

9347501

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

WILLOW CREEK

THIS DECLARATION is made this 22<sup>nd</sup> day of September, 1993, by Thomas D. Wilson, Inc., an Indiana corporation (the "Developer").

Recitals

This Instrument Recorded 10-1-1993  
Sharon K. Cherry, Recorder, Hamilton County, IN

1. Developer is the owner of certain real estate more particularly 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 as generally shown on the Plat for Willow Creek - Section I," as hereafter recorded in the office of the Recorder of Hamilton County, Indiana.

3. Before so subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain rights, privileges, covenants, conditions, restrictions, easements and liens for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of all or any part thereof.

4. Developer further desires to create an organization to which shall be delegated and assigned, among other things, the powers of administering and enforcing the covenants, conditions and restrictions contained in this Declaration and the Plat of the Initial Real Estate as hereafter recorded in the office of the Recorder of Hamilton County, Indiana.

5. Developer may from time to time subject additional real estate located within the tract adjacent to the Initial Real Estate, as more particularly described in Exhibit B attached hereto and made a part hereof, 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").

NOW, THEREFORE, Developer 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 following provisions, agreements, covenants, conditions, restrictions, easements, and liens, which shall run with the land and shall be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in the Real Estate, or any part thereof.

9347501

RECORDED  
FOR  
10-1-1993

Declaration

ARTICLE I

NAME

The name by which the Real Estate shall be known is "Willow Creek".

ARTICLE XI

DEFINITIONS

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

2.1 "Association" means the Willow Creek Homeowners Association, Inc., an Indiana not-for profit corporation, which Developer has caused or will cause to be incorporated, its successors and assigns.

2.2 "Developer" means Thomas D. Wilson, Inc., an Indiana corporation, and any successors or assigns of it whom it designates in one or more written recorded instruments to have the rights of Developer hereunder, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Developer.

2.3 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the later of the following: (i) the date Developer no longer owns any Lot within or upon the Real Estate or (ii) the date which is three (3) years after the date on which all improvements and installations required by the Town of Westfield and Hamilton County have been completed and, if applicable, accepted for public maintenance by all appropriate governmental units or agencies thereof.

2.4 "Drainage Easements" means those areas designated on any Plat of all or any part of the Real Estate as Drainage Easements, either separately or in combination with any other easement designated on such Plat.

2.5 "Landscape Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Landscape Easements, either separately or in combination with any other easement designated on such Plat.

2.6 "Lot" means any numbered parcel of land shown and identified as a Lot on any Plat of all or any part of the Real Estate.

2.7 "Maintenance Areas" mean those areas designated on any Plat of all or any part of the Real Estate as Maintenance Areas.

2.8 "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

2.9 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding those having such 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.

2.10 "Plat" means the subdivision plat of the Initial Real Estate identified as the Final Plat for Willow Creek - Section I, Hamilton County, Indiana (as the same may be amended or supplemented from time to time), and any subdivision plat(s) for additional section(s) of Willow Creek which are hereafter recorded in the office of the recorder of Hamilton County, Indiana (as the same may be amended or supplemented from time to time).

2.11 "Utility Easements" mean those areas designated on any Plat of all or any part of the Real Estate as Utility Easements, either separately or in combination with any other easement designated on such Plat.

### ARTICLE III

#### APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate shall be subject to and shall observe and comply with the covenants, conditions, restrictions, terms and provisions set forth in this Declaration.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Developer and the Association provided for by this Declaration, and also for himself,

his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Developer and the Owners from time to time of the Lots, to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

#### ARTICLE IV

##### PROPERTY RIGHTS

4.1 Utility Easements. Developer hereby declares, creates and reserves the Utility Easements 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. No permanent structures, except walks or driveways, shall be erected or maintained upon said Utility Easements except as set forth herein.

