managing Agent, as directed by the Board of Directors. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal quarterly or semi-annual installments rather than an annual installment. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget.

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the

temporary budget, such excess shall be paid within thirty (30) days of the issuance of written notice to Owners of such excess.

- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be made by a cash payment or refund to the Owners who have previously paid such Regular Assessments on or before the fifteenth (15<sup>th</sup>) day of the second (2<sup>nd</sup>) full month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot and Dwelling Unit as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by such date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot and Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot and Dwelling Unit from payment of the Regular Assessment for such Lot and Dwelling Unit from payment of the Regular Assessment for such Lot and Dwelling Unit as finally determined, and such Owner and his successor as Owner of such Lot and Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all Persons to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Semi-annual or quarterly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

Section 4. Special Assessments. From time to time, Common Expenses of an unusual, extraordinary or capital nature not included in the budget or not otherwise anticipated may arise. At such time, unless otherwise provided in this Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot and Dwelling Unit, prorated based upon the percentages assigned to each Lot pursuant to the Assessment Schedule (herein called "Special Assessment"); provided, that any such assessment shall have the consent of fifty-one percent (51%) of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose. Without limiting the generality of the foregoing, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repairs or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

Section 5. Failure of Owner to Pay Assessments.

- (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expense of administration and of maintenance and repair of the Common Properties and items deemed Common Properties for purposes of maintenance only, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Properties or by abandonment of the Lot owned by him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one Person, the liability of such Persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessment or Special Assessment, when due, the Board may in its discretion, accelerate the entire balance of the unpaid assessments and declare the same immediately due and payable, notwithstanding any other provision hereof to the contrary. In any action to foreclose the lien for any assessments provided for in this Declaration, the Owner and any occupant of the Lot and Dwelling Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits there from for the benefit of the Association to be applied to the unpaid Regular Assessments and/or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment, without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment and/or Special Assessment whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expense of such action incurred (including but not limited to reasonable attorneys' fees) and interest from the date such assessments were due, until paid, at a rate per annum equal to the "prime or base interest rate" then being charged by National City Bank, Indianapolis, Indiana to its largest and best corporate customers (or if such Bank is no longer in existence, then such rate charged by another national bank in Marion County, Indiana, as designated by the Board) plus two percent (2.0%).
- (b) The lien of the assessments provided for herein shall be subordinate to the lien of the first mortgage on any Lot or Dwelling Unit. Notwithstanding anything contained in this Section or elsewhere in this Declaration, the Articles or By-Laws, any sale or transfer of a Lot and Dwelling Unit to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any Person at a public sale in the manner

provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any regular Assessment or Special Assessment as to such installments which become due prior to such sale, transfer or conveyance; provided, however, the extinguishment of such lien shall not relieve the prior Owner from personal liability therefore. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien thereof. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense, collectible from all Owners (including the party acquiring the subject Lot and Dwelling Unit from which such unpaid share arose).

Section 6. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Articles, in the By-Laws, in the Act or otherwise, until the Applicable Date the annual budget, Assessment Schedule and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence by the Owners. An initial fee of Two Hundred Fifty Dollars and No/100 (\$250.00) shall be assessed to each single family dwelling which shall be prorated depending on time of closing for that year. In addition, a one (1) time capital assessment fee of Five Hundred Dollars and No/100 (\$500.00) per Lot shall be paid to the Association upon the sale of a Lot by Declarant to a third-party Owner. This capital assessment fee shall not be prorated.

All Regular Assessments shall be determined for each year by the Initial Board, in its sole discretion, based upon the estimated cash requirements for the Common Expenses for such year.

Notwithstanding the foregoing or anything else contained herein, until the Applicable Date, the Declarant, or any builder or developer having title to a Lot, shall not be required to pay any Regular or Special Assessments.

## ARTICLE X. Mortgages

Section 1. Notice to Association. Any Owner, who places a first mortgage lien upon his Lot or Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Association of such lien and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the term of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown on such record in the time provided. Unless notification of any such mortgage lien and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled by virtue of this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

Section 2. Notice of Certain Actions or Conditions. The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of:

- i. any condemnation loss or any casualty loss which affects a material portion of the Development or any Dwelling Unit on which there is a first mortgage;
- ii. any default in the performance by its borrower Owner of any obligations of such borrower Owner under this Declaration or the By-Laws which is not cured within sixty (60) days;
- iii. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- iv. any proposed action which would require the consent or approval of Mortgagees.

