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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HILLSDALE GROVE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HILLSDALE GROVE (hereafter "Declaration"), is made this 14th day of ~~October~~ November, 2006, by M/I Homes of Indiana, L.P., an Indiana limited partnership (hereafter "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of certain real estate, located in Hamilton County, Indiana, which is more particularly described in what is attached hereto and incorporated herein by reference as Exhibit "A" (hereafter "Real Estate" or "Property"), upon which a residential subdivision known as Hillsdale Grove (hereafter "Development") will be developed;

WHEREAS, Declarant desires to subdivide and develop the Real Estate.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots (hereafter defined) in the Property, with the exception of Lot 34, as designated on the Plat (hereafter defined) which shall be specifically excluded from the provisions of this Declaration, as they are held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved, are subject to the following restrictions, all of which are declared to be in furtherance of a plan of the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and each of the Lots situated therein. This Declaration shall run with the Property and shall be binding upon the Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to these restrictions. The restrictions shall inure to the benefit of the Declarant and its successors in title to the Property or any part or parts thereof.

The Owner of any Lots subject to these restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot or (ii) the active occupancy of any Lot, shall accept such deed, execute such contract and/or actively occupy such Lot subject to each restriction and agreement herein contained.

ARTICLE I

DEFINITIONS ®

The following are the definitions of the terms as they are used in this Declaration:

Section 1.1 "Association" shall mean *Hillsdale Grove Homeowners Association, Inc.*, a not-for-profit corporation, the membership and power of which are more fully described in Article IX of this Declaration.

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JENNIFER J HAYDEN
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Section 1.2 "Board" or "Board of Directors" shall mean the Board of Directors of *Hillsdale Grove Homeowners Association, Inc.*

Section 1.3 "Builder" means a person or entity regularly engaged in the business of constructing single family residences for sale and responsible for the original construction of a residence on a Lot.

Section 1.4 "Committee" shall mean the *Development Standards and Architectural Control Committee*, as more fully described in Article VI of this Declaration.

Section 1.5 "Common Area" shall mean those areas (i) designated on current and future Plats as a "Block", "Common Area", "C.A.", "Limited Common Area", "LCA", and (ii) any other areas designated by the Declarant for the common use and enjoyment of the residents of the Development.

Section 1.6 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Hillsdale Grove.

Section 1.7 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property.

Section 1.8 "Drainage Board" means the Hamilton County Drainage Board.

Section 1.9 "Federal Agencies" shall mean (by way of illustration but not limitation) the Federal Housing Authority, 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.

Section 1.10 "Local Governing Authority" means Hamilton County, Indiana, or the Town of Fishers, Indiana.

Section 1.11 "Lot" shall mean any parcel of residential real estate designated on a Plat that is recorded in the Office of the Recorder of Hamilton County, Indiana, except for Lot 34, as designated on said Plat, which shall be specifically excluded from the provisions of this Declaration.

Section 1.12 "Mortgagee" shall mean and refer to any person or entity secured by a first mortgage or first deed of trust on any Lot or the Common Area who has notified the Association of this fact in writing. An "Eligible Mortgagee" shall be a Mortgagee who has given notice to the Association of its interest and requested all rights afforded Eligible Mortgagees under Article XI.

Section 1.13 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property (except for Lot 34, as designated on the Plat), including contract sellers, but otherwise excluding those having such

interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant and a Builder.

Section 1.14 "Person" shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 1.15 "Plat" shall mean the subdivision plats of the Property which are recorded with the Recorder of Hamilton County, Indiana.

Section 1.16 "Pool" shall mean the recreational swimming pool and attached bathhouse which Declarant, in its sole and absolute discretion, may construct on the Property.

Section 1.17 "Residence" shall mean any structure located on a Lot intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and recreational facilities usual and incidental to the use of a single family residential lot.

Section 1.18 "Special Use" shall mean any use defined or identified in any applicable zoning ordinance as a "Special Use".

Section 1.19 "Trail System" means paths or trails so designated by the Board and located in a Common Area.

ARTICLE II

DECLARATION AND CHARACTER OF THE DEVELOPMENT

Section 2.1. In General. No structure shall be erected, placed or permitted to remain upon any Lot except a Residence. All Property located within a Plat which has not been designated by numbering shall be used in a manner determined by the Declarant. Lots may be used only for single-family residential purposes and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 2.2. Other Restrictions. All Property shall be subject to the easements, restrictions and limitations of record appearing on a Plat and amendments thereto, on recorded easements, and rights-of-way, and also to all governmental zoning authority and regulation affecting the Property, all of which are incorporated herein by reference. The standards of the Town of Fishers PUD Ordinance 010305C applicable to the Property are attached hereto as Exhibit "B."

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ARTICLE III**EASEMENTS**

Section 3.1. Designated Easements. The following are easements designated or to be designated, in the Declarant's sole discretion, upon a Plat:

(A) **Designated Drainage, Utility, and Sewer Easements.** There are strips of ground designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, electric lines, gas lines, telephone lines, fiber optic cable, high speed internet lines, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved by any entity to which the easement is dedicated shall be built, erected or maintained on said drainage easements, except by the Declarant or its assigns. It shall be the responsibility of the Association and the Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Association and the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Association and the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

(B) **Designated Mounding, Landscaping, and Screening and Sign Easements.** Any strips of ground shown or designated on the Plat for landscaping including, but not limited to, landscape easements, landscape maintenance easements, and/or landscape maintenance access easements are hereby reserved unto Declarant, during the Development Period, and, thereafter,

unto the Association, for the purposes of (i) providing signs which either advertise the Property and the availability of Lots or identify the Property or, (ii) installing landscaping, mounding, and screening. Declarant reserves unto itself during the Development Period and thereafter unto the Association, the exclusive and sole right to erect signs and install landscaping, mounding, and screening within these strips of ground. Notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences or other improvements shall be erected or maintained in the area of such easements, except by the Declarant during the Development Period, and thereafter by the Association. Furthermore, notwithstanding anything in this Declaration to the contrary, no planting shall be done, and no hedges, walls, fences, structures, or other improvements shall be erected between (i) any landscape easement or landscape maintenance easement, and (ii) any perimeter roadway, public highway or right-of-way along the perimeter or boundary of the Property, except by the Declarant during the Development Period and thereafter by the Association.

(C) Easement Work. Notwithstanding any architectural approval under Article VI below, during the course of any maintenance, service, repair or work upon any easement, the Declarant, the Association, any private utility, any public utility, and/or any governmental entity shall have the right and the authority, without any obligation or liability whatsoever to any Owner, to remove, damage, or destroy any fence or other structure or landscaping built, erected, maintained or planted in any easement described in Section 3.1 (A) above and without any obligation of replacement.

Section 3.2. General Drainage, Utility, Sewer and other Development Easements. The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Residence or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass to the Association one (1) year after Declarant shall have conveyed the last Lot within the Property.

(A) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over all of the Common Area and any Lot, so as to permit the installation and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Residence. Any Drainage, Utility and Sewer Easement shall include all areas of the Property outside any Residence, with the exception of any areas covered by chimneys, or patios. Improvements or permanent structures installed within the Common Area are subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of the Declarant and any public or private utility to construct, maintain, repair or remove any necessary facilities. By virtue hereof, Declarant reserves the right to install a lake(s) or pond(s) on any Common Area. The rights hereunder and easements hereby reserved survive the conveyance, by the Declarant to the Association, of any Common Area. This easement shall

be in addition to any easement defined upon a Plat as a drainage, sewer, utility, cable, landscape, sign, transmission, flowage or similar type easement.

(B) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the right and an undefined sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, architectural and recreational features or facilities considered necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained by the Association as a part of its Common Area maintenance obligations.

(C) Declarant reserves unto itself during the Development Period, and thereafter unto the Association, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Utility and Sewer Easement and/or Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof; and

(iii) Describe more specifically or to change the description of any Drainage, Utility and Sewer Easement and/or Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hamilton County, Indiana.

(D) The title of the Association (as to the Common Area owned by the Association during the Development Period) and of any Owner of any Lot shall be subject to the rights and easements reserved herein.

ARTICLE IV

ADDITIONAL PROVISIONS REGARDING SANITARY SEWER UTILITY

Section 4.1 Sanitary sewer utility easements allow for the construction, extension, operation, inspection, maintenance, reconstruction, and removal of sanitary sewer facilities and give utility companies, whether public or private, as well as any governmental authorities, the right of ingress/egress.

