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DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS

This Declaration of Covenants, Conditions, Easements and Restrictions of Penn Oak ("Declaration") is made as of Aug 7, 2000, by PENN OAKS ENTERPRISES, LLC. ("Declarant").

Declarant states as follows:

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TICOR TITLE INSURANCE
Crown Point, Indiana

A. The Declarant is the fee owner of Real Estate set out on the plat of subdivision described as Penn Oak Unit 1 to the City of Crown Point as recorded in Plat Book 88, page 11, document No. 2000-012839 in the Office of the Recorder, Lake County, Indiana.

B. Declarant has established on the Real Estate a community to be commonly known as Penn Oak which, if carried to full and final completion, will consist of residential lots with dwelling units consisting of single-family homes.

C. The development contemplated hereby will require uniform and continuing care and maintenance for the primary benefit and enjoyment of the Owners and residents of Residential Units.

D. Declarant intends by this Declaration to impose upon the Real Estate and the development contemplated hereby mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners and residents of Residential Units in the development contemplated hereby by the recording of this Declaration.

E. Declarant has formed PENN OAK PROPERTY OWNERS ASSOCIATION, INC. as a nonprofit, mutual benefit corporation under the general laws of the State of Indiana ("Association") for the purpose of carrying out the powers and duties set forth herein, which Association approves in principle the site plans and common areas approved and to be approved by the City of Crown Point.

F. Declarant intends to convey all or any portion of the common area in the development contemplated hereby from time to time in fee simple title, free of financial encumbrances, to the Association, subject to easements, restrictions of record and such other conditions as Declarant may at the time of such conveyance deem appropriate.

AUG 7 2000

PETER BENJAMIN
LAKE COUNTY AUDITOR

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Return: Fleming Realty

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G. Declarant intends to sell and convey the Lots situated within the platted, to be platted, residential areas of the development contemplated hereby, and before doing so wishes to subject to and impose upon all real estate within the platted, to be platted, or annexed areas of the development contemplated hereby mutual and beneficial restrictions, covenants, conditions, easements, and charges under a general plan or scheme of improvement for the benefit and complement of the residential units and lands in the development contemplated hereby and future owners thereof.

NOW, THEREFORE, Declarant hereby declares that the Real Estate and any additional property as may by subsequent amendment hereto be added and subjected to this Declaration will be held, sold, and conveyed subject to the following.

GENERAL PROVISIONS

1. Purpose. The purpose of this Declaration is to protect the value and desirability of the Real Estate.

2. Declaration to Run with Land. The provisions of this Declaration will run with the Real Estate and will be binding on all parties having any right, title, or interest in the Real Estate or any part thereof, and their respective heirs, successors, successors-in-title, and assigns and will inure to the benefit of each owner thereof.

3. Dedication. So long as Declarant is the record title holder of all or any portion of the Real Estate, Declarant, for itself and its successors and assigns, specifically reserves unto itself the right and privilege to convey or contract to convey at a future time, any portion of the common area of the Development to any public agency or authority, or to any public or private utility for any of the following:

(a) storm water runoff, detention, retention, or conveyance serving all or any portion of the Development or nearby properties;

(b) public rights-of-way;

(c) utility services serving one or more of the Lots, including but not limited to any or all facilities for gas, electricity, telephone, cable television, water, and sanitary sewer services.

Such rights will also accrue to the Association as provided in this Declaration.

4. Agency for Plats. So long as Declarant is the owner of any Portion of the Development, Declarant, in its own capacity and as agent for any or all of the other Owners, may at any time and from time to time prepare, present for approval by any or all appropriate governmental entities, execute, and/or record a Plat, a re-plat, an amended plat, a corrective plat, or other similar survey or modification thereof, and may prepare, present for approval by any or all appropriate governmental entities, execute, and/or record any other documents with respect thereto. The execution of any such Plat or other document by Declarant as agent of any Owner will, for all such purposes, be deemed to constitute the execution of such Plat or other document by such Owner. This paragraph will be construed to permit Declarant (so long as Declarant owns any portion of the Development) to present for approval and obtain approval by the appropriate governmental authorities and to effectuate the recording of any Plat and any amendment thereto or re-platting thereof. Notwithstanding the foregoing, the agency rights granted to Declarant pursuant to this paragraph will be applicable only with respect to those Lots which are owned by Persons other than Declarant whereby:

- (a) The boundaries, setback lines, and easements over such Lot will remain unchanged; and
- (b) The benefits of the Common Areas with respect to such Lot will be substantially equivalent (although not necessarily precisely equal).

