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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
LEXINGTON WOODS

THIS DECLARATION ("Declaration") is made this 21st day of MAY, 2003,
by Davis Homes LLC, an Indiana Limited Liability Company ("Developer").

Recitals Instrument Book Page Type
200300022185 2051111 ABC
PLAT

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer intends to subdivide the Initial Real Estate into residential Lots.
3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain covenants, conditions and restrictions for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create an organization to which shall be assigned the responsibility for maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Initial Real Estate as hereafter recorded in the Office of the Recorder of the County in which the Real Estate is located, and of collecting and disbursing assessments and charges as herein provided.

5. Developer may from time to time subject additional real estate located within the tracts adjacent to or in the immediate vicinity of the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate" or the "Subdivision").

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be acquired, held, transferred, sold, conveyed, leased, rented, improved, used and occupied subject to the following easements, covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of the Real Estate and all of which shall run with the land and be binding upon, and inure to the benefit of, Developer, the Association (hereafter defined), and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

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ARTICLE I
DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

Section 1.1 "Act" means the Indiana Nonprofit Corporations Act of 1991, codified at Indiana Code Sec. 23-17-1-1, et seq., as amended from time to time.

Section 1.2 "Association" means Lexington Woods Community Association, Inc. (or a substantially similar name), an Indiana nonprofit corporation, which Developer has caused or will hereafter cause to be incorporated, and its successors and assigns.

Section 1.3 "Architectural Review Committee" means the architectural review committee established pursuant to Section 6.1 of this Declaration.

Section 1.4 "Board of Directors" means the governing body of the Association appointed by the Developer or elected by the Association's members, as further described in the Association's By-Laws.

Section 1.5 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or which are otherwise not located in Lots and are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common Areas may be located within a public right-of-way. Common Areas are for the common use and enjoyment of the Owners. Common Areas are created as conservation easements and shall not be used for residential home construction. (R)

Section 1.6 "Common Expenses" means any and all expenses associated with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities, powers and duties of the Association as set forth in this Declaration, the Articles of Incorporation, By-Laws, the Plat(s), and rules and regulations, all as amended.

Section 1.7 "Developer" means Davis Homes, LLC, an Indiana limited liability company, and any successors or assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

Section 1.8 "Development Period" means the period of time commencing with the date of recording of this Declaration and ending on the date Developer or its affiliates no longer own any Lot within the Real Estate, but in no event shall the Development Period extend beyond the date ten (10) years after the date this Declaration is recorded.

Section 1.9 "Landscape Easements" means those areas of ground (if any) so designated on a Plat of any part of the Real Estate. Such Landscape Easements, if any, are hereby created and reserved for the use of the Developer, during the Development Period, and the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, fencing, lighting, irrigation and other improvements. However, unless otherwise determined by the Board of Directors to be an Association responsibility, the Owner of a Lot upon which a Landscape Easement is designated on the Plat shall be responsible for mowing and maintaining the lawn situated within such Landscape Easement at said Owner's expense. Except as installed by Developer or installed and maintained by the Association, no structures or improvements, including without limitation piers, decks, walkways, patios and fences, shall be erected or maintained upon said Landscape Easements without permission from the Architectural Review Committee.

Section 1.10 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Real Estate.

Section 1.11 "Mortgages" means the holder of a duly recorded first mortgage lien on any Lot or Residence Unit.

Section 1.12 "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding for all purposes those having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot in the Real Estate.

Section 1.13 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the Office of the Recorder of the County in which the Real Estate is located.

Section 1.14 "Residence Unit" means any single family home constructed on any part of the Real Estate.

Section 1.15. "Tree Preservation Easement" means those areas of ground (if any) so designated on the Plat of any part of the Real Estate. Such Tree Preservation Easements are hereby created and reserved for the use of the Developer, during the Development Period, and the Association for access to and the preservation, installation, maintenance and replacement of foliage, trees and other improvements. Subject to the restrictions as set forth in the Plat, except as installed by Developer or installed and maintained by the Association or with the approval of the Architectural Review Committee, no structures or improvements, including without limitation decks, walkways, patios and fences, shall be erected or maintained upon said Tree Preservation Easements and no living trees or vegetation shall be removed from this area except those that are causing a safety problem for the surrounding residents pursuant to the approval of the Board of Directors.