Section 4.2 No trees shall be planted directly over building sewers (laterals). Any landscaping placed within easements or right-of-ways may be removed, damaged, or destroyed by the applicable utilities without an obligation of repair or replacement.

Section 4.3 No mounding, lighting, fencing, signs, retaining walls, landscaping walls, entrance walls, irrigation lines, or other improvements shall be placed within ten (10) feet of the center of the sanitary sewer infrastructure. Any of these which are placed within easements or right-of-ways may be removed by the applicable utilities without the obligation of replacement.

Section 4.4 All Owners not serviced by gravity sanitary sewer service are responsible for all maintenance, repair and replacement of all grinder/ejector pumps, force mains and gravity laterals from the Residence to its connection to the sanitary sewer main.

Section 4.5 The discharge of clear water sources, including, but not limited to, foundation drains, sump pumps, and roof drains to the sanitary sewers is prohibited.

Section 4.6 Grade changes across sanitary sewer facilities must be approved in writing by the applicable utilities.

ARTICLE V

COVENANTS AND RESTRICTIONS

Section 5.1 Land Use. Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the zoning ordinance of the municipality having zoning jurisdiction over the Property may be constructed thereon. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in the Property than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single family dwellings.

Section 5.2 Address Identification. The numbers representing the address of each Residence will be of a uniform appearance and will be displayed in a uniform location and manner, as determined by the Committee.

Section 5.3 Lighting. All homes will have at minimum two dusk to dawn lights located on the sides of the garage doors. Street lights may be installed by Declarant in the utility easements on Lots and in the Common Areas. Street lights shall be operated and maintained by the Association. The Association reserves the right to remove street lights deemed no longer necessary by the Board of Directors.

Section 5.4 Temporary Structures. No trailer, shack, tent, boat, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

Section 5.5 Driveways. All driveways in the Property shall be concrete in material.

Section 5.6 Water Systems. Each Owner shall connect to the water main maintained by a private or public water utility to provide water for domestic use on the Lot and shall pay all

connection, availability, or other charges lawfully established with respect to connections thereto.

Section 5.7 Drainage. In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale. Lots within the Property may be included in a legal drain established by the Drainage Board. In such event, each Lot in the Property will be subject to assessment by the Drainage Board for the costs of maintenance of the portion of the drainage system and the lake control structures included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of surrounding Lots. Perimeter foundation drains and sump pump drains shall be connected whenever feasible into a subsurface drainage tile; provided, however, that sump pumps on Lots with walk-out basements may drain directly into daylight. Down spouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

Section 5.8 Signs. Except for such signs as Declarant may in its absolute discretion display in connection with the identification of development of the Property and the sale of Lots therein, no sign of any kind shall be displayed to the public view of any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a Builder to advertise the Property during construction and sale.

Section 5.9 Fencing. This subsection is applicable to all Lots except those Lots which are used for a sales office or model home by the Declarant or a Builder. All fences shall be no greater than five (5) feet in height, and no fence, wall, hedge, or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set back line except where such planting is part of Residence landscaping approved by the Committee and the prime root thereof is within six (6) feet of the Residence. Corner Lots shall be deemed to have two (2) front property lines. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". All fencing shall be wrought iron, decorative steel, or unpainted cedar, dog-eared shadow box on both sides of the fence, unless otherwise approved by the Committee. All fencing on a Lot shall be uniform in height, style, and color and substantially similar in material. No fence shall be erected or maintained on or within any Landscape Easement except such as may be installed by Declarant and subsequently replaced by the Association in such manner as to preserve the uniformity of such fence. No fence may be erected on a Lot without prior approval of the Committee, which shall approve or disapprove the location of all fences; provided, however, that all fencing erected on a Lot must be erected either (i) within six (6) inches of the property line of such Lot, or (ii) more than ten (10) feet from the property line of such Lot. Owners of Lots adjoining Lots on which a fence is erected within six

(6) inches of the property line shall have the right to connect a fence to the fence on the adjoining Lot if the new fence satisfies all of the criteria expressed herein and is approved by the Committee. The Committee may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Lake and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge, or shrub planting, or tree foliage which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the Lot lines at the streets and a line connecting points 25 feet from the intersection of said street Lot lines; and, the same rule shall apply to the intersection of a driveway with a street, in which case the edge of the driveway pavement shall be substituted for one of the street Lot lines.

Section 5.10 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Violation of any ordinance governing noise, building or Lot maintenance, or any other public nuisance shall be deemed to be a nuisance creating rights in every affected Owner, the Declarant, and/or the Association, as the case may be, to enforce the provisions hereof against the offending Owner. Barking dogs shall constitute a nuisance. In the event of successful enforcement by an Owner, the Declarant, or the Association of the provisions hereof, the offending Owner shall be liable to the prevailing party for attorneys' fees, court costs, and all other costs and expenses of litigation and collection in connection therewith.

Section 5.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view except not more than 24 hours prior to its removal thereof, when it may be placed at the curb of the Lot. All equipment for storage or disposal of such materials shall be kept clean and sanitary.

Section 5.12 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners. Unless permitted by the Board of Directors of the Association, no Owner shall maintain more than three (3) of the same type (dog, cat, bird) of pet nor more than four (4) total pets; provided, however, that fish which are located in indoor aquariums and which pose no risk to the public health shall not be considered pets for the purpose of this restriction. No dangerous or potentially dangerous pets, such as exotic animals (large wild cats, wolves, alligators, snakes which are poisonous or longer than two feet, poisonous spiders, etc.) shall be permitted to exist in a Residence or on a Lot without the unanimous consent of the Committee and the Board of Directors; provided, however, that the decision of the Board of Directors to permit such animal or animals may be overturned by a majority vote of the Members at any meeting.

Section 5.13 Outside Burning. No trash, leaves, or other materials shall be burned upon a Lot unless the smoke therefrom would not blow upon any other Lot. Owners shall use

appropriate incinerators and shall at all times be in compliance with all applicable legal requirements for outside burning.

Section 5.14 Antennas and Receivers. No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, on any part of the Property, including Lots, without the written approval of the Committee, which approval shall not be unreasonably withheld; provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if such devices are not merely duplicative of other devices existing on the subject Lot and if: (a) the device is not visible from the neighboring Lots, streets or Common Area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices, or improvements, such as heat pumps, air-conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or Bylaws; or (d) the device is a satellite dish one meter or less in diameter and not affixed to the roof of a Residence; or (e) if prohibition of the installation, use, and maintenance of such device is specifically preempted and superseded by applicable governmental authority.

Section 5.15 Exterior Lights. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, no exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.

Section 5.16 Electric Bug Killers. Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.

Section 5.17 Vacant Lots. It shall be the duty and obligation of the Owner of a vacant Lot to maintain such Lot and mow the lawn thereof. Grass shall not be permitted to exceed five inches (5") in height. Declarant and the Association shall have the right, but not the duty, to enter upon each vacant Lot and to maintain the appearance thereof by cutting weeds, mowing grass, trimming trees, removing debris, installing erosion control devices, and performing any other act reasonable under the circumstances. The Owner shall be responsible for payment of all such expenses upon demand and the Declarant or the Association, as the case may be, shall have a lien on such Lot for the payment of such expenses, together with attorneys' fees and all other costs and expenses of litigation and collection which may be incurred in connection therewith.

Section 5.18 Association's Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Association shall have the right, but not the obligation, by and through its agents or employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost incurred by the Association shall be assessed to the Owner. The Owner shall reimburse the

Association within thirty (30) days of the date on which the Owner is invoiced by the Association. The Association shall have the right to collect any outstanding maintenance assessments in the manner described in Article X. Neither the Association nor any of its agents, employees, or contractors shall be liable for any damage that may result from any maintenance work performed hereunder.

Section 5.19 Awnings. Except on Lots on which there is maintained a sales office or model home by the Declarant or a Builder, or as approved by the Committee, no metal, wood, fabric, fiberglass or similar type material awnings or patio covers will be permitted anywhere on the Property.

Section 5.20 Diligence in Construction. Subject to inclement weather, every Residence shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage or, if approval of the applicable casualty insurance is pending, then within three (3) months after such approval is forthcoming.

Section 5.21 HVAC Units. No heat pumps, air conditioning units or gas meters will be installed in the front of the Residence.

Section 5.22 Mailboxes. All mailboxes and posts must be approved by the Committee and, within each Section of the Development, shall be standard as to size, location, post, design, height, material, composition and colors. The Builder upon the initial Lot sold to the homeowner shall install the initial mailbox for each Lot, which meets the above criteria. The Owner agrees to maintain and paint said mailbox and post in conformance with all other mailboxes.