I.

DEFINITIONS

1. Area of Common Responsibility. Area of Common Responsibility will mean and refer to the Common Area, which becomes the responsibility of the Association. In addition, the office facilities and overhead of any property manager employed by or contracting with the Association, if located on the Development, will be part of the Area of Common Responsibility.

2. Association. Association will mean and refer to The Penn Oak Property Owners' Association, Inc., formed as an Indiana nonprofit, mutual benefit corporation, and its successors and assigns.

3. Board. Board will mean the Board of Directors of the Association.

4. By-Laws. By-Laws will refer to the By-Laws of the

Association, as such by-laws may exist and be in effect from time to time.

5. Common Area. Common Area will mean all portions of the Real Estate which have not been designated as residential lots in the Plat, including any ponds, open space, outlots, landscape parcels, public streets, public street entryway median planting strips, trails, and all other real and personal property now or hereafter owned by or subject to an easement in favor of the Association for the common use and enjoyment of the Owners.

6. Common Expenses. Common Expenses will mean and include the actual and estimated expenses of operating the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, and the Articles of Incorporation and By-Laws of the Association. Common Expenses will include, without limitation, the actual and estimated cost to the Association for the maintenance, management, operation, repair, improvement, and replacement of the Common Areas, real estate taxes or personal property taxes assessed against any Common Area, as well as any other costs or expense incurred by the Association for the benefit of the Common Area and the Owners.

7. Drainage System. Drainage System will mean and include all retention ponds and areas, detention ponds and areas, storm sewers, subsurface drainage tiles, swales, ditches, pipes, culverts, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Area, streets, or easements affecting one or more Lots, or property located outside the Development relating thereto; and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across the Development, including storm sewer lines and related facilities located on the property, for the benefit of the Development, other than such as may have been dedicated to the public and accepted for maintenance by the appropriate public agency.

8. Majority. Majority means those Eligible Votes, Owners, or other groups as the context may indicate, totaling more than 50% of the total number of Eligible Votes.

9. Owner. Owner will mean the record owner, whether one or more persons or entities, of any Lot or Unit, but excluding any party holding the fee simple title merely as Mortgagee. Owner may include Declarant. Only one Eligible Vote per Lot will be available despite multiple ownership of such Lot. Where appropriate within the context of any provision hereof, references

to an Owner will include any person occupying any Lot as a tenant or as otherwise permitted by any Owner.

10. Person. Person means a natural person, a corporation, a general or limited partnership, a joint venture, a trust, the trustee of a trust, a limited liability company, or any other legal entity.

II.
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PROPERTY RIGHTS
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1. In General. Every Lot in the Development will, after a Residential Unit is placed thereon, be used as single-family Residential Units. No Unit will be erected, placed, or permitted to remain upon any of the Lots except single-family residential Units. No Lot will be resubdivided except pursuant to any Plat. All parcels and tracts of land located within the Development which are not designated as lots for residential units on the Plat will be Common Area and will be used in a manner consistent with the zoning and use designated by such Plat, by this Declaration, or pursuant to the conditions designated by Declarant or by the Association.

The Common Area will, except as otherwise provided herein, remain private, and except as otherwise provided herein neither Declarant's execution or recording of the Plat nor the doing of any other action by Declarant is, or is intended to be, or will be construed as, a dedication to the public of the parcel. A license for the use and enjoyment of the Common Area is or will be granted by Declarant, its successors, and assigns or by the Association, or both, to the persons who are from time to time members of the Association. Said license will be on the terms and conditions deemed appropriate by the grantor of said license. Ownership of the Common Area, or any portion thereof, will be conveyed from time to time as determined by Declarant in its discretion in fee simple title, free of financial encumbrances, to the Association. Such conveyance will be subject to easements and restrictions of record, and such other conditions as Declarant may at the time of such conveyance deem appropriate. Such conveyance will be deemed to have been accepted by the Association and those persons who are, from time to time, members thereof upon the recording of a deed or deeds conveying said Common Area to the Association.