Section 1.16 "Utility, Drainage or Sewer Easements" means those areas of ground so designated on a Plat of any part of the Real Estate, either separately or in combination. The Utility Easements are hereby created and reserved, for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage Easements are hereby created and reserved for the use of Developer during the Development Period and the Association for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property. The Sanitary Sewer Easements are hereby created and reserved for the use of the Developer during the Development Period and the Association for access to and installation, repair, removal, replacement or maintenance of an underground storm and sanitary sewer system. The Drainage Easements and the Sanitary Sewer Easements are dedicated to the appropriate local governmental agency or body as per the Plat. The delineation of the Utility Easements, Drainage Easements and Sanitary Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Section 1.16. No structures, planting, improvements or other materials, including without limitation decks, walkways, patios and fences, shall be erected or maintained upon said easements, as set forth in the Plat, which may damage or interfere with the installation and maintenance of utilities or which may obstruct or retard the flow of water through the drainage channels or without prior approval from the Architectural Review Committee, and such easement areas of each Lot shall be continuously maintained as a yard area by the Owner of the Lot, except for those improvements permitted hereby or which are the responsibility of a public authority or utility to maintain. (R)

Section 1.17 "Lift Station Easement" means those areas of ground so designated on a Plat of any part of the Real Estate, to be used for access to and installation, maintenance, repair or removal of any equipment and facilities that are necessary or appropriate for furnishing sanitary lift station services. The Lift Station Easement is reserved for the Developer and Association as per the Plat. The delineation of the Lift Station Easement area on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any portion of any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by Section 1.17. No structures, planting, improvements or other materials, including without limitation decks, walkways, patios and fences, shall be erected or maintained upon said easement, as set forth in the Plat, which may damage or interfere with the installation or maintenance of utilities, and such easement areas of each Lot shall be continuously maintained as a yard area by the Owner of the Lot, except for those improvements permitted hereby or which are the responsibility of the Association, a public authority or utility to maintain. The lift station improvement is owned by the Association, and all expenses associated with the maintenance, repair or replacement of the lift station and the performance of the responsibilities, powers and duties of the Association shall be as set forth in

this Declaration, the Articles of Incorporation, By-Laws, the Plat(s), and rules and regulations, all as amended.

ARTICLE II
APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the applicable covenants, conditions and restrictions set forth in this Declaration, the Plat, and any rules and regulations adopted by the Association's Board of Directors as herein provided, as the same may be amended from time to time.

The Owner of any Lot (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any other builder or any other Owner of the Lot, or (ii) by the act of occupancy of the Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions and restrictions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants, for such Owner, such Owner's heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions and restrictions of this Declaration, the Plat, and any rules and regulations adopted by the Association's Board of Directors.

ARTICLE III
PROPERTY RIGHTS

Section 3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Lot and related Residence Unit, subject to the following provisions:

- (i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas which are in addition to the regular and special assessments described herein;
- (ii) the right of the Association to fine any Owner or make a special assessment against any Lot in the event a person permitted to use the Common Areas by the Owner of such Lot violates any rules or regulations of the Association;
- (iii) the right of the Association to dedicate or transfer all or any part of the Common Areas or grant easements therein to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association's members and as set forth in the instrument of dedication or transfer.

(iv) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate; and

(v) the right of the Association's Board of Directors to adopt, amend and repeal such rules and regulations regarding the Common Area as it deems necessary.

Section 3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas subject to the terms of this Declaration and any rules and regulations promulgated by the Board of Directors.

Section 3.3 Conveyance of Common Areas. Developer shall from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association, and such Common Areas so conveyed shall then be the property of the Association.

Section 3.4 Public Right of Way. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the applicable local governmental agency or body for the public use and maintenance.

ARTICLE IV
USE RESTRICTIONS

Section 4.1 Lakes. There shall be no swimming, skating, boating, fishing in or on or other recreational use of, or any pumping of water by any Owner from, any lake, pond, creek, ditch or stream on the Real Estate, provided that the Developer or the Association may pump water from lakes for purposes of irrigation. The Association's Board of Directors may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate. Neither the Developer nor the Association will be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the lakes or other bodies of water on the Real Estate.

Section 4.2 Use of Common Areas. Subject to section 3.1 above, the Common Areas shall be used only for recreational purposes and other purposes permitted or sanctioned by the Association's Board of Directors.

Section 4.3 Lot Access. All Lots shall be accessed from the interior streets of the Subdivision.