Section 5.23 Maintenance of Lots and Improvements. Each Owner shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly and, specifically, such Owner shall:

- (A) Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds (grass shall not be permitted to exceed five inches (5") in height);
- (B) Remove all debris or rubbish from the Lot;
- (C) Prevent the existence of any other condition that tends to detract from or diminish the aesthetic appearance of the Property;
- (D) Cut down and remove dead trees from the Lot; and,
- (E) Within sixty (60) days following completion of a Residence, the Owner shall landscape the Lot in accordance with the provisions set forth in this Declaration, weather permitting.

Section 5.24 Miscellaneous. No clotheslines may be erected on any Lot.

Section 5.25 Outbuildings and Animal Quarters. Any and all forms of outbuildings, including but not limited to, sheds, storage sheds, pool houses, animal quarters, and play houses, which are not part of the architectural structure of the main house on any Lot are prohibited, unless the same are necessary or incident to the Declarant's, Builder's or Association's business or activities upon the Property. Animal quarters or kennels which are part of the architectural structure of the main house must be approved by the Committee.

Section 5.26 Play Equipment. Children's play equipment such as sandboxes, temporary swimming pools having a depth of eighteen (18) inches or less, swing and slide sets, and trampolines shall not require approval by the Committee, provided that (i) such equipment is not more than eight (8) feet high (to the highest point of the structure) and properly painted and maintained by the Owner in good repair, (ii) such equipment is located in the rear yard of the Lot between the parallel lines defined by extending the side lines of the Residence into the rear yard of the Lot, and (iii) such swing and slide sets are constructed of wood. Metal swing and slide sets are prohibited. Equipment higher than eight (8) feet shall require approval of the design, location, color, material and use by the Committee, and aluminum or metal play equipment is prohibited.

Section 5.27 Plumbing. All plumbing vent stacks are to be located on the rear of the Residence.

Section 5.28 Sidewalks. Each Residence shall have a continuous four (4) foot wide by a minimum of four (4) inches thick concrete sidewalk adjacent to all interior dedicated street frontage. Sidewalks shall be installed by the Builder and included in the purchase price of the Residence. If an approved asphalt bike/walking path is approved on the Property in place of the sidewalk, no additional concrete sidewalk will be required.

Section 5.29 Subsurface Drains and Sump Pump Discharges. Subsurface drains have been provided in certain areas within drainage easements as additional storm and ground water drainage sources and are part of the public storm drainage system. Subsurface drain laterals have been provided on specific Lots, and the Builder on such Lots shall connect all sump pump discharge lines to such laterals, except for Lots with walk-out basements, as provided in Section 5.7 hereof. All maintenance and repair of all sump pump discharge lines and subsurface drain laterals shall be the responsibility of each Lot Owner in accordance with the following:

(A) The limits of Owner responsibility include all sump pump lines and subsurface drain laterals between the connection at the sump pump within the Residence and the connection with the publicly maintained storm sewer or subsurface drain within the drainage easement.

(B) In cases where subsurface drain laterals are connected along a common property line before connecting to the storm sewer, maintenance and repair of the common lateral will be shared equally by the adjacent Owners unless an individual Owner caused the lateral to be damaged, changed or altered.

(C) Any Owner or Builder damaging, changing, or altering these subsurface drains and/or common subsurface drain laterals will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owner(s) and/or Builder(s) for immediate payment. If immediate payment is not received, the Declarant and/or the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XII of this Declaration.

Section 5.30 Swimming Pools and Hot Tubs. Only permanent, in-ground pools with professional construction, approved by the Committee, shall be permitted upon a Lot. All submittals to the Committee shall include landscape plans. All backyard pools should be oriented to minimize the potential effect on neighboring properties. All fencing shall conform to county or municipal regulations and shall be of harmonious design and subject to Committee approvals. Hot Tubs must also be approved by the Committee.

Sections 5.31 Tennis Courts, Racquetball Courts, Paddleball Courts, etc. Tennis courts, racquetball courts, paddle ball courts, basketball courts, squash courts, and other recreational facilities or sporting facilities will not be permitted without approval from the Committee. All submittals to the Committee shall include landscape plans. Basketball goals may be installed on a Lot adjacent to a driveway without Committee approval provided that they have translucent fiberglass or glass backboards; temporary, portable or partial basketball goals are prohibited. Independent basketball courts may not be constructed on a Lot without written Committee approval. No basketball goal or backboard shall be permitted to hang from or be affixed to the Residence or garage. Lighted courts of any kind are prohibited.

Section 5.32 Vents. All metal and PVC roof or range vents will be painted to blend with roof color.

Section 5.33 Windows-Doors. If storm doors are installed, they must be painted to match the exterior of the Residence. No unfinished aluminum doors or windows will be allowed.

Section 5.34 Street Signs. Decorative street signs that do not conform to applicable municipal standards may be installed by Declarant in the Declarant's sole and absolute discretion. Such decorative street signs shall be maintained by the Association, and shall be repaired or replaced by the Association if damaged in accordance with applicable rules and regulations of the Local Government Authority. The Association assumes all liability in the installation, maintenance and repair of the decorative street signs.

Section 5.35 Fuel Tanks. All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.

Section 5.36 Garbage and Other Refuse. No Lot Owner in the Development shall burn or permit the burning out-of-doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out-of-doors of such refuse, including compost on his or her Lot.

Section 5.37 Home Occupations. No Lot or Lots shall be used by an Owner, other than a Builder or Declarant, for any purpose other than as a single-family residence, except that a home occupation, which satisfies the following definition as well as all requirements of the applicable zoning ordinance, may be permitted: any use conducted entirely within the Residence and participated in solely by a member of the immediate family residing in said Residence, which use is clearly incidental and secondary to the use of the Residence for dwelling purposes and does not change the character thereof and in connection with which there is: a) no sign or display that will indicate from the exterior that the Residence is being utilized in whole or in part for any purpose other than that of a dwelling; b) no commodity sold upon the premises; c) no person is employed other than a member of the immediate family residing in the Residence; and d) no manufacture or assembly operations are conducted. Provided however, that in no event shall the following or similar activities be conducted or considered to be a permitted home occupation: child day care, barber shop, styling salon, nail salon, animal hospital, or any form of animal care or treatment such as dog trimming, or any other similar activities. The foregoing notwithstanding, the Declarant and Builders shall be permitted to operate sales trailers, model homes, and sales offices.

Section 5.38 Open Drainage Ditches and Swales. The following shall apply to open ditches and swales:

(A) Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated drainage easements, are not to be altered, dug out, filled in, tiled, or otherwise changed, without the written permission of the appropriate jurisdictional agency and the Declarant. Property Owners must maintain these swales as grassways or other non-eroding surfaces. Any damage to swales or drainage structures must be repaired or replaced by the Lot Owner.

(B) Any Owner or Builder altering, changing, or damaging these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice, by registered mail, to repair said damage, after which time, if no action is taken, the appropriate jurisdictional agency, Declarant or the Association will cause said repairs to be accomplished and the invoice for such repairs will be sent to the responsible Owners for immediate payment. If immediate payment is not received by the Association, the Association shall have all the rights and remedies to collect any outstanding amounts as outlined hereafter in Article XII of this Declaration.

Section 5.39 Roofing Materials. The roofing materials on all Residences within the Development shall be similar in color, and shall be of a quality, style and composition acceptable to the Declarant during the Development Period and, thereafter, the Committee.

Section 5.40 Solar Panels. No solar panels shall be permitted on any Residence.

Section 5.41 Utility Services. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat.

Section 5.42 Vehicles Parking. No trucks one (1) ton or larger in size, campers, trailers, motor homes, boats, snowmobiles, jet skis or similar vehicles shall be parked on any street in the community. Any recreational vehicle or trailer, camper, snowmobile, jet ski, or boat shall not be permitted to remain on any driveway or Lot except within a closed garage and shall not be regularly parked upon unpaved areas. There shall be no outside storage of commercial trucks, trailers, boats, junk cars, or fuel tanks.

Section 5.43 Wells. Water wells shall not be drilled on any of the Lots except as required to irrigate Common Areas.

Section 5.44 Occupancy or Residential Use of Partially Completed Residence Prohibited. No Residence constructed on any Lot shall be occupied or used for residential purposes or human habitation until a certificate of occupancy has been issued.

Section 5.45 Streets, Sidewalks, and Street Landscaping.