4.2 Drainage Easements. Developer hereby declares, creates and reserves the Drainage Easements (i) for the use of Developer during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage (including retention and detention basins) or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association of the Town of Westfield and Hamilton County for access to and maintenance, repair or replacement of such drainage system; provided, however, that each Owner of a Lot subject to the Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the surface water drainage will be unimpeded. Subject to the provisions of paragraph 4.4, no permanent structures, except walks or driveways, shall be erected or maintained upon said Drainage Easements except as set forth herein.

4.3 Access Rights. Developer hereby declares, creates and reserves an access easement over and across the entirety of the Real Estate (subject to the limitations hereinafter provided in this paragraph 4.3): (i) for the use of all public utility companies (not including transportation companies) and governmental agencies for access to the Utility Easements created and reserved herein, and (ii) for the use of Developer, or its designees, during the Development Period and for the use of the Association, the Town of Westfield and Hamilton County for access to the Drainage Easements created and reserved herein. Notwithstanding the foregoing, the area of the access easement created by this paragraph 4.3 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of the building or other

improvement located on the Real Estate. The parties for whose benefit this access easement is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

**4.4 Lake Area Maintenance.** Several Lots include as a part of the Lots all or a portion of one (1) or more retention basins (designated on the Plats as and hereinafter called "Lake Areas") which serve as drainage outlets and facilities. The Lake Areas are part of and located within Drainage and Utility Easements. The Association shall be responsible for the maintenance and upkeep of the Lake Areas (including, but not limited to, repairs to and replacement of equipment and improvements located on or in the Lake Areas). The Association shall maintain a policy of general public liability insurance naming the Association and each Owner of a Lot upon which a Lake Area is located as insureds and covering claims against the insureds for injuries to or death of persons and damage to property occurring in or upon the Lake Areas, in an amount not less than One Million Dollars (\$1,000,000) for injury to or death of any one person; One Million Dollars (\$1,000,000) for injury to or death of more than one person in the same accident or occurrence; and One Million Dollars (\$1,000,000) for damaged property arising out of any one accident or occurrence.

**4.5 Landscape Easements.** Developer hereby declares, creates and reserves the Landscape Easements for the use of the Developer and the Association for access to and installation, repair and removal of signs advertising and referencing the name of the subdivision and landscaping incidental to such signs. No permanent structures shall be erected or maintained upon said Landscape Easements that obscures or blocks the view of any signs located upon said Landscape Easements from any adjoining right-of-way. The Association shall be responsible for the maintenance and upkeep of the Landscape Easements (including, but not limited to, repairs to and replacement of equipment and improvements located on or in the Landscape Easements). The Association shall maintain a policy of general public liability naming the Association and each Owner of a Lot upon which a Landscape Easement is located as insureds and covering claims against the insureds for injuries to or death of persons and damage to property occurring in or upon the Landscape Easements, in an amount not less than One Million Dollars (\$1,000,000) for injury to or death of any one person; One Million Dollars (\$1,000,000) for injury to or death of more than one person in the same accident or occurrence; and One Million Dollars (\$1,000,000) for damaged property arising out of any one accident or occurrence.

**4.6 Maintenance Areas.** Portions of the dedicated rights-of-way for the streets serving the Real Estate are designated as maintenance Areas on the Plat(s). The Association shall be responsible for the maintenance and upkeep of the Maintenance Areas (including, but not limited to, repairs to and replacement of

equipment and improvements located on or in the Maintenance Areas). The Association shall maintain a policy of general public liability insurance naming the Association as the insured and covering claims against the insured for injuries to or death of persons and damage to property occurring in or upon the Maintenance Areas, in an amount not less than One Million Dollars (\$1,000,000) for injury to or death of any one person; One Million Dollars (\$1,000,000) for injury to or death of more than one person in the same accident or occurrence; and One Million Dollars (\$1,000,000) for damaged property arising out of any one accident or occurrence.

#### ARTICLE V

##### USE RESTRICTIONS

5.1 Residential Use Only. Every lot is a residential lot and shall be used exclusively for single-family residential purposes.