2. Owner's Rights of Enjoyment.

1. Every Owner will have a right by license of ingress and egress, use and enjoyment in and to some of the Common Area which right and license will be appurtenant to and will pass with the title to every Lot subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use the facilities.

(b) the right of the Association to suspend an Owner's voting rights, both as a Member and as an Owner, and to suspend the right to use any of the Common Area and facilities for any period during which any assessment of the Association against that Owner's Lot remains unpaid, and for any infraction by an Owner of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed 30 days;

(c) non-exclusive easement rights of all occupants of Residential Units and all invitees and guests thereof for pedestrian access to and across all sidewalks which are situated in the front yard of such Lot and are parallel or substantially parallel to the front Lot line of such Lot, as installed in the original construction of any Residential Unit, and the right of the Association to enter onto such Lot for the purpose of fulfilling the obligations of the Association pursuant to this Declaration to the extent that such sidewalks are not required hereunder to be maintained by the Association, the Owner of such Lot will maintain such sidewalks in good and sightly condition;

(d) Declarant's reserved easements, as described herein, and the right of Declarant to grant easements in and to the Common Area contained within the respective portions of the Development to any public agency, authority, or utility for such purposes which will benefit the Development or portions thereof and Owners or Lots contained therein;

(e) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds

(%) of all Owners present or represented by proxy at a meeting called for such purpose approve; provided, however, the lien and encumbrance of any such mortgage given by the Association will be subject and subordinate to any and all rights, interest, options, easements, and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Development; and

(f) the right of Declarant, for so long as Declarant is the Owner of any property in the Development, to dedicate or transfer all or any portion of the Common Area to any public agency or authority, or to any public or private utility for any of the following:

(i) storm water runoff, detention, retention, or conveyance serving all or any portion of the Development or nearby properties;

(ii) public rights-of-way;

(iii) utility services serving one or more of the Lots, including but not limited to any or all facilities for gas, electricity, telephone, cable television, water, and sanitary sewer services.

After Declarant is no longer the Owner of any property in the Development, such dedication or transfer may be made by the Association, provided that no such dedication or transfer will be effective unless such act is evidenced by an instrument agreeing to such dedication or transfer approved by a vote of at least two-thirds (%) of all Eligible Votes.

The owners rights of enjoyment may not be amended without the written consent of Declarant during the time that Declarant owns any property subject to this Declaration.

3. Owner's Rights to Ingress and Egress. Each Owner will have the right to pedestrian (not vehicular) ingress and egress over, upon, and across the Common Area necessary for access to such Owner's Lot and such other easements as may be designated on the Plat for access to such Common Area. Such rights will be appurtenant to and will run with title to each Lot.

4. Rules and Regulations. The Association may establish reasonable rules and regulations concerning the use of the Common Area, facilities located thereon, Residential Units and individual Lots. Copies of such regulations and amendments thereto will be furnished by the Association to all Owners prior to the rules' effective date. Such regulations will be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement is specifically overruled, canceled, or modified by the Association in a regular or special meeting by the vote of Owners holding a two-thirds (%) majority of the Eligible Votes or with the written approval of Declarant for so long as Declarant controls the Development herein. The Board will have the authority to impose reasonable monetary fines and other sanctions, and monetary fines may be collected by lien and foreclosure. In addition, the Association, through the Board, may, by contract or other agreement, enforce municipal ordinances or permit the municipality having jurisdiction to enforce ordinances affecting the Development for the benefit of the Association and its Members.

Pets. No animals, livestock, or poultry of any kind will be raised, bred, or kept on the Development, except that no more than a total of two animals (i.e. dogs, cats, small birds) may be kept in residences, subject to rules and regulations adopted by the Association through the Board, provided that such pets are not kept, bred, or maintained for any commercial purpose. The Board will have the absolute power to prohibit a pet, or any reasonably established class of pets (including, but not limited to, any specified type of animal other than dogs and cats, and any particular breeds of dogs and/or cats), from being kept on any Lot in the Development, including inside Residential Units. Excessive barking by dogs will be considered a nuisance requiring abatement.

RECORDING OFFICE
III.
SEAL
MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner of a Lot will be a member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Lot.