(A) Maintenance. Declarant shall maintain all streets and curbs in good condition satisfactory for the purpose for which they were constructed until their dedication has been accepted by the Local Governing Authority.

(B) Landscaping. All landscaping within the street rights-of-way is subject to the approval of the Local Governing Authority. Each Owner shall cut all grass and trim all other landscaping in the rights-of-way adjoining his Lot lines (grass shall not be permitted to exceed five inches (5") in height) and shall maintain all sidewalks in the rights-of-way nearest his Lot lines. Each Owner shall immediately replace any street trees and lighting required by this Declaration, the Plat, or any other document controlling maintenance of Lots.

(C) Street Lights and Decorative Street Signs. All street lights and decorative street signs located within the right-of-way of any street shall be maintained by the Association.

Section 5.46 Septic Systems. No septic tank, absorption field, or any other on-site sewage disposal system shall be installed or maintained on any Lot.

Section 5.47 Tree Removal. No tree larger than six inches (6"), when measured four feet (4') from the ground, shall be removed from any Lot or Common Area. No smaller tree shall be removed from any Lot or Common Area without the prior written approval of Declarant during the Development Period, and, thereafter, the Committee.

ARTICLE VI



ARCHITECTURAL CONTROLS

Section 6.1 Approvals. Approvals, determinations, permissions, or consents required herein shall be deemed given only if they are given in writing and signed, with respect to the Declarant or the Association, by an officer thereof, and with respect to the Committee, by one (1) member thereof.

Section 6.2 Development Standards and Architectural Control Committee. A Development Standards and Architectural Control Committee (the "Committee"), composed of at least three (3) members, shall exist and shall be appointed by the Declarant. Such members shall be subject to removal by the Declarant at any time, with or without cause. Any vacancies from time to time shall be filled by appointment of the Declarant. The Declarant may, at its sole option, at any time hereafter, relinquish for a period of time to the Association the power to appoint and remove one or more members of the Committee.

Section 6.3 Continuation of Committee. When the Declarant provides written notification to the Association of discontinuance of this Committee, then the Directors of the Association, or their designees, shall continue the actions of the Committee with like powers and duties.

Section 6.4 Duties of Committee. The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. The Committee for its permanent files shall retain one copy of submitted material. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the requesting applicant may re-apply with changes. If however, approval has not been received by applicant in writing within thirty (30) days, then said request shall be considered DENIED.

Section 6.5 Exercise of Discretion. Declarant intends that the members of the Committee exercise discretion in the performance of their duties consistent with the provisions hereof, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of discretion by such members. In any judicial proceeding challenging a determination by the Committee and in any action initiated to enforce this Declaration in which an abuse of discretion by the Committee is raised as a defense, abuse of discretion may be established only if a reasonable person, weighing the evidence and drawing all inferences in favor of the Committee, could only conclude that such determination constituted an abuse of discretion.

Section 6.6 Inspection. The Committee may inspect work being performed without the Owner's permission to assure compliance with these restrictions and applicable regulations.

Section 6.7 Liability of Committee, Declarant. Neither the Committee nor any agent thereof, nor the Declarant, nor the Association shall be liable in any way for any costs, fees, damages, delays, or any charges or liability whatsoever relating to the approval or disapproval of any plans submitted to it, nor shall the Committee, Association or Declarant be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee, Association and/or Declarant make no representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, the compliance of proposed plans with laws and zoning ordinances, or the materials to be used. All parties should seek professional construction advise, engineering, and inspections on each Lot prior to proposing construction.

Section 6.8 Common Area Entrances, Street Signs, and Landscape Easements. None of the following shall be installed or constructed without prior written approval thereof by the

Committee: (i) any and all landscaping, fences, structures, lighting, walking trails, sidewalks, or other improvements located in any Common Area, landscape maintenance access easement, and/or sign landscape easement, (ii) any entrance monument or signage identifying the Development or any section thereof and/or (iii) street signage.

Section 6.9 Lot Improvements. No dwelling, building structure, fence, deck, driveway, swimming pool, rear yard tennis or basketball courts, or improvement of any type or kind (including significant landscaping, stacking of wood or changes in exterior colors) shall be constructed or placed on any Lot without the prior approval of the Committee. Such approval shall be obtained only after the Owner of the Lot requesting authorization from the Committee has made written application to the Committee at least thirty (30) days prior to the proposed construction. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing (i) the location of the improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated and (ii) all easements, set backs, and rights-of-way and (iii) any landscape plans required by the Committee. Such plans and specifications shall further set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other materials, photographs, or information, which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn to a scale of 1/4" = 1' and all plot plans shall be drawn by a professional to a scale of 1" = 30', or to such other scale as the Committee shall deem appropriate. It is also recommended that a certified survey be prepared to insure that a resident is not encroaching on an adjacent Lot or in a Common Area. If an Owner has encroached on an adjacent Owner's property or in a Common Area, the encroaching Owner will, at his or her own expense, move any fence or other improvement(s) so as to eliminate the encroachment. Notwithstanding anything to the contrary in the foregoing, upon receipt of any written application which is in form and content acceptable to the Committee in the Committee's sole and absolute discretion, the Committee may pre-approve a Builder's plans and specifications for the original construction of a Residence and, in the event of such pre-approval, the Builder shall then be authorized to construct the pre-approved Residence on different Lots without further approvals from the Committee.

No fence or screen of any kind will be permitted if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view of other amenities from adjoining properties shall be considered by the Committee when reviewing applications for approval.

Section 6.10 Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement with or without cause. Common grounds for denial include, but are not limited to, a lack or absence of the following:

(A) The plans, specifications, drawings or other material submitted must themselves be adequate and complete, show the proposed improvement, and not be in violation of this Declaration; and

CHICAGO TITLE

(B) The design or color scheme of a proposed improvement must be in harmony with the general surroundings of the Lot or with adjacent buildings or structures.

Section 6.11 Power to Grant Variances. The Committee may allow reasonable variances or adjustments of this Declaration where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of this Declaration, no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Development, and any such variance granted shall not be considered as precedent setting.

Section 6.12 Statement of Purposes and Powers. Subject to this Declaration and the restrictions contained herein, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and improvements thereon in such a manner as to preserve and enhance values and maintain a harmonious relationship among structures and the natural vegetation and topography, and in keeping with the intent of the Declarant.

ARTICLE VII

CONTIGUOUS LOTS

Section 7.1 Rules Governing Building on Several Contiguous Lots Having One Owner. Whenever two or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two or more of said Lots as a site for a single-dwelling house, such Owner must apply in writing to the Committee for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying this Declaration to said Lots, so long as the Lots remain improved with one single-dwelling house. In addition, the Owner must obtain all requisite and necessary permits and approvals from the municipality having zoning jurisdiction over the Property; provided, however, that with respect to the Lots so combined, the Owner of the combined Lots shall be obligated to pay Annual Assessments, One-Time Assessments, and/or Special Assessments for each originally platted Lot together constituting the combined Lots, and such Annual Assessments, One-Time Assessments, and Special Assessments shall be a lien on the combined Lots, all per the terms and conditions of Article X below.

ARTICLE VIII

USE AND OWNERSHIP OF COMMON AREA

Section 8.1 Ownership. A license upon such terms, conditions, rules and regulations as the Declarant, and successors, assigns or licensees of the Declarant, shall from time to time grant, for the use and enjoyment of the Common Area, is granted to the persons who are from time to time members of the Association; provided, however, that no residential development shall occur in the Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in common with all other Owners, in and to the Common Areas which nonexclusive right and easement of enjoyment shall be appurtenant to and pass with the title to every Lot; provided, however, that any area identified on a Plat as a Limited Common Area shall be for the exclusive use and benefit of Owners whose Lots abut the Limited Common Area, subject to (i)

the right of the Association to perform and undertake maintenance of the Limited Common Area and (ii) all easements granted in this Declaration. The Common Areas shall be conveyed by quitclaim deed to the Association. Such conveyance shall be deemed to have been accepted by the Association and those persons who shall from time to time be members thereof upon the recording of a deed or deeds conveying such Common Area to the Association.

Section 8.2 Use. The Common Area shall be used for such purposes as deemed appropriate by the Declarant until the end of the Development Period. Following the end of the Development Period, the Common Area shall be used for such purposes as deemed appropriate by the Association. Any Common Area depicted on the recorded Plats of the Development or designated by the Declarant as a Common Area shall remain for the exclusive use of the Owner(s), and their family members, guests, tenants, or contract purchasers who reside on the Lot(s). Neither the Declarant's execution or recording of the Plats nor the doing of any other act by the Declarant is, or is intended to be, or shall be construed as, a dedication to the public of the Common Area.