5.2 Building and Setback Lines. Building lines are established on the Plat(s) of the real Estate. No structure or part thereof, other than walks and drives, shall be erected or maintained between such building lines and the Lot lines of said Lot. Side Lot lines are established in accordance with the zoning ordinances of the Town of Westfield and Hamilton County, Indiana, applicable to the respective Lots or any variance granted therefrom, unless a greater setback line is established on any Plat. In the event a building is erected on more than one Lot, this restriction shall apply to the side lines of the extreme boundary of the multiple Lots.

5.3 Subdivision of Lots. No Lot shall hereafter be subdivided into parcels for additional residential purposes.

5.4 Accessory and Temporary Buildings. No trailers, shacks, outhouses, detached storage sheds, tool sheds or other out building of any kind shall be erected or situated on any Lot, nor shall any building of a temporary character be erected, except that for use by the Developer or builder(s) during the construction of a residential building on any Lot.

5.5 Motor Vehicle Repair. The repair or storage of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot, unless entirely within a garage permitted to be constructed by these covenants, conditions and restrictions.

5.6 Vehicle Parking and Swimming Pools. No camper, motor home, truck, trailer, recreational vehicle or boat of any kind may be stored on any Lot in open public view. Nor shall any above-ground pools be permitted or erected on any Lot.

5.7 Antenna. All television or other antennas shall be affixed to improvements located on the respective Lot involved. No freestanding antennas, for any purpose, shall be permitted. NO outside television antennas will be permitted if a master antenna is available for a Lot.

5.8 Noxious or Offensive Trade. No noxious, unlawful or otherwise offensive trade or activity shall be carried on upon any Lot; nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

5.9 Garbage and Refuse Disposal. Owners shall not dump any trash, waste, refuse or other objectionable matter upon any Lot, easement or street within the Real Estate. All trash, garbage and refuse stored on any lot shall at all times be stored in covered sanitary receptacles. There shall be no burning of trash and no open fires, except fires in a grill or fire ring.

5.10 Weeds and Vegetation. Lot owners shall not permit the growth of weeds and shall keep their Lots reasonably clear from unsightly weeds and growth at all times.

5.11 Business Activity. No business buildings shall be erected on any Lot, and no business may be conducted on any part thereof, other than the home occupations permitted in the applicable zoning ordinances of the Town of Westfield and Hamilton County. Notwithstanding the above, no school, preschool, day-care facility, church or similar institution of any kind shall be maintained, conducted or operated upon any Lot.

5.12 Exterior Lighting. No exterior lighting shall be directed outside the boundaries of any Lot, nor shall any lighting be used which constitutes more than normal convenience lighting.

5.13 Laundry. All laundry shall be dried on a special drying apparatus in the form of a folding rack or umbrella which, if used, shall be placed at the rear of each Lot. Clotheslines shall not be strung or hung between trees and shrubbery on any Lot.

5.14 Building Number. No more than one building shall be erected or used for residential purposes on any Lot.

5.15 Fences and Site Obstructions. No fence, wall, hedge or shrub planting which obstructs site lines at elevations between two (2) feet and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street and 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 site line limitation shall apply to any Lot within ten (10) feet from the intersection of the street line with the edge of a driveway. No

trees shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of site lines.

5.16 Animals. No animals, livestock or poultry shall be raised, bred or kept on any Lot except that dogs, cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

5.17 Size of Structures. No structure shall be erected, altered, placed, or permitted to remain on any Lot, other than one detached single-family dwelling. No residence shall be erected on any Lot having main floor area of less than 1000 square feet in the case of a one-story structure and 660 square feet in the case of a multi-story structure exclusive of open porches, carports and garages in all cases. However, no structure of more than one-story shall have less than an aggregate of 1,000 square feet.

5.18 Completion of Dwellings. Unless a delay is caused by strikes, war, court injunction or acts of God, the exterior of any dwelling or structure built on any Lot shall be completed within one (1) year after the date of commencement of the building process.