2. Classes of Membership and Voting Rights. The Association will have one class of voting membership which will be comprised of all Owners, without regard to whether there are Residential Units on such Owners' Lots. Each Owner will hold one membership for each Lot owned and will be entitled to one vote for each Lot owned, except as otherwise provided. When more than one person holds an interest in any Lot, all such persons will be members. The vote for such Lot will be exercised as such co-owners among themselves

determine evidenced by a certificate signed by all such Owners filed with the Association. Such signed certificate will also be conclusive with respect to voting rights of an Owner in instances where such Owner's voting is referred to in this Declaration. In no such event will more than one vote be cast with respect to any Lot either with respect to Association membership or Lot ownership.

3. Board of Directors. The Members will elect a Board of Directors of the Association ("Board") as prescribed by the Association's By-Laws. There will be three members of the initial Board of Directors, and subsequent Boards will have such numbers of members as may be provided in the By-Laws, provided that the By-Laws will not provide for less than three members of the Board. The Board will manage the affairs of the Association. The initial Board will be appointed by Declarant and will manage the affairs of the Association until Declarant transfers control of the Association to the Owners as required herein.

4. Professional Management. No contract or agreement for professional management of the Association nor any other contract with Declarant will be for a term in excess of three years. Any such agreement or contract will provide for termination by either party with or without cause without termination fee by written notice of 90 days or less.

5. Responsibilities of the Association. The Association is hereby authorized to maintain, repair, and replace the Common Area, to determine Common Expenses, to collect annual and special Assessments, and to grant any approvals whenever and to the extent called for by this Declaration for the common benefit of all such Owners. The Association will also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration. Neither the Association nor its officers or authorized agents will have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration as for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct. The Association will procure and maintain casualty insurance for the Common Area, liability insurance (including directors' and officers' insurance) and such other insurance as it deems necessary or advisable. The Association may contract for such services as management, snow removal, security

control, lawn care, trash removal, exterior maintenance and repair and such other services as the Association deems necessary or advisable.

6. Control and Transfer of Control of Association. During the development and construction stages of the Development and for so much of the selling period as described hereinafter, the Association will be operated and controlled by Declarant. The Board will, during such period, consist of persons appointed by Declarant, and each Owner will give and will be deemed to have given to Declarant an irrevocable proxy to vote on any and all matters on which the Owner is entitled to vote under this Declaration, any Supplemental Declaration, or under the Articles of Incorporation or the By-Laws of the Association.

The control of the Association will be transferred to the Owners (which includes Declarant with respect to each unsold Lot) 120 days after the date on which Declarant no longer owns any portion of the Development platted, to be platted, or to be annexed, as then ascertained, or on such earlier date as Declarant, in its discretion, may determine.

IV.

COMMON MAINTENANCE

1. Maintenance by Association. The Association will maintain and keep in good repair the Area of Common Responsibility, which responsibility will be deemed to include the Common Area. The maintenance of the Common Area will be deemed to include, but not to be limited to, maintenance, repair, and replacement (subject to later reimbursement from the insurance and casualty loss provisions contained at the Association's sole cost and expense as Common Expense) of all of the following located on the Common Area: trees, fences, shrubs, grass, signs, Common Area access and parking spaces, if any, walks, Trails, pedestrian bridges, Drainage System improvements (unless contracted otherwise to a public agency), the Common Area lighting and watering systems and other improvements situated upon the Common Area. The Association may, at its discretion, leave appropriate portions of the Common Area unmaintained to produce a "natural effect" for a natural habitat.

In addition, the Association will maintain, replace and keep in good repair the planting and landscape areas to include electrical and watering systems thereon located in and upon the

public street cul-de-sac circular areas (if any) and the entry way median strips and all parcels designated on the plat or otherwise situated at various Lots in the Development as Common Area.

In addition, the Association will maintain and keep in good repair the street name signs (unless installed and maintained by the municipality having jurisdiction) located on public streets in the Development.

In addition, the Association will pay for any utility consumption costs such as natural gas, electricity and water which serve the Common Area.

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ASSESSMENTS

1. Purpose of Assessment. The assessments for the Common Area and Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board.