ARTICLE IX

HILLSDALE GROVE HOMEOWNERS ASSOCIATION, INC.

Section 9.1 Association Duties. The duties of the Association shall include the following: (i) the promotion of the recreation, health, safety, and welfare of the residents in the Property, (ii) the maintenance and repair of the Common Area including, but not limited to, any and all lighting, landscaping, pools, amenity areas, the Trail System, and sidewalks located thereon, (iii) the maintenance and repair of any and all entrance monuments and signage, and the landscaping surrounding such entrance monuments and signage, (iv) maintenance and repair of all street signage, street lighting, and all improvements and landscaping existing in any landscape maintenance access easement and/or any sign landscape easement, and (v) the performance of any other obligations and duties of the Association specified herein.

Section 9.2 Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and Bylaws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

Section 9.3 Classes of Membership and Voting Rights. The Association shall have the following two classes of voting membership:

(A) Class A. Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be members. The vote for such Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

(B) Class B. The Class B member shall be the Declarant. The Declarant shall be entitled to five (5) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A

membership on the happening of either of the following events, whichever occurs earlier (hereafter "Applicable Date"):

- (i) December 31, 2020; or
- (ii) When the total number of votes outstanding in the Class A Membership is equal to the total number of votes outstanding in the Class B Membership; provided, however, that the Class B Membership shall recommence in the event that the Declarant records a Plat of part of or all of the Additional Real Estate and, by virtue thereof, the total number of votes outstanding in the Class A Membership is no longer equal to the total number of votes outstanding in the Class B Membership; or
- (iii) When the Declarant executes and records, with the Recorder's Office, a written instrument by which the Declarant terminates the Class B membership.

Section 9.4 Membership. Initially, the Person(s) who serve as incorporator(s) of the Association shall be the member(s) (the "Initial Member(s)"). The Initial Member(s) shall remain member(s) of the Association until the Association Articles of Incorporation are accepted by the Indiana Secretary of State, at which time the Initial Member(s) shall cease to be member(s) unless they also qualify as Class A or Class B members. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Apart from the Initial Member(s), a membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

Section 9.5 Professional Management. No contract or agreement for professional management of the Association, nor any other contract between Declarant 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 and without payment of any termination fee upon written notice of ninety (90) days or less. The Association shall at all times be managed by a licensed management company.

Section 9.6 Limitations on Rights of the Association. As long as there is a Class B Member, the Association may not use its resources, nor take a public position in opposition to future phases of Hillsdale Grove proposed by the Declarant or changes to current phases proposed by the Declarant. Nothing in this paragraph shall be construed to limit the rights of the members acting as individuals or in affiliation with other members or groups as long as they do not employ the resources of the Association or identify themselves as acting in the name or on behalf of the Association.

ARTICLE X

ASSESSMENTS

Section 10.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot, except the Declarant and any Builder, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

- (A) Annual Assessments (hereafter defined);
- (B) One-Time Assessments (hereafter defined);
- (C) Special Assessments (hereafter defined) for costs of enforcement of the Declaration, capital improvements and operating deficits, copies of Association documents if requested by a member, and such assessments to be established and collected as hereinafter provided or established by the Board; and
- (D) Violation Assessments (hereafter defined) levied for a violation of this Declaration (collectively, the "Assessments").

Section 10.2 Annual Budget. By majority vote of the Board of Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for the allocation of expenses in such a manner that the obligations imposed by the Declaration and all Supplemental Declarations can effectively be met.

Section.10.3 Annual Assessment.

(A) Amount. The Annual Assessment provided for herein shall be per calendar year and shall commence for each Lot on the date of closing of the sale of a Lot to an Owner other than Declarant or a Builder. The Annual Assessment, commencing during the calendar year in which the first Lot is conveyed to an Owner other than the Declarant or a Builder, shall be Four Hundred Ninety-Five Dollars (\$495.00) per year per Lot. The Annual Assessment for the calendar year shall be pro-rated to year-end. The Board of Directors shall fix any increase in the amount of the Annual Assessment at least thirty (30) days in advance of the effective date of such increase. The initial due date for Annual Assessments shall be January 1st of each calendar year, and such assessment shall be subject to collection and late charges beginning on January 31st of each calendar year.

(B) Purpose of Assessments. The Annual Assessment levied by the Association shall be used in the reasonable discretion of the Board of Directors to fulfill the duties and obligations of the Association specified in this Declaration.

(C) Method of Assessment. By a vote of a majority of the Board of Directors, the Board of Directors shall, on the basis specified in Section 10.7 below, fix the Annual Assessment for each assessment year at an amount sufficient to meet the obligations imposed by this Declaration upon the Association. The Board during any calendar year shall be entitled to increase the Annual Assessment for that year if it should determine that the estimate or current assessment is insufficient for that year, provided that the Board shall give at least thirty (30) days advance notice thereof to the Owners. The Board of Directors shall establish the date(s) the Annual Assessment shall become due, and the manner in which it shall be paid.

Section 10.4 One-time Assessment. Upon (i) the closing of the initial conveyance of each Lot by Declarant to an Owner other than a Builder, or (ii) the sale of each Lot by a Builder (either by deed or by installment sale, conditional sale or land-contract sale), the purchaser of such Lot shall pay to the Association, in addition to any other amounts then owed or due to the Association, as a contribution to its working capital and start-up fund, an amount of Two

Hundred Fifty Dollars (\$250.00) against such Lot, which payment shall be non-refundable and shall not be considered as an advance payment of any assessment or other charge owed the Association with respect to such Lot. Such working capital and start-up fund shall be held and used by the Association for payment of, or reimbursement to Declarant for advances made to pay, expenses of the Association for its early period of operation of the Development, to enable the Association to have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary by the Board.

Section 10.5 Special Assessment. In addition to such other Special Assessments as may be authorized herein, the Board of Directors may levy in any year a Special Assessment(s) for the purpose of enforcing these covenants and restrictions, for legal expenses, for collection expenses, other activity that is the responsibility of an Owner hereunder but which such Owner has not undertaken as required hereunder, for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement which the Association is required to maintain and/or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of a majority of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 10.6 Violation Assessment. In addition to all other assessments as be authorized herein, the Board of Directors may levy a Violation Assessment to an Owner, (i) for a violation against this Declaration or (ii) for damages if any portion of the Common Area that the Association is obligated to maintain, repair and/or replace is damaged due to the willful or negligent act or omission of such Owner or Owner's guest or invitee. In the event of such damage, the Board shall have the right to undertake the necessary maintenance, repair or replacement. The choice between repair or replacement is in the sole discretion of the Board.

Section 10.7 Basis for Assessment.

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

(B) **Lots Owned by Declarant or Builder.** Declarant and any Builder shall not pay any Assessment so long as any Residence constructed upon a Lot by Declarant or a Builder has not been either conveyed to an Owner intending to occupy or rent said Residence as a residence or leased to an individual or an entity for use as a Residence.

Section 10.8 Notice and Due Date. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be delivered to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors.

Section 10.9 Assessment Liens. All Assessments, together with interest thereon, attorneys fees, and other costs of collection permitted by this Declaration to be collected, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made

until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

Section 10.10 Failure of Owner to Pay Assessments. No Owner, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Residence belonging to such Owner, may exempt himself or herself from paying Assessments, or from contributing toward the expenses of administration and/or maintenance and repair of the Common Areas and toward any other expense lawfully agreed upon. Each Owner shall be personally liable for the payment of all Assessments and all other charges. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessments when due, the lien for such assessment on the Owner's Residence may be foreclosed by the Board of Directors for and on behalf of the Association, as provided by law. Upon the failure of an Owner to make payments of any Assessments within ten (10) days after such are due, the Board of Directors, in its discretion and regardless of whether litigation is commenced, may:

- (1) impose a uniform monthly late charge, which will be considered an addition to the Assessment, in an amount to be determined by the Board of Directors of up to twenty-five percent (25%) of the amount of the 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) require that, in addition to the delinquent assessment and any applicable late charge, the Owner of the respective Residence also pay (i) any attorney's fees incurred incident to the collection of the delinquent Assessment and (ii) collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts;
- (4) suspend such Owner's right to use the Common Areas as provided in the Indiana Nonprofit Association Act of 1991, as amended; and
- (5) suspend such Owner's right to vote as provided in the Indiana Nonprofit Association Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board of Directors may, at its option, bring a suit to recover a money judgment for any unpaid Assessments 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 costs and expenses of such action incurred, including but not limited to collection costs incurred by the Association to the managing agent for processing delinquent Owners' accounts and reasonable attorney's fees, from the Owner of the respective Residence.