5.19 Driveways and Garages. All driveways on any Lot shall be paved with either asphalt or concrete simultaneously with construction of the residence. All residences constructed on any Lot shall have at least a two-car garage.

5.20 Compliance with Drainage Requirements. Each Owner of a Lot shall comply at all times with the provisions of any drainage plan as approved for the Plat(s) of all or any part of the Real Estate by the Town of Westfield and Hamilton County and the requirements of all drainage permits for the Plat(s) of all or any part of the Real Estate issued by the Town of Westfield and Hamilton County. Failure to so comply, including failure to comply with Federal Housing Administration Lot grading regulations and recommendations, or construction of any building area, including basements, below the minimum pad elevation shown on the drainage plan, shall operate as a waiver and release of the Developer and his agents from all liability as to damage caused by storm waters and storm drainage. Notwithstanding anything contained in this Declaration to the contrary:

(i) No permanent or temporary structures or improvements shall be located in the Lake Areas;

(ii) No Owner of any Lot shall do or permit any action or activity in or about the Lake Areas which could result in the pollution thereof, diversion of water, change in elevation of the water level, silting, adverse change in the water



quality, drainage, or otherwise impair the use of the Lake Areas for drainage and related purposes; and

(iii) No swimming, boating or other activity shall be conducted in, on or above the Lake Areas.

## ARTICLE VI

### ASSOCIATION

6.1 Membership. Each Owner shall, automatically upon becoming an Owner, be and become a member of the Association and shall remain a member of the Association until such time as his ownership of a Lot ceases, at which time his membership will terminate and the new Owner of his Lot shall be and become a member of the Association.

6.2 Classes of Membership. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless the Class B membership has been converted to Class A membership as provided in the following subparagraph (ii), in which event Developer shall then be a Class A member). Class A members shall be entitled to one (1) vote for each Lot owned.

(ii) Class B Members. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and terminate and be converted to Class A membership upon the "Applicable Date" (as such term is hereinafter defined in paragraph 6.3).

6.3 Applicable Date. As used herein, the term "Applicable Date" shall mean the date which is the earlier of (a) the date on which the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or (b) June 30, 1998.

6.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a particular Lot, all such persons or entities shall be members of the Association, but the vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves, but in no event shall more than one (1) vote (in the case of Class A membership) be cast with respect to such Lot.

6.5 Board of Directors. The Board of Directors of the Association shall manage the affairs of the Association.

6.6 Responsibilities of the Association. The responsibilities of the Association include, but shall not be limited to, (a) the administration and enforcement of the covenants, conditions and restrictions contained in this Declaration, (b) the maintenance and upkeep of the Maintenance Areas, Landscape Easements and Lake Areas, and (c) maintaining the policies of general public liability insurance required to be maintained by the Association by this Declaration.

6.7 Compensation. No director of the Association shall receive compensation for his services as such director.

6.8 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, bad faith or gross negligence.

6.9 Covenant for Assessments. The Declarant, for each Lot owned within the Real Estate, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, and (2) special assessments for capital improvement, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with costs of collection and reasonable attorneys' fees and interest from the date such assessments are due at the rate of twelve percent (12%) per annum, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with costs of collection and reasonable attorneys' fees and interest from the date such assessments are due at the rate of twelve percent (12%) per annum, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.10 Purpose of Assessments. The assessments levied by the Association shall be used exclusively (a) for the maintenance and upkeep of the Maintenance Areas, Landscape Easements and Lake Areas (including, but not limited to, repairs to and replacement of equipment and improvements located on or in the Maintenance Areas, Landscape Easements or Lake Areas), (b) to pay the premiums for the policies of general public liability insurance required to be maintained by the Association by this Declaration, (c) to promote the health, safety and welfare of the residents occupying the Real Estate, and (d) for the performance of the responsibilities and

duties of the Association. A portion of the annual assessments may be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of any equipment or improvements located on or in the Maintenance Areas, Landscape Easements or Lake Areas.