2. Creation of Assessments.

(a) There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board. General assessments and special assessments will be allocated among all Owners of Residential Units or Lots which include Residential Units within the Association and will be for capital improvements and expenses determined by the Board to be for the benefit of the Association as a whole or otherwise as provided in this Declaration. Each Owner, by acceptance of such Owner's deed, is deemed to covenant and agree to pay all assessments created or referenced herein. All such assessments, together with interest, not to exceed the maximum legal rate, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law will be a charge on the land and will be a continuing lien upon the Lot against which each assessment is made.

(b) Each such assessment, together with interest, costs, and reasonable attorneys' fees, will also be the personal obligation of the person or persons who were the Owner(s) of such Residential Unit or Lot containing a Residential Unit at the time the assessment arose, and such Owner's grantee will be jointly and severally liable for total unpaid assessments as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage will be liable for unpaid assessments which accrued prior to such acquisition of title by such lender. Assessments will be paid in such manner and on such dates as may be fixed by the Board which may include, without limitation, monthly, quarterly, semi-annually or annually and acceleration of the annual assessments for delinquents. Unless the Board otherwise provides, all assessments will be paid annually within 30 days after the date of the billing.

3. Computation of Assessment.

(a) Budget. It will be the duty of the Board, at least 60 days before the beginning of the fiscal year and 30 days prior to the meeting at which the budget is to be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming year. In accepting bids and/or estimating Common Expenses prior to preparing the budget, the Board will separate the Common Expenses to the extent necessary to allocate said expenses among Owners as set forth below. If and to the extent applicable, the budget will include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared and will separately list Common Expenses.

(b) Amount of Assessments. Common Expenses shall be allocated among Owners in the Development on an equal per Lot basis. Where contiguous Lots are combined and approved as one building site, the allocated value is "one" Lot. Each Owner of any Lot or approved combined Lot building site (including any Residential Unit) in the Development hereby covenants and agrees to pay to the Association a Proportionate Share (as hereinafter defined) of the annual Common Expenses for the Development, as fixed, established and determined from time to time as herein provided. The Proportionate Share of each Owner in the Development shall be the percentage obtained by dividing "one" by the total number of Lots (and/or building sites if contiguous Lots are combined) shown on the Plats of the Development as the same may be recorded from time to time and owned by Owners (including Declarant). The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Lot for the following year to be delivered to each Owner at least 15 days prior to the meeting. The budget and the assessments shall become

effective unless disapproved at the meeting addressing Common Expenses by a vote of at least a two-thirds (%) Majority (present or by proxy) of the total Owners.

(c) Failure to Approve Budget. Notwithstanding the foregoing, however, if the Members disapprove the proposed budget or if the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as the budget has been determined as provided herein, the budget in effect for the then current year will continue for the succeeding year.

(d) Deficits. If the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit will be carried over and become the first item comprising the next year's budget as an additional basis for assessments for the following fiscal year, except that so long as Declarant controls the Association, and subject to Declarant's right to impose Special Assessments, Declarant will be responsible for such deficit; provided, however, that Declarant will be reimbursed by the Association for such deficits, together with interest at 10% per annum until so reimbursed, from available surpluses in later years or through a special assessment at the time of transfer of control of the Association to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Association. If the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, an allocable share of such excess (based on the amounts originally levied as assessments) will be a credit against the assessment(s) due from each Owner for the next fiscal year(s); provided, that Declarant will first be reimbursed for deficits previously paid, with interest, as required above before such excess will be so credited to Owners.

(e) Limitation on Increases. In each year thereafter, the total assessments per Lot Residential Unit per month for Common Expenses will not be increased by more than the greater of 10% over the prior year or \$40, until such time as Declarant relinquishes control of the Association.

4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable does not exceed \$50 per Lot in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Residential Unit to exceed this limitation will be effective only if approved by a two-thirds (%)

majority of the Eligible Votes, present in person or by proxy. Special assessments will be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. This Section will not apply to assessments levied.

5. Lien for Assessments.

(a) All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, will be secured by a lien on such Lot in favor of the Association. Such lien will be recorded by the Association with the Lake County Recorder. Such lien will be superior to all other liens and encumbrances on such Lot, except for (i) liens of ad valorem taxes or (ii) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Lake County, Indiana, and all amounts advanced to such respective Mortgage or Mortgages and secured thereby in accordance with the terms of such instrument.