Section 10.11 Certificates. The Association shall, upon reasonable request by an Owner, at any time, furnish a letter in writing signed by an officer of the Association, indicating the accounting status of Assessments on a Lot showing the balance due the Association, if any.

Section 10.12 Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the lien of Assessments levied under this Article X. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments which became due or are attributable to the period of time 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.

ARTICLE XI

RIGHTS OF MORTGAGEES

Unless a right is waived by the appropriate Federal Agency, all Mortgagees shall have the following rights:

Section 11.1 Veterans Administration. If any of the Lots are security for a loan guaranteed by the Veteran's Administration (the "VA") and if there is a Class B Member:

(a) The Declarant must provide a copy of all amendments to the VA. The Association may not make any Material Amendment or take any Extraordinary Action as such terms are defined in Article XV without the approval of the VA.

(b) Eligible Mortgagees shall have the following rights:

(i) the right to inspect Association documents and records on the same terms as the Members;

(ii) notice of any Material Amendment to the Association documents;

(iii) notice of any Extraordinary Action of the Association;

(iv) notice of any property loss, condemnation or eminent domain proceeding affecting the Common Area resulting in a loss greater than ten percent (10%) of the annual budget or affecting any Lot insured by the Association in which the Eligible Mortgagee has an interest;

(v) notice of any termination, lapse or material modification of an insurance policy held by the Association;

(vi) notice of any default by an Owner of a Lot subject to a mortgage held by the Eligible Mortgagee in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;

(vii) notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before any action is taken;

(viii) the right of a majority of the Eligible Mortgagees to demand professional management; and

(ix) the right of a majority of the Eligible Mortgagees to demand an audit of the Association's financial records.

Section 11.2. Federal Housing Authority. If any of the Lots are security for a loan insured by the Federal Housing Authority (the "FHA") and if there is a Class B Member, the following actions will require the prior approval of the FHA:

- (a) annexation of additional properties;
- (b) mergers, consolidations and dissolution of the Association;
- (c) mortgaging or conveyance of the Common Area; and
- (d) amendment of this Declaration.

Section 11.3. Freddie Mac. Assuming that Mortgagees may securitize pools of mortgages, including mortgages on Lots and/or Residences within the Property, with the Federal Home Loan Mortgage Corporation (a/k/a "Freddie Mac"), the following requirements shall apply to all Lots and Residences within the Property:

(a) Unless at least two-thirds (2/3rds) of the first Mortgagees (based on one vote for each first mortgage owned) or two-thirds of the Class A Members have given their prior written approval, the Association shall not take any of the following actions:

(i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The re-subdivision and/or adjustment of boundary lines of the Common Area and the granting of easements by the Association shall not be deemed a transfer or subdivision within the meaning of this clause.

(ii) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner.

(iii) by act or omission waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences and their appurtenances, the exterior maintenance of Residences and their

appurtenances, the maintenance of the Common Area, common fences and driveways, and the upkeep of lawns and plantings in the Property.

(iv) fail to maintain fire and extended coverage insurance on insurable parts of the Common Area or other Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, based on current replacement costs, not including land value.

(v) use hazard insurance proceeds for losses to the Common Area or other Association property for other than the repair, replacement or reconstruction of such property.

(b) A Mortgagee shall be given written notification from the Association of any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default.

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

(d) The assessments imposed by the Association shall include an adequate reserve fund for maintenance, repairs and replacements for those parts of the Common Area which may be replaced or require maintenance on a periodic basis. Such reserves shall be payable in regular installments rather than by Special Assessment.

Section 11.4. Fannie Mae. Assuming that Mortgagees may secure funding for mortgage loans by selling mortgage loans, including mortgages on Lots and/or Residences within the Property, to the Federal National Mortgage Association (a/k/a "Fannie Mae"), the following requirements shall apply to all Lots and Residences within the Property:

(a) A Mortgagee shall be given written notification from the Association of the following:

(i) any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot that is the security for the indebtedness due the Mortgagee;

(ii) any default in the performance of any obligation under this Declaration or related Association documents by the Owner of a Lot that is the security for the indebtedness due the Mortgagee which is not cured within sixty (60) days after the Owner's receipt of notice of the default;

(iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(iv) any proposed action that would require the consent of a specified percentage of Mortgagees.

(b) Provided that improvements have been constructed in the Common Area and provided that a Mortgagee gives written notice to the Association that it has relied on the value of the improvements in making a loan on a portion or all of the Property then, unless at least sixty-seven percent (67%) of the Members and Mortgagees representing at least fifty-one percent (51%) of those Lots that are subject to mortgages or deeds of trust have given their prior written approval, the Association shall not add or amend any material provision of this Declaration or related Association documents concerning the following:

- (i) voting rights of any Member;
- (ii) Assessments, Assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of those parts of the Common Area that may be replaced or require maintenance on a periodic basis;
- (iv) responsibility for maintenance and repair of the Property;
- (v) reallocation of interests in the Common Area or rights to its use other than as permitted by this Declaration;
- (vi) converting Lots into Common Area or vice versa;
- (vii) annexation of property, or withdrawal of property, except as permitted by this Declaration;
- (viii) insurance or fidelity bonds;
- (ix) leasing of Residences;
- (x) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey its property;
- (xi) a decision by the Association to establish self-management when professional management has been required previously by a Mortgagee;
- (xii) restoration or repair of the Property after a hazard damage or partial condemnation;
- (xiii) any provisions that are for the express benefit of Mortgagees; and
- (xiv) termination of the legal status of the Association after substantial destruction or condemnation of the subdivision occurs.

An addition or amendment to this Declaration or related Association documents shall not be considered material if it is for the purpose of clarification or correcting errors. A Mortgagee who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days of receipt of such request shall be deemed to have approved such request.

Section 11.5. General.

(a) Condemnation. In the event that there is a condemnation or destruction of the Common Area or other Association property, to the extent practicable, condemnation or insurance proceeds shall be used to repair or replace the condemned or destroyed property.

(b) Unpaid Assessments. Any Mortgagee, who obtains title to a Lot pursuant to the remedies provided in its mortgage or deed of trust or foreclosure of the mortgage or deed of trust or deed in lieu of foreclosure, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to the Lot by the Mortgagee.

(c) Books and Records. A Mortgagee shall have the right to examine and copy at its expense the books and records of the Association during normal business hours and upon reasonable notice to the Association.

(d) Notice. As set forth in this Article, Mortgagees shall have the right, upon request, to receive notice of (a) the decision of the Owners to abandon or terminate the Planned Unit Development (as defined by Fannie Mae); (b) any material amendment to the Declaration, the By-Laws or the Articles of Incorporation; and (c) if professional management has been required by a Mortgagee, the decision of the Association to terminate such professional management and assume self-management.

(e) Excess Proceeds. Should there be excess insurance or condemnation proceeds after the renovation, repair or reconstruction called for herein, such excess proceeds may be distributed equally to the Owners, apportioned equally by Lot; subject, however, to the priority of a Mortgagee with regard to the proceeds applicable to the Lot securing said Mortgagee and in accordance with Indiana law.

(f) Audited Financial Statement. The Association must provide an audited financial statement for the preceding fiscal year to a Mortgagee upon its written request.

(g) Termination. Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots must consent to the termination of the legal status of the Association for reasons other than substantial destruction or condemnation of the Property.

(h) Damage to Common Area. The Association shall cause the immediate repair, reconstruction or renovation of any damage to the Common Area unless a decision not to repair, reconstruct or renovate is approved by a majority of the Mortgagees.

ARTICLE XII**REMEDIES**

Section 12.1 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of covenants, conditions, and restrictions in this Declaration shall be held to be a waiver by that party or an estoppel of that party of any right available to such party upon the occurrence, reoccurrence or continuation of such violation or violations of this Declaration.

Section 12.2 In General. The Association or any party to whose benefit this Declaration inures, including the Declarant and/or any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, or to compel compliance with these Restrictions and Covenants, and shall be entitled to recover costs of collection and reasonable attorney's fees; however, neither the Declarant, nor the Association, shall be liable for damages of any kind to any person for failing either to abide by, enforce, or carry out any terms, conditions, or restrictions contained in this Declaration.