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

Section 4. Unpaid Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which have or may become a lien against any Common Properties (excluding items deemed Common Properties for maintenance only) for any Common Expenses (excluding items deemed Common Properties for maintenance only), and the Mortgagees making such payments shall be entitled to immediate reimbursement therefore by the Association.

## ARTICLE XI Insurance

Section 1. Public Liability Insurance. The Association shall also purchase a comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. 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 Real Estate or the Development. Such public liability insurance policy shall contain "severability of interest" clauses or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 2. Casualty Insurance.

- (a) The Association shall purchase a casualty insurance policy with an "agreed amount and inflation guard endorsement" or its equivalent affording first and extended coverage insuring all Common Properties owned by the Association, including, but not limited to, utilities and recreational equipment in an amount equal to the full replacement value of the improvements. If the Board of Directors can obtain such coverage for reasonable amounts, it shall also obtain "all risk" coverage for the Common Properties. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board, the Board ~~may cause such full replacement value to be determined by a qualified appraiser.~~ The costs of any such appraisal shall be a Common Expense of all Owners. Such insurance coverage shall be for the benefit of each Owner and, if applicable, the Mortgagee of each Owner.
- (b) The sole duty of the Board in connection with any insurance proceeds shall be to receive such proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners. The proceeds shall be used or disbursed by the Association or the Board, as appropriate, only in accordance with the provisions of this Declaration. Such casualty insurance policies and "all risk" coverage's, except flood and earthquake coverage's, if obtained, shall (to the extent that same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, the Owners, their Directors, its agents and employees, the Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further to the extent obtainable upon reasonable terms (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Association does not elect to restore.

Section 3. Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including, but not limited to, worker's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability

insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

Section 4. General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner and Mortgagee whose interest may be affected thereby, which notice shall be promptly furnished to each Owner and Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association. All policies shall also contain an endorsement to the effect that such policy shall not be terminated for non-payment of premiums without at least thirty (30) days prior written notice to the Owner and Mortgagee of each Lot and Dwelling Unit.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a Mortgagee endorsement on the certificate of insurance or insurance policy or the Board has notice of a Mortgagee as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same restriction on distribution shall apply to the distribution of any condemnation awards in connection with any taking of any of the Common Properties. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds in excess of amounts needed to repair damage or pay off any first mortgage or any condemnation awards by made by the Association to any Owners or Mortgagees if to do so would be in violation of the Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

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

## ARTICLE XII.

### Casualty and Restoration; Condemnation; Termination

Section 1. Casualty and Restoration. In the event of damage to or destruction of the structure or exterior of any of the Common Properties due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The



proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

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

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

Encroachments upon any Lot which may be created as a result of such reconstruction of repair of any Common Properties shall not constitute a claim or basis of a proceeding or action for the Owner upon whose Lot such encroachment exists.

Section 2. Total or Partial Condemnation. In the event of the condemnation of all or any part of the Common Properties, Board is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Properties.

### **ARTICLE XIII.** **Specific Restrictions**

Section 1. Specific Restrictions. The following are specific restrictions that are binding upon the Architectural Review Board, run with the Real Estate and may not be amended except by appropriate amendment of these Declarations. It is the intent of these Declarations to specifically restrict the Development as follows:

- (a) Land Use. All Lots shall be used for residential purposes unless designated for other use on the Plat. No temporary or mobile-living facility shall be used on any Lot at any time.
- (b) Subdividing Lots. No Lot or Lots shall be re-subdivided by the Owner.
- (c) Water and Sewage System. No individual water supply system or sewage system shall be permitted on any Lot. The water and sewage disposal systems constructed by the Developer, the Association or the City of Indianapolis, Indiana shall be the only means of water supply and sewage disposal.

Section 2. Use of Development Property.

(a) Protective Covenants.