Section 4.4 Residential Unit Use. All Lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on any Lot, and no business may be conducted on any part thereof in violation of any home occupation provisions of the applicable zoning ordinance. No building shall be erected, placed or permitted to remain on any Lot other

than one single-family residence. No mini-barns and other detached accessory structures (including but not limited to garages, tool sheds and storage buildings) shall be erected, placed or permitted on any Lot.

Section 4.5 Accessory and Temporary Buildings. No trailers, shacks, outhouses or other accessory or temporary structure of any kind shall be erected or situated on any Lot in the Subdivision, except that used by the Developer or by a builder during the construction of a residential building on the Real Estate, which temporary construction structures shall be removed within a reasonable time upon completion of construction.

Section 4.6 Animals and Pets. No animals of any kind shall be raised, bred or kept in any part of the Real Estate, except that dogs, cats or customary household pets in reasonable numbers may be kept in a Residence Unit or on a Lot subject to rules and regulations adopted by the Board of Directors; provided that such pet is not kept, bred or, maintained for any commercial purpose, and does not create a nuisance. An Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas, caused by his or her pet. The Owner shall be responsible for the cleaning made necessary by his or her pet's excrement, and shall be fully liable for the expenses of any cleaning not performed by the Owner. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Real Estate upon ten (10) days' written notice from the Board to the respective Owner. The appropriate governmental authorities shall have an easement across the Real Estate to enforce local animal control laws and ordinances.

Section 4.7 Nuisances. No noxious, unlawful or otherwise offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be or may become a serious annoyance or nuisance to the neighborhood, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines, or by loud persons, and objectionable odors.

Section 4.8 Vehicle Parking. Except as used by the Developer or during the Development Period or by a builder during the construction of a residential building on the Real Estate, no camper, motor home, truck (over 3/4 ton load capacity), trailer, bus, boat, personal watercraft, snowmobile or other recreational vehicle of any kind may be stored on any Lot in open public view. However, recreational vehicles and boats may be parked in the Owner's driveway for a period not to exceed seventy-two (72) hours for the purpose of cleaning, loading or unloading. No vehicles of any kind may be put up on blocks or jacks on a Lot to accommodate repair unless such repairs are done in the garage. No disabled, junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be allowed to remain in open public view anywhere within the Real Estate.

CHICAGO TITLE

Section 4.9 Signs. No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time for the purpose of advertising a Residential Unit for sale, and except that Developer and its affiliates and designees may use larger signs during the sale and development of the Subdivision.

Section 4.10 Mailboxes. All mailboxes and replacement mailboxes shall be uniform and shall conform to the standards set forth by the Architectural Review Committee. The cost of replacement mailboxes shall be the expense of the Owner.

Section 4.11 Garbage and Refuse Disposal. Trash and refuse disposal will be on an individual basis, lot by lot. The community shall not contain dumpsters or other forms of general or common trash accumulation except to facilitate development and house construction. Except for builder trash bins and "designated lots" used as dumping areas for construction and development debris, no Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other household waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse. All garbage, trash cans and receptacles and woodpiles shall be screened.

Section 4.12 Storage Tanks. Except for propane tanks associated with gas grills, no gas, oil or other storage tanks shall be installed on any Lot (except by builders).

Section 4.13 Water Supply and Sewage Systems. No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field or similar method of sewage disposal shall be located or constructed on any Lot. All Lots must be hooked up to and serviced by public utilities.

Section 4.14 Ditches and Swales. All Owners, including builders, shall keep unobstructed and in good maintenance and repair all open storm water drainage ditches and swales which may be located by the Developer on their respective Lots. No filling, regrading, piping, rerouting or other alteration of any open ditch or swale may be made without the express written consent of the Architectural Review Committee or other appropriate governmental entity.

Section 4.15 Driveways. Each driveway in the Subdivision shall be of concrete material and wide enough to park two (2) cars.

Section 4.16 Antenna and Satellite Dishes. Subject to any lawful restrictions or conditions imposed by ordinance, no outside antennas shall be permitted in the Subdivision. Outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that the (i) the diameter of the satellite dish shall be no more than thirty-nine inches (39"), (ii) only one (1) satellite dish shall be permitted on each Lot, and (iii) the Architectural Review Committee shall have first determined that the satellite dish is appropriately placed and properly screened in order

to preserve property values and maintain a harmonious and compatible relationship among the houses in the Subdivision.