(b) All other persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded in the Office of the Recorder of Lake County, Indiana, will be deemed to consent that such liens or encumbrances are and will be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

6. Effect of Nonpayment of Assessments; Remedies of the Association.

(a) **Lien Rights.** Any assessments which are not paid when due will be delinquent. Any assessment delinquent for a period of more than 10 days will incur a late charge in an amount as the Board may from time to time determine. The Association will cause a notice of delinquency to be given to any member who has not paid within 10 days following the due date. If the assessment is not paid within 30 days from the due date, a lien, as herein provided, will attach to the Lot and, in addition, the lien will include the late charge, interest, not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. If the assessment remains unpaid 60 days from the due date, the Association may, as the Board determines, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, or

all persons or parties in title, jointly and severally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property (i.e., mechanics and materialmen's liens). The lien provided for in this Article will be in favor of the Association and will be for the benefit of all other Owners. The Association, acting on behalf of the Owners, will have the power to bid on the Lot at any foreclosure sale or to acquire and to hold, lease, mortgage, or convey the Lot. No Owner may waive, purge himself, or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

(b) Priority of Application of Payment. All payments will be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

(c) Suspension of Voting Rights. If any assessment with respect to any Lot is not paid within 30 days from the due date thereof, the Board may suspend the voting rights of the delinquent Owner with respect to such Lot. Upon and during such suspension, the vote with respect to such Lot will not constitute one of the Eligible Votes. Such voting rights will cease to be suspended when all delinquent assessments with respect to such Owner's Lot are paid.

7. Capital Budget and Contribution. The Board will annually prepare a capital budget which will take into account the number and nature of replacement costs for the Common Area. The Board will set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association as shown on the capital budget, with respect to both amount and timing of need for funds by annual assessments over the period of the budget.

8. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, will be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot will not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage will extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (subject to the right of

the Association to payment out of available foreclosure sale proceeds). No sale or transfer will relieve such Lot from lien obligations for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, such Mortgagee's successors and assigns will not be liable for the share of the Common Expenses by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lots by such acquirer. Such unpaid share of Common Expenses will be deemed to be Common Expenses collective from all the Residential Unit or Lot which include Residential Units, including such acquirer and all successors and assigns thereof. Such procedure will not discharge the former Owner from personal liability for such unpaid assessment.

9. Capitalization of Association. Upon acquisition of record title to a Residential Unit or Lot which includes a Residential Unit from Declarant or upon completion of a Residential Unit by an Owner other than Declarant, such Owner will contribute to the capital of the Association an amount equal to a pro-rated portion of the annual general assessment for Common Expenses for that Lot as determined by the Board. Such pro-ration will be based upon the remaining portion of the assessment year during which the Owner acquired title or completed a Residential Unit.

10. Date of Commencement of Annual Assessments. The annual assessments provided for herein will commence as to all Lots subject to assessment under this Declaration on the first day of the month following the conveyance of the first Lot which includes a Residential Unit by Declarant to an Owner or the completion of a Residential Unit on a Lot by an Owner other than Declarant and will be due and payable in a manner and on a schedule as the Board may provide. The first annual assessment will be adjusted according to the number of months then remaining that fiscal year. The date any Lot becomes subject to assessment hereunder will be the date on which such Lot is transferred by Declarant to an Owner.

11. Assessments by Declarant.

(a) After the commencement of assessments on any Lot, Declarant will be liable for and agrees to pay the full amount of the annual assessment (prorated for partial years, if applicable) for each Residential Unit or Lot which include Residential Units which are owned by Declarant.

(b) Notwithstanding anything to the contrary herein, Declarant may contribute assessments due from it in services or materials or a combination of services and materials, rather than in money (herein collectively called "in-kind contribution"). The amount by which monetary assessments will be decreased as a result

of any in-kind contribution will be the fair market value of the contribution. If Declarant and the Association agree as to the value of any contribution, the value will be as agreed. If the Association and Declarant cannot agree as to the value of any contribution, Declarant will supply the Association with a detailed explanation of the service performed and material furnished, and the Association will acquire bids for performing like services and furnishing like materials from three independent contractors approved by Declarant who are in the business of providing such services and materials. If the Association and Declarant are still unable to agree on the value of the contribution, the value will be deemed to be the average of the bids received from the independent contractors.