- i. Nuisances. No noxious or offensive trade or activity shall be conducted upon any Lot nor shall anything be done thereon which may become a nuisance or annoyance to the neighborhood or the Owner of a Lot. No commercial business, trade or activity of any commercial nature shall be carried on upon a residential Lot in the Development. No junk or disabled motor vehicles, whether licensed or unlicensed, shall be kept upon any Lot in the Development for a period exceeding fifteen (15) days. The keeping of poultry, cows, hogs, goats, horses or livestock of any nature is strictly prohibited. Dogs shall be kept under the control of Owners at all times, by leash, pens or other means and shall not be permitted to wander through the Development. No Lot shall be used for the storage of any property or thing that will cause such Lot to appear unclean or untidy or that will be obnoxious to the eye, nor shall any substance, thing or material be kept upon any Lot that will emit fire or obnoxious odors or that will cause any noise which might disturb the peace, quiet, comfort or serenity of the Owners. There shall be no discharge of any firearms and there shall be no hunting with firearms or bows and arrows or otherwise upon any part of the Development.
- ii. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, nor may garbage or rubbish be buried on such Lots. Rubbish, garbage and other waste shall be kept in sanitary containers concealed from the streets, parks and fairways and in such manner as to avoid an unsightly appearance until removed from the premises by a garbage and rubbish removal service or the Owner. All equipment for the storage or disposal of garbage and rubbish shall be kept in a clean and sanitary condition at all times. Burning of trash, leaves or other refuse is prohibited.
- iii. Vacant Lots. Owners of vacant Lots shall be required to maintain, at the Owner's expense, their Lots in a clean, neat, sanitary, attractive and uncluttered manner. Weeds shall be cut as necessary to preserve a clean appearance. If the Owner fails or refuses to maintain said Lot, the Association shall have the right to enter upon such Lot and perform such work as necessary, charging the Lot Owner any cost of such maintenance.
- iv. Signs. Each Lot may display a marker containing only the resident's name and the Owner's name and address. No signs advertising products, services, professions, facilities or real estate shall be displayed on any Lot at any time. No sign shall exceed five (5) square feet unless approved by the Architectural Review Board.

- v. Other Restrictions. In addition to the provisions of this Article, the Board of Directors may adopt general rules and regulations to implement the purposes set forth in this Declaration, including but not limited to, rules to regulate animals, antennas, signs, fences, walls and screens, mailboxes, storage tanks, awnings, storage and use of recreational vehicles, storage and use of machinery, use of outdoor drying lines, trash containers, and planting, maintenance and removal of vegetation in the Development. The Board of Directors may adopt general rules and regulations appropriate to each Lot, which rules and regulations may vary among Lots. Such general rules may be amended by a two-thirds (2/3) vote of the Board of Directors.
- vi. Exceptions. The Board of Directors may authorize exceptions to or variances from the general rules and regulations adopted pursuant to subsection (v) if the Board of Directors can show good cause and acts in accordance with adopted guidelines and procedures.

(b) Maintenance of Lot. Each Owner shall keep all Lots owned by him, and ~~all improvements therein or thereon, in good order and repair and free of debris~~ including, without limitation, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management as determined by the Architectural Review Board or Board of Directors. In the event an Owner of any Lot in the Development shall fail to maintain the premises and the improvements situated on a Lot, as provided herein, the Association, after notice to the Owner as provided by the By-Laws and approval by two-thirds (2/3) vote of the Board of Directors, shall have the right to enter upon said Lot to correct drainage and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. All costs related to such correction, repair or restoration shall become a Special Assessment upon such Lot.

Section 3. Easements. All easements mentioned herein include the right of reasonable ingress and egress for the exercise of other rights reserved. No structure, including fences, shall be built on any sewer or utility easement, if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Marion County, Indiana.

Section 4. Enforcement. The Association, or any Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, but neither Developer nor the Association shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions. In addition, the Board of Directors shall

have the discretion to establish and amend fines for infractions of the requirements set forth in this Declaration. No delay or failure by any Person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

Section 5. Interpretation. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 6. Duration. The foregoing covenants and restrictions are for the mutual benefit and protection of the present and future Owners and the Association, and shall run with the land and shall be binding on all parties and all Persons claiming under them until January 1, 2025, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by majority vote of those Persons who are then the Owners of Lots in the Development; provided, however, the lapse or amendment of the terms and conditions of this Declaration shall not in any manner affect or amend the terms of the Declaration for the Ladywood Gardens Horizontal Property Regime, which terms and conditions shall not be affected by such lapse or amendment, but instead shall continue unaffected.

Section 7. Severability. All provisions and restrictions in this Declaration are hereby declared to be independent of, and severable from, the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions, and of and from every combination of the provisions and restrictions. Therefore, if any of the provisions and restrictions 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 "running" quality of any other one of the provisions and restrictions.

Section 8. Amendment by Declarant Only. Notwithstanding any other provision of this Declaration, the Declarant shall have the right acting along and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other persons, to amend or supplement this Declaration or other documents from time to time if (i) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages; or (iii) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any amendments described in this Section 8 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Dwelling Unit and

acceptance thereof shall be deemed to be grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Section 8 shall terminate at such time as Declarant no longer holds or controls title to any part or portion of the Real Estate.