Section 4.17 Fencing. No fence shall be erected on or along any Lot line, nor on any Lot, the purposes or result of which will be to obstruct reasonable vision, light or air. All fences shall be kept in good repair and erected so as to enclose the property and decorate the same without unreasonable hindrance or obstruction to any other property. Except for fences installed by Developer or the Association, all fencing style, color, location and height shall be generally consistent within the Subdivision and shall be subject to prior written approval of the Architectural Review Committee. The Architectural Review Committee may (but is not required to) approve a fence to be installed within an easement; provided, however, that such a fence would be erected at the Owner's risk as such fence may be partially or completely torn down by beneficiaries of the easement if the fence interferes with the purpose for which the easement has been reserved, with such removal, any related damage, and any necessary reinstatement or repair being at the Owner's sole cost and expense.

Section 4.18 Swimming Pools, Sports Court and Play Equipment. No above-ground swimming pools shall be permitted, except temporary "play" pools having a depth of less than twenty-four (24) inches. No hard surfaced sports courts of any kind shall be permitted on any Lot except as approved by the Architectural Review Committee. Basketball goals may not be mounted onto the home or garage, but may be installed on the side of the Owner's driveway after approval by the Architectural Review Committee. No basketball goal shall be positioned so as to allow or permit playing on the street. Except for play equipment installed in Common Areas by Developer or the Association, no metal outdoor play equipment shall be permitted in the Subdivision. No trampolines shall be permitted unless approved by the Architectural Review Committee as to size, height and location.

Section 4.19 Solar Panels. No solar heat panels shall be permitted on roofs of any structures in the Subdivision. All such panels shall be enclosed within fenced areas and shall be concealed from the view of neighboring Lots, Common Areas and the streets.

Section 4.20 Outside Lighting. All Lots shall have dusk to dawn cowlage lights or yard lights, in which shall be installed and maintained light bulbs in operable condition to insure uniform illumination on each Lot. Except as otherwise approved by the Developer or Architectural Review Committee, all other outside lighting contained in or with respect to the Subdivision shall be of an ornamental nature compatible with the architecture within the Subdivision and shall provide for projection of light so as not to create a glare, distraction or nuisance to any Owner or other property owners in the vicinity of or adjacent to the Subdivision.

Section 4.21 Site Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and five (5) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property

lines and a line connecting points twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight-line limitations shall apply to any Lot within twenty-five (25) feet from the intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

ARTICLE V
ASSOCIATION

Section 5.1 Membership. Each Owner of a Lot shall automatically become a member of the Association and shall remain a member of the Association so long as he or she owns a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership as follows:

- (i) Class A Member. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the immediately following subparagraph). Each Class A member shall be entitled to one (1) vote per Lot owned.
- (ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and be converted to Class A membership upon the Applicable Date (as defined in Section 5.3 below). ^(R)

Section 5.3 Applicable Date. The term "Applicable Date" shall mean when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or the expiration of the Development Period, whichever shall first occur.

Section 5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote and no Lot's vote shall be split.

Section 5.5 Board of Directors. The Association's members shall elect a Board of Directors as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 5.6 Professional Management. The Developer or the Association shall have the right to employ a professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent"), which may include an affiliate of the Developer, to assist the Board of Directors in performing its duties. No contract or agreement for professional management of the Association, nor any contract between Developer and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination fee or penalty, on written notice as provided therein, but in any event, with at least sixty (60) days prior written notice.

Section 5.7 Responsibilities of the Association. The responsibilities of the Association shall include, but shall not be limited to:

- (i) Maintenance, repair and replacement of the Common Areas, and such other portions of the Subdivision for which the Association is responsible as described in this Declaration, all as the Board of Directors deems necessary or appropriate.
- (ii) Maintenance, repair and replacement of any entrance street light, any private street signs and any private streets, or any other improvements which may be Common Area on any Plat of a part of the Real Estate.
- (iii) Except as required to be maintained, repaired and replaced by the public authority, maintenance, repair and replacement of the drainage system and sewer system in and upon the Common Areas and/or Drainage Easements or Sewer Basements as the Board of Directors deems necessary or appropriate. Nothing herein shall relieve or replace the obligation of each Owner of a Lot to keep the portion of the drainage system and/or Drainage Easement on such Lot free from obstructions so that the storm water drainage will be unimpeded.
- (iv) Maintenance of lake water to the extent determined by the Board of Directors.
- (v) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration.
- (vi) Assessment and collection from the Owners and payment of all Common Expenses.
- (vii) Performing or contracting for property or Association management, snow removal, Common Area maintenance, trash removal or other services as the Board of Directors deems necessary or advisable.
- (viii) Enforcing the rules and regulations of the Association and the requirements of this Declaration as the Board of Directors deems necessary or advisable.