6.11 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Developer), the maximum annual assessment shall be One Hundred Dollars (\$100) per Lot.

(i) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Developer), the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership of the Association.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner (other than Developer), the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(iii) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum annual assessment.

6.12 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of collecting or reimbursing in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Maintenance Areas, Landscape Easements and Lake Areas, provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes of each class of members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

6.13 Notice and Quorum for Any Action Authorized Under Paragraphs 6.11 and 6.12. Written notice of any meeting of the members of the Association called for the purpose of taking any action requiring a vote of the members of the Association under paragraphs 6.11(ii) or 6.12 shall be sent to all members of the Association not less than 30 days, and not more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all

the votes of each class of membership of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

6.14 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

6.15 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner (other than Developer). The first Annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date(s) shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments of a lot is binding upon the Association as of the date of its issuance.

6.16 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, together with costs of collection and reasonable attorneys' fees, to recover a money judgment and such amounts may be further enforced by imposition of a lien and foreclosure of such lien against such Owner's Lot in the manner that mechanics liens are imposed and foreclosed in Indiana. Any lien sought to be imposed pursuant to this paragraph 6.16 shall be perfected upon the filing in the office of the Recorder of Hamilton County, Indiana, at any time within sixty (60) days after the date payment is due, a notice of the intention to hold a lien in the same manner that a notice of intention to hold a mechanic's lien is filed in Indiana.

6.17 Subordination of the Lien to Mortgages. The lien of the assessments provided for in paragraph 6.16 shall be subordinate to the lien of any mortgage on the Lot. Sale or transfer of any Lot shall not affect the lien of the assessments provided for in paragraph 6.16. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall

extinguish the lien of the assessments provided for in paragraph 6.15 as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

6.18 Architectural Control. No residential building or other structure shall be commenced or erected upon any Lot until the plans and specifications showing the nature, shape, dimensions and foot print of the same shall have been submitted to and approved in writing as to compliance with this Declaration by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors of the Association. In the event said Board, or its designated committee, fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this paragraph 6.18 will be deemed to have been fully complied with.

## ARTICLE VII

### MORTGAGES

7.1 Notice to Association - Any Mortgagee who places a first mortgage lien upon a Lot may notify the Secretary of the Association of the existence of such mortgage and provide the name and address of such Mortgagee. A record of such 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 such Mortgagee at the address shown in such record in the time provided. Unless notification of any such Mortgage and the name and address of Mortgagee are furnished to the Secretary, as herein provided, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws of the Association 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 of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

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

ARTICLE VIII

AMENDMENT

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

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

(ii) 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 the votes of all Owners.

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

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than two-thirds (2/3) in the aggregate of the votes of all Owners; provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer owns any Lots within and upon the Real Estate. In the event any Lot 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 of the Association in accordance with the provisions of the foregoing paragraph 7.1.

(v) Special Amendments. No amendment 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 402.02 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, without the approval of all Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing paragraph 7.1.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said 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). In the event that a proposed amendment is deemed by the Board of Directors of the Association 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 of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

8.2 By Developer. Developer hereby reserves the right so long as Developer, or any entity related to Developer, owns any Lot within and upon the Real Estate to make such amendments to this Declaration as may be deemed necessary or appropriate by Developer, without the approval of any other person or entity, in order to bring Developer into compliance with the requirements of any Statute, Ordinance, Regulation or Order of any public agency having jurisdiction thereof, or 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 Federal Housing Administration, the Veterans Administration or any other governmental agency to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages, or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided that Developer shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

8.3 Recording. Each amendment to the Declaration shall be executed by Developer only in any case where Developer has the right to amend this Declaration without any further consent or approval, and otherwise by the President or Vice President and Secretary of the Association; provided, that any amendment requiring the consent of Developer shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and no amendment shall become effective until so recorded.