IN WITNESS WHEREOF, OAKFIELD DEVELOPMENT II, LLC, an Indiana limited liability company, has caused this Declaration to be executed as of the date first written above.

OAKFIELD DEVELOPMENT II, LLC  
An Indiana limited liability company

By: [Signature]  
Ryan G. Thomas, Member

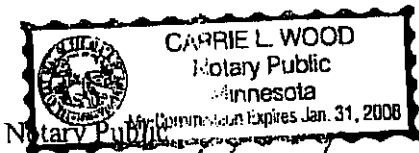
STATE OF INDIANA )  
COUNTY OF HAMILTON ) SS

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Ryan G. Thomas*, a Member of Oakfield Development II, LLC, an Indiana limited liability company, and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of the Ladywood Bluff Subdivision.

Witness my hand and Notarial Seal this 22 day of Nov,  
2005

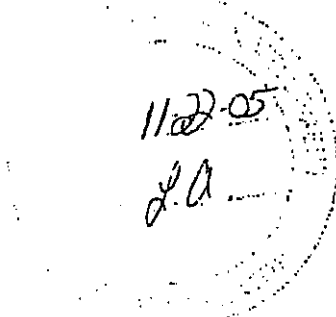
My Commission Expires:  
1/31/08

Residing in Crow Wing County



[Signature]  
Printed Name  
Carrie L. Wood

KD\_IM-597136\_4.DOC



**LADYWOOD BLUFF**

INST # 2005-0193315

OVERALL OF LANE TABLE

LINE #	MARKING	WIDTH	LENGTH	AREA
1	MARKING	10.00	100.00	1000.00
2	MARKING	10.00	100.00	1000.00
3	MARKING	10.00	100.00	1000.00
4	MARKING	10.00	100.00	1000.00
5	MARKING	10.00	100.00	1000.00
6	MARKING	10.00	100.00	1000.00
7	MARKING	10.00	100.00	1000.00
8	MARKING	10.00	100.00	1000.00
9	MARKING	10.00	100.00	1000.00
10	MARKING	10.00	100.00	1000.00

LOT AND BLOCK CURVE TABLE

LOT #	AREA	PERCENT	CHORD	CHORD	PI	ARC
1	1000.00	100.00	100.00	100.00	3.1416	3141.59
2	1000.00	100.00	100.00	100.00	3.1416	3141.59
3	1000.00	100.00	100.00	100.00	3.1416	3141.59
4	1000.00	100.00	100.00	100.00	3.1416	3141.59
5	1000.00	100.00	100.00	100.00	3.1416	3141.59
6	1000.00	100.00	100.00	100.00	3.1416	3141.59
7	1000.00	100.00	100.00	100.00	3.1416	3141.59
8	1000.00	100.00	100.00	100.00	3.1416	3141.59
9	1000.00	100.00	100.00	100.00	3.1416	3141.59
10	1000.00	100.00	100.00	100.00	3.1416	3141.59

OVERALL OF CURVE TABLE

LINE #	MARKING	WIDTH	LENGTH	AREA
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6	MARKING	10.00	100.00	1000.00
7	MARKING	10.00	100.00	1000.00
8	MARKING	10.00	100.00	1000.00
9	MARKING	10.00	100.00	1000.00
10	MARKING	10.00	100.00	1000.00

LEGEND

- 1. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 2. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 3. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 4. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 5. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 6. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
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- 8. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 9. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.
- 10. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.

SECTION 1 - LADYWOOD BLUFF

SECTION 2 - LADYWOOD BLUFF

SECTION 3 - LADYWOOD BLUFF

SECTION 4 - LADYWOOD BLUFF

SECTION 5 - LADYWOOD BLUFF

SECTION 6 - LADYWOOD BLUFF

SECTION 7 - LADYWOOD BLUFF

SECTION 8 - LADYWOOD BLUFF

SECTION 9 - LADYWOOD BLUFF

SECTION 10 - LADYWOOD BLUFF

THE ENGINEER HAS REVIEWED THE RECORD DRAWING SUBMITTED FOR THE LADYWOOD BLUFF PROJECT AND HAS FOUND IT TO BE IN ACCORDANCE WITH THE CITY OF LOS ANGELES RECORD DRAWING REQUIREMENTS. THE ENGINEER HAS NOTED THE FOLLOWING COMMENTS:

1. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.