Section 5.8 Powers of the Association. The Association's Board of Directors may adopt, amend or rescind reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the Lots and the management and administration of the Association, in each case as the Board of Directors deems necessary or advisable. Such rules and regulations may provide for reasonable interest and late charges on past due installments of any regular or special assessments or other charges or fines against any Owner or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective. The Board of Directors shall have such other powers as are set forth in the Association's By-Laws. The Board of Directors shall also have the power to enter into long-term leases for Subdivision improvements, including, but not limited to, street lights and fountains.

Section 5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer, except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

Section 5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or bad faith. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

Section 5.11 Indemnity of Directors and Officers. To the extent not inconsistent with the laws of the State of Indiana, every person (and the heirs and personal representatives of such person) who is or was a director or officer of the Corporation shall be indemnified by the Association to the same and fullest extent that directors of nonprofit corporations are indemnified under the Act.

ARTICLE VI
ARCHITECTURAL REVIEW COMMITTEE
CHICAGO TITLE

Section 6.1 Creation: Developer-Appointed Architectural Review Committee. There shall be, and hereby is, created and established an Architectural Review Committee to perform the functions provided for herein. The Architectural Review Committee shall consist of three (3) members appointed, from time to time, by Developer until the earlier of the following:

- (a) the expiration of thirty (30) days after the end of the Development Period, or
- (b) upon the written relinquishment of the Developer of its power to appoint the Architectural Review Committee members, mailed or delivered to the President of the Association.

The Developer-appointed members of the Architectural Review Committee shall be subject to removal by Developer at any time with or without cause.

Section 6.2 Board-Appointed Architectural Review Committee. After the time set forth in Section 6.1 above, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) or more persons appointed, from time to time, by the Association's Board of Directors. Such members of the Architectural Review Committee shall consist of Owners of Lots. The chair of the Architectural Review Committee shall also be a member of the Board of Directors. The Board of Directors may at any time remove any member of the Architectural Review Committee upon a majority vote of the members of the Board of Directors.

Section 6.3 Purposes and Powers of Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, structures or any other improvements placed or modified by any person on any Lot in such a manner as to preserve the value and desirability of the Real Estate and the harmonious relationship among Residence Units and the natural vegetation and topography.

(1) In General. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon shall be made or done without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each property and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise permitted by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. In its sole discretion, the Architectural Review Committee may refuse to approve any application (a "Requested Change") made to it when:

(a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration or the Plat applicable to any part of the Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with the adjacent Residence Units or related improvements; or

(c) The Requested Change, in the opinion of the Architectural Review Committee, would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

~~(iii) Rules and Regulations.~~ The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations, architectural guidelines, or building policies or procedures as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of Requested Changes.

Section 6.4 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within forty-five (45) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

Section 6.5 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association, the Developer nor any agent or member of any of the foregoing, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.

Section 6.6 Inspection. The Architectural Review Committee or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

Section 6.7 Developer's Control of New Construction. Developer and Developer's affiliates and designees shall have no obligation to submit plans to, or receive approval from, the Architectural Review Committee. The Developer shall have exclusive control of new construction within the Real Estate. No provision of this Declaration, as the same relates to new construction, may be modified without Developer's consent.

ARTICLE VII
ASSESSMENTS

Section 7.1 Purpose of Assessments. Each Owner of a Lot by acceptance for itself and related parties of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for his or her obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any capital improvements which the Association is required to maintain or replace on a periodic basis. The Regular and Special Assessments levied by the Association shall be uniform for all Lots within the Subdivision.

Section 7.2 Regular Assessments. The Board of Directors shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the "Maximum Regular Assessment" as follows:

- (i) Until December 31 of the year immediately following the year in which the first Lot is conveyed to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Five hundred Dollars (\$500.00).
- (ii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) per year above the Regular Assessment for the previous calendar year without a vote of the members of the Association.
- (iii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Board of Directors may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called and held for such purpose at which a quorum is represented.
- (iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

Section 7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss)

which the Association may from time incur, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called and held for such purpose at which a quorum is represented.

Section 7.4 No Assessment against Developer During the Development Period. Neither the Developer nor any affiliated entity shall be assessed any portion of any Regular or Special Assessment during the Development Period.

Section 7.5 Date of Commencement of Regular or Special Assessments: Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner.