#### ARTICLE IX

##### GENERAL PROVISIONS

9.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in any Plat of all or any part of the Real Estate 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 or restrictions. 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 reasonable attorneys' fees incurred by any party successfully enforcing such covenants and restrictions; provided, however, that neither Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce or carry out any such covenants, conditions or restrictions.

9.2 Government Enforcement. The Town of Westfield and Hamilton County, their successors and assigns, shall have no right, power or authority, to enforce any covenants, conditions, restrictions or other limitations contained in any Plat of all or any part of the Real Estate or in this Declaration other than those covenants, conditions, restrictions or limitations that expressly run in favor of the Town of Westfield and Hamilton County.

9.3 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in any Plat of all or any part of the Real Estate shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuance of such violation or violations of such covenants, conditions or restrictions.

9.4 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all parties, entities and persons 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 January 1, 2010, and thereafter shall automatically be extended for successive periods of ten (10) years each, unless prior to the commencement of any such extension period, by vote of the majority of the then Owners of the Lots within and upon the Real Estate, it is agreed that this Declaration shall be terminated in its entirety; provided, however, that no termination of the Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

9.5 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

9.6 Titles. The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be sued as an aid to the construction of any provisions 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.

9.7 Applicable Law. This Declaration shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

9.8 Annexation. Additional land within the tract described in the attached Exhibit B may be annexed by Developer to the Real Estate (and form and after such annexation shall be deemed a part thereof for all purposes of this Declaration) by execution and recordation in the office of the Recorder of Hamilton County, Indiana, of a supplemental declaration by Developer; and such action shall require no approvals or action of the Owners.

9.9 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or any Plat of all or any part of the Real Estate now or hereafter recorded in the office of the Recorder of Hamilton County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer shall, during the Development Period, be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer 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 and the sale of Lots and the construction of residences thereon. Such facilities may include, without limitation, storage areas, parking areas, signs, model residences, construction offices and sales offices; provided, that such facilities shall comply with applicable law and ordinances.

9.10 Dedication of Rights-Of-Way. All Rights-Of-Way not heretofore dedicated to the public are hereby dedicated to the public.

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

THOMAS D. WILSON, INC.

By: *Steven Wilson*

Printed: Steven Wilson

Title: President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Steven Wilson, president of Thomas D. Wilson, Inc., who acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Willow Creek, for and behalf of said corporation.

Witness my hand and Notarial Seal this 27<sup>th</sup> day of September, 1993.

My Commission Expires:

October 1, 1996

MICHELE K SPURGEON  
NOTARY PUBLIC STATE OF INDIANA  
MARION COUNTY  
MY COMMISSION EXP OCT 1, 1996

Michele Spurgeon  
Notary Public  
MICHELE SPURGEON  
Printed  
Residing in Marion County,  
Indiana



This instrument was prepared by Stephen A. Harlow, Attorney At Law, 9000 Keystone Crossing, Suite 730, Indianapolis, IN 46240

This Instrument Recorded 10-1-1993  
Sharon K. Cherry, Recorder, Hamilton County, IN

94293269

9448186

**RATIFICATION OF PLAT**

This Ratification of Plat, executed by Thomas D. Wilson, Inc., an Indiana Corporation with its principal place of business located in Hamilton County, Indiana, provides as follows:

WHEREAS, Thomas D. Wilson, Inc. is and was at all times relevant herein the true and correct owner and developer of Section 1 of Willow Creek Subdivision located in Hamilton County, Indiana, recorded as Instrument Number 9347502, in Plat Cabinet 1, Slide 355, in the office of the Recorder of Hamilton County, Indiana;

WHEREAS, Thomas D. Wilson, Inc., is and was at all times relevant herein the true and correct owner and developer of Section 2 of Willow Creek Subdivision located in Hamilton County, Indiana, recorded as Instrument Number 9437673 in Plat Cabinet 1, Slide 460, in the office of the Recorder of Hamilton County, Indiana;

WHEREAS, when the plat was prepared and recorded, the name of the Owner and Developer, Thomas D. Wilson, Inc., was inadvertently omitted from the plat as owner and developer thereof;

WHEREAS, Thomas D. Wilson desires to correct this omission by ratifying the plat;

NOW THEREFORE, in consideration of the premises and the platting of Section 1 and Section 2 of Willow Creek Subdivision, Thomas D. Wilson, Inc., does hereby ratify and confirm the platting of Section 1 and Section 2 of Willow Creek Subdivision as those plats have previously been platted and recorded in the office of the Recorder of Hamilton County, Indiana.