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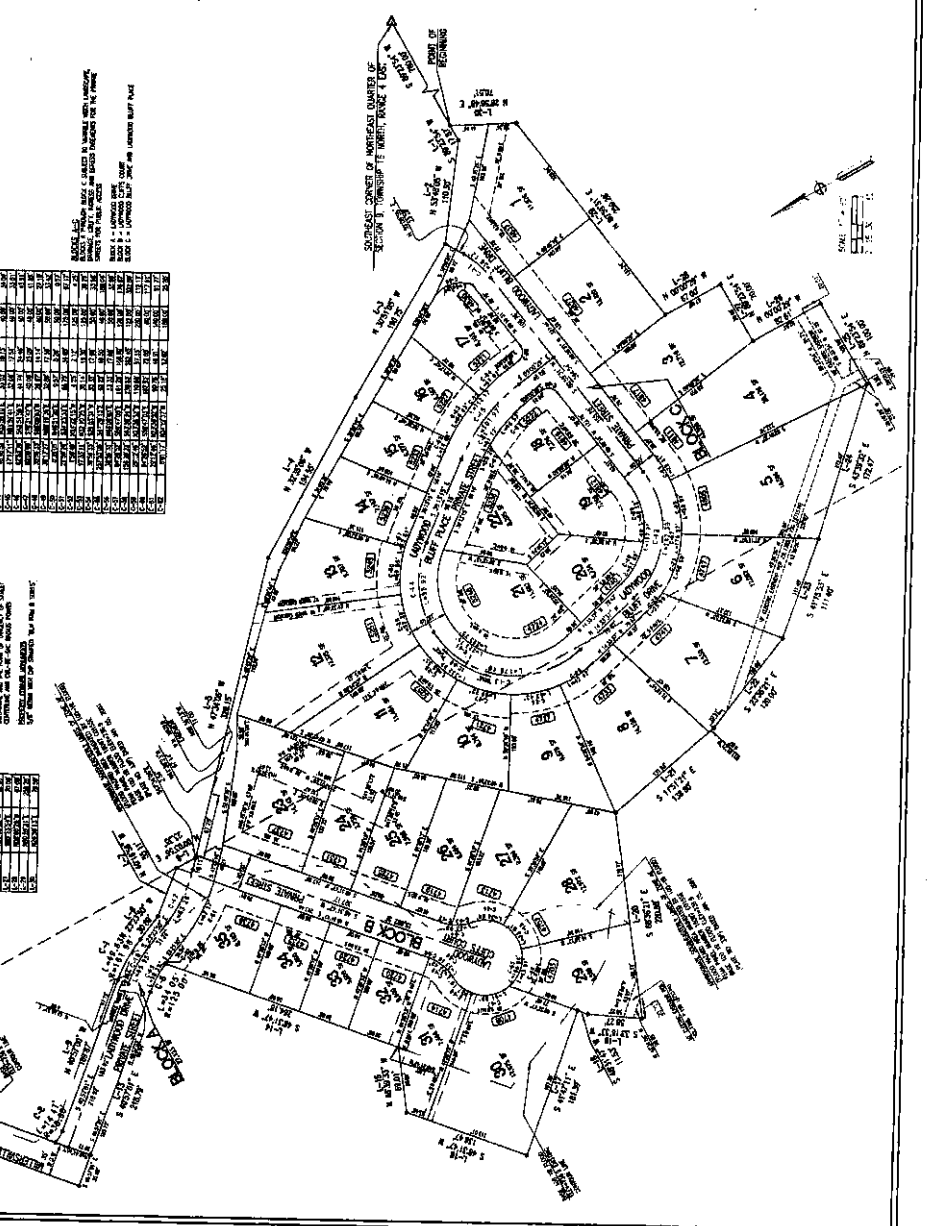
10. ALL LINES SHOWN ARE TO BE CONSIDERED AS PERMITTED BY THE CITY OF LOS ANGELES.

**BLN** Blevins, Longest and Neff, LLC  
Professional Engineers and Surveyors  
1000 W. 10th Street, Suite 1000  
Los Angeles, CA 90015  
Tel: (213) 481-1111  
Fax: (213) 481-1112  
www.blncorp.com

**FILED**  
MAY 13 2005  
LOS ANGELES  
COUNTY CLERK

**RECORDING**  
MAY 13 2005  
LOS ANGELES  
COUNTY CLERK

**RECORDING**  
MAY 13 2005  
LOS ANGELES  
COUNTY CLERK



INST # 2005-0193315