The Board of Directors shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The installment periods and due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

Section 7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself or herself from paying Regular Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. Upon the failure of an Owner to make payments of any Regular or Special Assessments by the due date, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the unpaid assessment;
- (2) accelerate the entire balance of the unpaid assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) suspend such Owner's right to use the recreational facilities within the Subdivision as provided in the Act; and
- (4) suspend such Owner's right to vote as provided in the Act.

In addition, if any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment (as described in section 7.7 below) may be foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association on the first day of each month of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits there from for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to collection costs, if any, incurred by the Association to the Managing Agent for processing delinquent Owners' accounts, and attorneys fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this section 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot 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 assessments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter becoming due or from the lien therefor.

Section 7.7 Creation of Lien and Personal Obligation. ^(R) All Regular and Special Assessments, together with interest, late charges, collection costs (if any) incurred by the Association to the Managing Agent for processing delinquent Owners' accounts, other costs of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, late charges, costs of collection and attorneys' fees, shall also be the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them.

The Association, upon request of a current Owner, a proposed Mortgagee or a proposed purchaser having a contractual right to purchase a Lot, shall furnish to such requesting party a statement or certificate setting forth the amount of any unpaid Regular or Special Assessments or

other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement or certificate. The Association shall have the right to impose a reasonable charge, not to exceed Fifty Dollars (\$50), for issuing such statement or certificate.

Section 7.8 Expense Incurred to Clear Drainage, Utility or Sanitary Sewer Easement Deemed a Special Assessment. The Owner of any Lot subject to a Drainage, Utility or Sanitary Sewer Easement shall be required to keep the portion of said Drainage, Utility or Sanitary Sewer Easement on his or her Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Developer and the Association. If, within thirty (30) days after a written request of the Developer or the Association to remove any obstruction of storm water drainage, such Owner shall not have commenced and diligently and continuously effected the removal of any such obstruction, Developer or the Association may enter upon the Lot and cause such obstruction to be removed so that the Drainage, Utility or Sanitary Sewer Easement is returned to its original designed condition. In such event, Developer or the Association shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a Special Assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and the personal obligation of the Owner thereof, and may be collected by the Association pursuant to this Article VII in the same manner as any Regular Assessment or Special Assessment may be collected.

ARTICLE VIII INSURANCE

Section 8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if practicable, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

Section 8.2 Liability Insurance. The Association shall also purchase and maintain a master 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 shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the

Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

Section 8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to directors' and officers' liability insurance.

Section 8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as Common Expenses.

ARTICLE IX MAINTENANCE

Section 9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot to keep the grass on the Lot properly cut and keep the Lot, including any Drainage, Utility or Sewer Easements located on the Lot, free of weeds, and otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner reasonably satisfactory to the Board of Directors, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a Special Assessment against such Lot and the Owner thereof, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the offending Owner for any damage which may result from any maintenance work performed hereunder.

Section 9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association owns or is required to maintain hereunder, the Association shall repair or replace the same from the insurance proceeds received. If such insurance proceeds are insufficient to cover the costs, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to repair or maintain the Common Areas and other improvements if, due to the willful, intentional or negligent acts or omissions of any Owner or of a member of his family or of a guest, subcontractor, employee, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any other improvements maintained by the Association, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and

replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall constitute a Special Assessment against such Owner and his or her Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

ARTICLE X MORTGAGES

Section 10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of any Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

Section 10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot may notify the Secretary of the Association by certified mail (return receipt requested) of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgagee and the name and address of the Mortgagee are furnished to the Secretary as herein provided, no notice to any Mortgagee 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 of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

Section 10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become liens against any Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee with respect to any Lot may make the payment on behalf of the Association.

ARTICLE XI AMENDMENTS

Section 11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

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

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

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of all votes entitled to be cast by all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit within the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the foregoing Section 10.2. As long as there is a Class B membership, amendments to effect the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties (unless done through Supplemental Declarations in the manner described in this Declaration) and dedication or mortgaging of Common Area.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mae Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors in accordance with the provisions of the foregoing Section 10.2.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such meeting. If a proposed amendment is deemed by the Board of Directors to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days

after the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

Section 11.2 By the Developer. So long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Real Estate, Developer hereby reserves the right to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation:

- (i) to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof;
- (ii) to conform with zoning covenants and conditions;
- (iii) to comply with the 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 to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages;
- (iv) to clarify the Developer's original intent;
- (v) to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; or
- (vi) for any other purpose deemed necessary or advisable by the Developer, provided, however, that in no event shall Developer be entitled to make any amendment pursuant to this Section 11.2 which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to vote in favor of, make, or consent to any amendments described in this Section 11.2 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Residence Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Developer to vote in favor of, make, execute and record any such amendments.