Dated: November 15, 1994

THOMAS D. WILSON, INC.

By:

Stephen A. Wilson  
Stephen A. Wilson, President

STATE OF INDIANA )

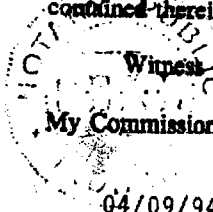
) SS:

COUNTY OF HAMILTON )

This Instrument Recorded 11-22-1994  
Sharon K. Cherry, Recorder, Hamilton County, IN

RECEIVED FOR RECORD  
94 NOV 22 PM 12:39  
SHARON K. CHERRY  
RECORDER  
HAMILTON CO. IN

Before me, a Notary Public in and for said County and State, personally appeared Stephen A. Wilson, President of Thomas D. Wilson, Inc., who acknowledged the execution of the foregoing Ratification of Plat, and who, having been duly sworn, stated that any representations contained therein are true.



Witness my hand and Notarial Seal this 15th day of November 1994.

My Commission Expires:

04/09/94

Melva I. Phelps  
Notary Public

Melva I. Phelps

Printed

Residing in Hamilton County, Indiana

This instrument was prepared by Stephen A. Harlow, Attorney at Law, 9000 Keystone Crossing, Suite 730, Indianapolis, IN 46240

98186

9412402

FIRST AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF WILLOW CREEK

RECEIVED  
FOR RECORD  
94 MAR 16 11 09:02  
SHARON K. CHERRY  
RECORDER  
HAMILTON COUNTY, IN

This amendment is made this 15th day of March, 1994.

D. Wilson, Inc., an Indiana Corporation (the "Developer")

RECITALS

1. Developer has previously caused to be executed on September 27, 1993, and recorded on October 1, 1993, as Instrument No. 9347501 in the office of the Recorder of Hamilton County, Indiana, a Declaration of Covenants, Conditions and Restrictions of Willow Creek (the "Declaration").

2. Paragraph 8.2 of the Declaration reserves to the Developer the right to amend the Declaration to correct clerical or typographical errors and to bring the Declaration in compliance with the requirements the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Department of Housing and Urban Development.

3. Developer desires to amend the Declaration to correct clerical errors and to insert language required by the Department of Housing and Urban Development.

NOW, THEREFORE, Developer hereby amends the Declaration as follows:

1. Paragraph 2.1 of the Declaration is amended to read as follows:

2.1 Association means the Willow Creek Of Westfield Homeowner's Association, Inc., an Indiana not-for profit corporation, which Developer has caused or will cause to be incorporated, its successors and assig.s.

2. Paragraph 4.4 of the Declaration is amended to read as follows:

This instrument Recorded MAR 16 1994  
Sharon K. Cherry, Recorder, Hamilton County, IN

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared Steven Wilson, President, who acknowledged the execution of the foregoing First Amendment To Declaration of Covenants, Conditions and Restrictions of Willow Creek, and who, having been duly sworn, stated that any representations contained therein are true.



Witness my hand and Notarial Seal this 15th day of March, 1994.

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

4/9/94

Melva I. Phelps  
Notary Public  
Melva I. Phelps  
Printed  
Residing in Hamilton County,  
Indiana

This instrument has been prepared by Stephen A. Harlow, Attorney At Law, 9000 Keystone Crossing, Suite 730, Indianapolis, IN 46240.

This Instrument Recorded **MAR 16 1994**  
Sharon K. Cherry, Recorder, Hamilton County, IN

9412402