ARTICLE XIII**EFFECT ON BECOMING AN OWNER**

Section 13.1 The Owner(s) of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or by virtue of the execution of a contract for the purchase thereof, whether from Declarant, a Builder, or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every covenant, condition, and restriction contained in this Declaration. By acceptance of such deed or execution of such contract each Owner acknowledges the rights and powers of the Declarant, Committee, and Association contained in this Declaration, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owner(s) covenant and agree and consent to and with the Declarant, Committee and the Association and to and with the other Owners and subsequent Owners of each of the Lots affected by this Declaration to keep, observe, comply with and perform such covenants, conditions, and restrictions contained in this Declaration.

ARTICLE XIV**TITLES**

Section 14.1 The titles preceding the various Sections and paragraphs of this Declaration are for convenience of reference only and none of them shall be used 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.

CHICAGO TITLE

ARTICLE XV**GENERAL PROVISIONS**

Section 15.1. Enforcement and Declarant's Exemption. The Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration or other Association documents unless such right is specifically limited. Failure by the Association or by any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or an Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or any Owner pursuant to any term, provision, covenant or condition of the Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by this Declaration or at law or in equity.

Notwithstanding anything in this Declaration to the contrary, (i) the Declarant and any Builder reserves a right to carry on construction, development, and sales activities, to place equipment, machinery, supplies and signs, construct and maintain models or other structures, and park vehicles of prospective or actual purchasers, lessees, or employees and personnel of the Declarant, on any part of the Property owned by the Declarant, a Builder, or the Association and (ii) none of the terms, conditions, provisions, and restrictions set forth in this Declaration shall be construed, in any manner, to limit any activity of the Declarant or a Builder in the construction, development, and sales activities pertaining to the Property.

Section 15.2. Severability; Headings; Conflict. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect. Titles of paragraphs are for convenience only and are not intended to limit or expand the covenants, rights or obligations expressed therein. In the case of any conflict between the Articles of Incorporation and this Declaration, the Declaration shall control; in the case of any conflict between this Declaration and the By-Laws, this Declaration shall control.

Section 15.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, unless such right is specifically limited, for a term of twenty (20) years from the date this Declaration is recorded, after which time the covenants and restrictions of this Declaration shall be automatically extended for successive periods of twenty (20) years each, unless terminated by a written and recorded instrument approved of in advance by the affirmative and unanimous vote of all Members of the Association and their respective Mortgagees.

CHICAGO TITLE

Section 15.4. Material Amendment/Extraordinary Action.

(a) Approval Requirements. In accordance with Federal Agencies' requirements, material amendments ("Material Amendments") or extraordinary actions ("Extraordinary Actions") must be approved by Members entitled to cast at least sixty-seven percent (67%) of the votes of Members present and voting, in person or by proxy, at a meeting held in accordance with the notice and quorum requirements for Material Amendments and Extraordinary Actions contained in the By-Laws, such vote including the vote of a majority of the Class A Members present and voting, in person or by proxy, at such meeting.

(b) Material Amendment. A Material Amendment includes adding, deleting or modifying any provision regarding the following:

- (i) Assessment basis or Assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual Owners;
- (iii) reserves for maintenance, repair or replacement of the Common Area improvements;
- (iv) maintenance obligations;
- (v) allocation of rights to use Common Areas;
- (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Lots;
- (vii) reduction of insurance requirements;
- (viii) restoration or repair of Common Area improvements;
- (ix) the annexation or withdrawal of land to or from the Property other than withdrawal of those properties referred to in this Article XV;
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a Lot; or
- (xii) any provision which is for the express benefit of Mortgagees.

(c) Extraordinary Action. Alternatively, an Extraordinary Action includes:

- (i) merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to this Association);

(ii) determining not to require professional management if that management has been required by the Association documents, a majority of eligible Mortgagees or a majority vote of the Members;

(iii) expanding the Association to include land not previously described as annexable which increases the overall land area of the project or number of Lots by more than ten percent (10%);

(iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring the Common Area except for (i) granting easements; (ii) dedicating Common Area as required by a public authority; (iii) re-subdividing or adjusting the boundary lines of the Common Area or (iv) transferring Common Area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the Association;

(v) using insurance proceeds for purposes other than reconstruction or repair of the insured improvements; or

(vi) making capital expenditures (other than for repair or replacement of existing improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the annual operating budget.

(d) Class Amendments. Any Material Amendment which changes the rights of any specific class of Members must be approved by Members entitled to cast at least fifty-one percent (51%) of the votes of all Members of such class present and voting, in person or by proxy, at a meeting held in accordance with the requirements contained in the By-Laws.

(e) Material Amendment and/or Extraordinary Actions Amendments. The following Material Amendments and Extraordinary Actions must be approved by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members of the Association, including at least a majority of the total authorized votes entitled to be cast by Class A Members:

- (i) termination of this Declaration or termination of the project;
- (ii) dissolution of the Association except pursuant to a consolidation or merger; and
- (iii) conveyance of all Common Areas. ®

(f) VA Amendments. If the VA has guaranteed any loans secured by a Lot, so long as there is a Class B Member all Material Amendments and Extraordinary Actions must have the approval of the VA.

Section 15.5. Amendment. Amendments other than Material Amendments or Extraordinary Actions shall be approved by at least sixty-seven percent (67%) of the votes

entitled to be cast by all Members present and voting, in person or by proxy, at any duly called and conveyed meeting, or in writing by Members entitled to cast at least sixty-seven percent (67%) of the total authorized votes of all Members.

Any amendment must be properly executed and acknowledged by the Association (in the manner required by law for the execution and acknowledgment of deeds) and recorded among the appropriate land records.

Section 15.6. Special Amendment. Notwithstanding anything herein to the contrary, the Declarant may unilaterally amend this Declaration for any reason prior to the first conveyance of a Lot to an Owner other than the Declarant and/or a Builder and thereafter may make any amendment required by any of the Federal Agencies or by the Local Governing Authorities, as a condition of the approval of this Declaration, by the execution and recordation of such amendment following notice to all Members.

Section 15.7. Waiver. The Declarant, as the present most interested party in maintaining the high quality of development which by these covenants is sought to be assured for the Property, hereby expressly reserves unto itself (so long as these restrictions are in effect), the unqualified right to waive or alter from time to time such of the herein contained restrictions as it may deem best, as to any one or more of the Lots, which waiver or alteration shall be evidenced by the mutual written consent of the Declarant and the then-Owner of the Lot as to which some or all of said restrictions are to be waived or altered; such written consent to be duly acknowledged and recorded in the Office of the Recorder of Hamilton County, Indiana.

Section 15.8. Withdrawable Real Estate.

(a) The Declarant shall have the unilateral right, without the consent of the Class A Members or any Mortgagee, to execute and record an amendment to this Declaration withdrawing any portion of the Property on which Residences have not been constructed; provided, however, that not more than five (5) years have lapsed since the date of the recordation of this Declaration.

(b) Upon the dedication or the conveyance to any public entity or authority of any portion of the Property for public street purposes, this Declaration shall no longer be applicable to the land so dedicated or conveyed.

Section 15.9. Management Contracts. For such time as the Declarant has Class B membership status, the Declarant shall have the right to enter into professional management contracts on behalf of the Association for the management of the Property for terms not to exceed three (3) years; provided, however, that the Association shall have the right to terminate such contracts, with or without cause, upon sixty (60) days' written notice to the other party and without payment of a termination fee.

Section 15.10. Dissolution. The Association may be dissolved with the assent given in writing and signed by at least two-thirds (2/3) of each class of Members and in accordance with Article 13 of the Act. Upon dissolution of the Association, other than incident to a merger or

consolidation, the assets of the Association, both real and personal, shall be offered to an appropriate public agency to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association. In the event that such offer of dedication is refused, such assets shall be then offered to be granted, conveyed or assigned to any non-profit corporation, trust or other organization devoted to similar purposes and in accordance with Indiana law. Any such dedication or transfer of the Common Area shall not be in conflict with then-governing zoning ordinances or the designation of the Common Area as "open space".

ARTICLE XVI

DECLARANT'S RIGHTS

Section 16.1 Any and all of the rights and obligations of the Declarant set forth in this Declaration may be transferred, in whole or in part, to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded with the Recorder of Hamilton County, Indiana.

Section 16.2 Nothing in this Declaration shall be construed in a manner that limits or restricts the Declarant and/or any Builders in their development of the Property and construction of Residences thereon. Therefore, notwithstanding anything herein to the contrary, the Declarant and/or any Builders authorized by Declarant may maintain and carry upon the Common Area, and other portions of the Property and Lots owned by the Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Residences including, but not limited to, business offices, signs, model units, sales offices, and sales trailers.