Section 11.3 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Section 11.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Section

11.1 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of the County in which the Real Estate is located, and no amendment shall become effective until so recorded.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration, a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of the County in which the Real Estate is located, or the rules and regulations adopted by the Board of Directors, shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions, restrictions or rules. Available relief in any such action shall include recovery of damages or other sums due for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

Section 12.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Association and the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration, in a Plat of any part of the Real Estate, or of any rules and regulations promulgated by the Board of Directors, shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

Section 12.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land comprising the Real Estate and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31st of the twentieth (20th) year after the recording of this Declaration, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless terminated or modified by a vote of the then Owners of no less than seventy-five percent (75%) of all Lots which are now or hereafter made subject to and annexed to the Declaration; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

Section 12.4 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

Section 12.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

Section 12.6 Annexation. Additional land adjacent to or in the immediate vicinity of the Real Estate may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recording by Developer in the Office of the Recorder of the County in which the Real Estate is located, of a Supplement to this Declaration, and such action shall require no approvals or other action of the Owners.

Section 12.7 Controlling Document. If there is any conflict between the provisions of this Declaration and any Plat of a part of the Real Estate, the terms and provisions of this Declaration shall be controlling. If there is any conflict between the provisions of this Declaration and Articles of Incorporation or By-Laws of the Association, the terms and provisions of this Declaration shall be controlling. Conflict, as used herein, shall mean a situation where the application of the language in one document contradicts the language in another document. Conflict does not occur where language in one document is simply more restrictive than language in another document.

ARTICLE XIII
DEVELOPER'S RIGHTS

Section 13.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all of the Real Estate for the use of Developer and its representatives, agents, designees, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this Section 13.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or the foundation of a building property located on the Real Estate. However, if a Residence Unit has been commenced or completed on a Lot, said access license shall also apply to the exterior surfaces of said Residence Unit for the purpose of alterations, adjustments, or additions made to correct any violation or deviation from any architectural covenants or guidelines or zoning requirements. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate and such parties shall, to the extent reasonably practicable, repair any damage or destruction caused by reason of such parties' exercise of this access license.

Section 13.2 Signs; Exemption from Architectural Review Committee Approval Requirement. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to this Declaration with respect to signs during the

Development Period. Developer and its designees shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

Section 13.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate, Developer, any entity related to Developer and any other person or entity with the written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer, the Association or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas, tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

ARTICLE XIV ADDITIONAL RESTRICTIONS

Section 14.1 Zoning Restrictions, Commitments and Standards. For purposes of notice to all Owners, the Real Estate may be further subject to the zoning restrictions, commitments or standards including but not limited to development standards, architectural commitments and development commitments, which from time to time may be changed or with respect to which variances or exceptions may be obtained generally or on a Lot by Lot basis.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

Davis Homes, LLC, an Indiana Limited Liability
Company, by its managing member,
Davis Holding Corporation, an Indiana corporation

By Richard Davis, Vice President
CHICAGO TITLE

STATE OF INDIANA)
)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for the State of Indiana, personally appeared C. Richard Davis, Vice President of Davis Holding Corporation, an Indiana corporation, as managing member of Davis Homes, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions.

WITNESS my hand and Notarial Seal this 21st day of May 2003.

Jane A. Hendricks
Notary Public, Signature

JANE A. HENDRICKSON
Printed Name

My Commission Expires: 6/09/07 County of Residence: HENDRICKS

This instrument was prepared by and return recorded instrument to: P. Thomas Murray, Jr., Eads
Murray & Pugh, P.C., Attorneys at Law, 7321 Shadeland Station, Suite 250, Indianapolis, IN
46256. (317) 842-8550.



CHICAGO TITLE

200400021695
Filed for Record in
HENDRICKS COUNTY IN
THERESA D LYNCH
07-09-2004 At 10:40 AM
SUPP COVENA 14.00
DR Book 524 Page 1663 - 1665

FIRST SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF LEXINGTON WOODS

This First Supplement is made this 8th day of May, 2004, by Davis Homes, LLC,
an Indiana limited liability company (the "Developer").

Instrument
200400021695

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").
Parcel 170P178E
2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Lexington Woods, dated May 21, 2003 and recorded the same on May 28, 2003 as Instrument No. 200300022186 in Book 427 Page 522 in the Office of the Recorder of Hendricks County, Indiana (the "Declaration").
3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Hendricks County of a supplemental declaration so annexing all or any part of such real estate.
4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this First Supplement as follows:

1. Definitions. All terms used in this First Supplement not otherwise defined in this First Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. First Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and made subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this First Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this First Supplement has been executed by Developer as of the date first above written.

By: Davis Homes, LLC,
an Indiana limited liability company

By: Davis Holding Corporation,
manager member

BY 
C. Richard Davis
Vice President

CHICAGO TITLE

SECOND SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF LEXINGTON WOODS

This Second Supplement is made this 21st day of October 2004, by Davis Homes, LLC, an Indiana limited liability company (the "Developer").

PL 1 24/2AB

1. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").
2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Lexington Woods, dated May 21, 2003 and recorded the same on May 28, 2003 as Instrument No. 200300022186 in Book 427 Page 522 in the Office of the Recorder of Hendricks County, Indiana (the "Declaration").
3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Hendricks County of a supplemental declaration so annexing all or any part of such real estate.
4. The **CHICAGO TITLE** Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this Second Supplement as follows:

1. Definitions. All terms used in this Second Supplement not otherwise defined in this Second Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. Second Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and made subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this Second Supplement, the Declaration shall continue unchanged and in full force and effect.

IN WITNESS WHEREOF, this Second Supplement has been executed by Developer as of the date first above written.

By: Davis Homes, LLC,
an Indiana limited liability company

By: Davis Holding Corporation,
manager member

By: 
Richard Davis
Vice-President
CHICAGO TITLE

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, Vice President of Davis Holding Corporation, who acknowledged the execution of the foregoing Second Supplement to Declaration of Covenants, Conditions and Restrictions of Lexington Woods.

WITNESS my hand and Notarial Seal this 20TH day of October, 2004.

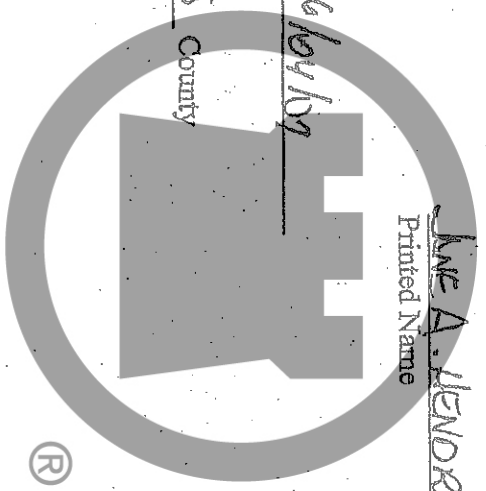
Jan A. Henderson
Notary Public



Jan A. Henderson
Printed Name

My Commission Expires: 6/30/07

Residing in Hendricks County



CHICAGO TITLE

This instrument was prepared by Trent Sokol, of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317)595-2900

STATE OF INDIANA)
)
COUNTY OF MARION) SS:

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, Vice President of Davis Holding Corporation, who acknowledged the execution of the foregoing First Supplement to Declaration of Covenants, Conditions and Restrictions of Lexington Woods.

WITNESS my hand and Notarial Seal this 8TH day of May, 2004.

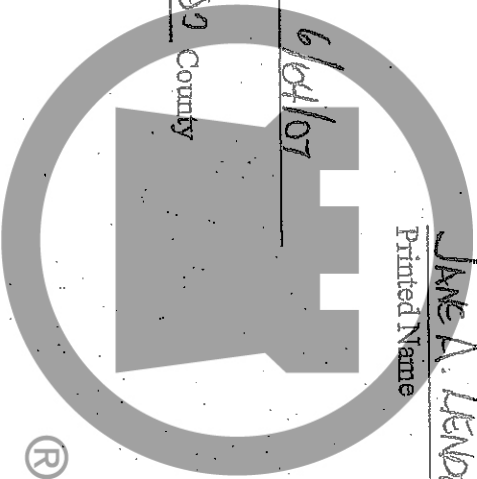
Jane A. Hendrickson
Notary Public



JANE A. HENDRICKSON
Printed Name

My Commission Expires: 6/6/07

Residing in Hendricks County



CHICAGO TITLE

This instrument was prepared by Trent Sokol, of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240 (317)595-2900