IN TESTIMONY WHEREOF, witness the signature of the Declarant of this Declaration as of the date first above written.

DECLARANT:

M/I HOMES OF INDIANA, L.P., an Indiana limited partnership

By: M/I HOMES FIRST INDIANA, LLC, an Indiana limited liability company, its General Partner

By:  _____
Cliff White, Area President

CHICAGO TITLE

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public, in and for said County and State, personally appeared Cliff White, the Area President of M/I Homes of First Indiana, LLC, the General Partner of M/I Homes of Indiana, L.P., as the Declarant herein, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Hillsdale Grove this 14 day of November, 2006.

My Commission Expires:

October 10, 2010



Tommie Hamilton
Notary Public

Resident of Hendricks County, Indiana

Printed: Tommie Hamilton

This instrument prepared by: William M. Braman, Bingham McHale LLP, 8900 Keystone Crossing, Suite 400, Indianapolis, IN 46240, (317) 663-3714.

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

William M. Braman
William M. Braman, Preparer, Attorney at Law



CHICAGO TITLE

EXHIBIT "A"**LAND DESCRIPTION**

A part of the Southwest Quarter of the Northwest Quarter of Section 12, Township 17 North, Range 5 East, Hamilton County, Fall Creek Township, Indiana described as follows:

Commencing at a Railroad Spike found marking the Southwest Corner of the Northwest Quarter of Section 12, Township 17 North, Range 5 East; thence along the West line of said Quarter Section North 4 degrees 02 minutes 02 seconds East (assumed bearing and basis for this description) for a distance of 50.79 feet to a point; thence perpendicular to said West line South 85 degrees 57 minutes 58 seconds East for a distance of 20.00 feet to the existing right of way line of Olio Road as recorded in Instrument #200300064308; thence along said existing right of way of Olio Road for the following four courses, (1) North 20 degrees 07 minutes 18 seconds East for a distance of 244.40 feet; (2) North 09 degrees 19 minutes 19 seconds West for a distance of 130.45 feet; (3) North 1 degree 10 minutes 58 seconds East for a distance of 232.79 feet; (4) North 5 degrees 51 minutes 02 seconds East for a distance of 10.88 feet to a point; thence North 89 degrees 22 minutes 07 seconds East for a distance of 1254.69 feet through a capped rebar; thence South 4 degrees 11 minutes 25 seconds West for a distance of 658.21 feet (658.26 feet record) to a Stone found marking the Southeast corner of the West half of the Northwest Quarter of said Section 12; thence along the South line of said West half of the Northwest Quarter of said Section 12; thence along the South line of said West half of the Northwest Quarter South 89 degrees 38 minutes 30 seconds West for a distance of 1341.19 feet (1341.56 feet record) to the Point of Beginning. Containing 19.031 Acres more or less, subject to all recorded legal rights of way and easements.



CHICAGO TITLE

EXHIBIT "B"**STANDARDS OF TOWN OF FISHERS PUD ORDINANCE 010305C****A. Bulk and Density Standards**

Area	Hillsdale PUD
Land Use	Single-Family Residential
Maximum Lots	34
Lot Area SF	11,700
Min. Lot Width	90'
Min. Lot Depth	130'
Front Yard	25'
Side Yard	5'/15'
Rear Yard	35'
Min. SF ¹	1,800/2,400
Max. Lot Coverage	35%
Building Height ²	35'/25'
Parking ³	3
Common Area	Minimum 2 acres
Street (curb to curb)	30'

B. Landscaping

- 1) The landscaping standards of the Town of Fishers as adopted by Ordinance 080403C shall apply except for the following modification, which shall replace Section 3 Perimeter Planting Standards of the Landscape Ordinance:
 - a. Along Olio Road, a 200' buffer area (except for areas utilized for access, drainage, and utilities) shall be maintained with the existing stand of trees as provided by a tree preservation plan in accordance with Section 9.1 and Section 9.2 Natural Area Protection of Landscape Ordinance 080403C.
 - b. A landscape easement shall be located along the rear of the lots on the northern and eastern perimeters of the Property. The landscape easement shall contain existing 12' to 15' tall evergreens, which shall be replanted 25' on center. A tree preservation plan in accordance with Section 9.1 and Section 9.2 Natural Area Protection of Landscape Ordinance 080403C shall be provided for this landscape easement.
- 2) **Street Trees**
Streets shall have street trees on both sides of the street. Street trees shall be placed on average between 40 - 60 feet on center in a planting strip between the curb and the sidewalk if available. If utilities prevent the location of trees within this planting strip, then the required tree shall be planted within the front yard of the adjacent lot. The planting strip shall be a minimum of

¹ Refers to 1-story/2-story square footage minimum unless otherwise noted (and does not include basements)

² Refers to maximum building height for primary/accessory structures

³ Refers to minimum off-street parking spaces and includes the number of spaces inside a garage and on a driveway

four feet wide. Within 100' of an intersection, trees may be planted back of sidewalk in order to maintain vision clearance of traffic control signs. Trees shall be deciduous and selected from the Town's approved List of Recommended Species. Trees, as mentioned hereafter, shall be a minimum of three (3) inch caliper, as measured twelve (12) inches from the ground.

3) Residential Lot and Foundation Plantings

- All lots shall be required to have three (3) trees in the lot planting area with at least one in the front yard;
- All lots shall have a minimum of ten (10) shrubs planted along the foundation facing a street. Corner lots shall install a minimum of six (6) shrubs per side facing a street.

4) Preservation of Existing Trees

The preservation of an existing healthy tree shall constitute a credit toward meeting the landscape requirements in the ordinance. An in kind credit will be given per tree that contributes to and satisfies the intent of a particular section of the ordinance.

C. Architecture

1) Brick/Masonry

- Masonry shall be defined as brick, stone, cultured stone, stucco or EFIS materials;
- All homes shall have masonry on 50% of the front elevation, not including doors, windows and other openings;
- The exterior chase of fireplaces shall be brick, Hardiplank, or other masonry material, except for direct vent and interior fireplaces.

2) Siding/Window Requirements

- All siding shall be masonry, wood or Cemplank/Hardi plank type material (no vinyl or aluminum siding is permitted);
- All windows shall be wood, vinyl, vinyl clad or aluminum clad type material.

3) Roof Pitch Requirements

- Front to back 6/12 minimum;
- All homes shall have a minimum 8" overhangs.

4) Additional Requirements.

- All plans, including exterior colors, to be approved by the Committee prior to construction;
- No equipment vents permitted on the front of homes;
- Basement or crawl space required (no slab permitted);
- No outbuildings or storage sheds permitted;
- All driveways to be concrete or asphalt. Any modifications (i.e., color changes, stamping) must be approved by the Association.
- Public sidewalks required on all Lots;
- Uniform location of yard lights or coach lights as determined by the Declarant;

- Uniform mailboxes as determined by the Declarant are required.
- 5) Model Home Requirements
Model homes shall include:
- All model homes must be at least 2800 square feet (not including the basement); however, if a Builder builds and uses at one time more than one model home, then one of the model homes must be the largest model offered by that Builder in that project;
 - 3-car garage (unless impractical due to easements or similar site restrictions);
 - A finished basement; and
 - One of the following features on the rear façade: first floor masonry, sunroom, screened porch, or breakfast nook with landscaped patio (minimum 1 tree and 8 shrubs).

D. Parking

1) Garages

- Minimum 2-car garage per home and one open space a minimum of eighteen (18) feet in length;
- If a two-car front loading garage is equal to or exceeds 50 percent of the width of the Residence, the garage shall be side or rear loading or be recessed a minimum of eight (8) feet behind the front façade;
- If the garage is less than 50 percent of the width of the Residence, the garage may be front loading, but shall not protrude more than twenty (20) feet from the first floor front façade;
- Side loading or courtyard entry garages shall have two (2) windows located on the front elevation of the garage;
- Front-loading garages protruding more than ten (10) feet shall contain a window on the side of the garage closest to the entry and front and side loading garages protruding more than twenty (20) feet shall have two (2) windows on the side of the garage closest to the entry (except for the Monterey, Tennyson, Townsend, and Watkins). Residences which have a front-loading garage that protrudes in front of the first floor façade shall, including the garage, be equal to or greater than forty (40) feet wide; and
- For homes with front-loading three-car garages, the third car garage entrance must be recessed a minimum of sixteen (16) inches from the two-car garage door. Any three-car garage driveway must taper to a maximum of sixteen (16) feet wide at the lot line.

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