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1. Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder), will, upon payment of the reasonable expenses of the Association associated therewith, be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) condemnation, damage or destruction to the Development or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) any delinquency in the payment of assessments or charges owned by an Owner of a Lot or Residential subject mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of 60 days;
- (d) any lapse, cancellation, or material modifications of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of eligible holders.

2. Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of this Declaration will defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns will hold any and all land so purchased subject to this Declaration. Notwithstanding any other provision of this Declaration, neither the Owners nor the Association will have any right to make any amendment to this Declaration which materially impairs the rights of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

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VII.

**This Document is the property of
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GENERAL PROVISIONS

1. Duration. This Declaration and the covenants, restrictions, charges and liens set out herein will run with and bind the Development, and will inure to the benefit of and be enforceable by Declarant, and its legal representatives, successors, and assigns. Except as otherwise expressly set forth herein, this Declaration benefits only the real property described in this Declaration, and there is no intention to the benefit any persons other than those having an interest in such real property. The existence of easement rights or covenant rights in Persons not owning or having an interest in such real property will not confer on any such person, any right whatever to enforce the covenants, conditions and restrictions hereby created. The easements granted hereunder will be perpetual, subject to the provisions of this Declaration; with the exception of the easement rights provided herein, this Declaration will continue and remain in full force and effect at all times with respect to the Development and each part thereof (subject, however, to the right to amend the provisions hereof until all lots are sold. This Declaration will remain in full force and effect, subject to termination at any time by the written election of Owners of two-thirds of the Lots. Upon the recording of such termination election in the Office of the Recorder of Lake County, Indiana, this Declaration and all provisions hereof (excepting the grants of easement provided herein) will expire and terminate as of the date of such recording without any further act or instrument by any Person.

2. Amendment.

(a) This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which will be in conflict therewith; (ii) at Declarant's option, if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) at Declarant's option, if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration or (iv) at Declarant's option, if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment will not adversely affect the title to any Owner's Lot unless any such Lot Owner will consent thereto in writing. Further, so long as Declarant owns any property in the Development or any property capable of being annexed thereto, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment will not adversely affect in a material magnitude, the substantive rights of any then present Lot Owners hereunder, nor will it substantially affect marketability of title to any Lot without the consent of the affected Owner.

(b) In addition to the above, the provisions of this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) a majority of the Owners and the consent of Declarant.

Amendments to this Declaration will become effective upon recordation in the Lake County, Indiana, records, unless a later effective date is specified therein.

3. Indemnification. The Association will indemnify each of its officers and directors against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors will not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. Officers and directors will have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the

Association (except to the extent that such officers or directors are Members of the Association and thereby affected through the assessment process), and the Association will indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein will not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association will, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4. Easements for Utilities. There is hereby reserved to the Association and to any public or private utility which is an assignee of the Association, blanket easements upon, across, above, and under all property within the Development for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Development or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system or security system which the Association might decide to have installed to serve the Development. Notwithstanding the foregoing, such easement rights will be limited to the Common Area and to portions of the Lots on which no Residential Unit, as originally constructed, was situated. It will be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board will have the right to grant such easement.

5. Construction and Sale. Notwithstanding any provision contained in the Declaration to the contrary, so long as construction and initial sale of Lots continues, it will be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units, and sales offices, and Declarant will have an easement for access to such facilities. The right to maintain and carry on such facilities and activities will include specifically the right to use residences owned by Declarant and the Common Area facilities, if any, which may be owned by the Association, as models and sales offices. This Section may not be amended without the express written consent of Declarant; provided, however, the rights contained herein will terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded or (b)

upon Declarant's recording a written statement that all sales activity has ceased.

6. General and Grammar. The singular, wherever used herein will be construed to mean the plural, when applicable, and the use of the masculine pronoun will include the neuter and feminine.

7. Severability. Whenever possible, each provision of this Declaration will be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration will be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions will continue only until twenty-one (21) years after the death of the last survivor of the individuals who were Owners, who were living on the date of this Declaration, and who originally purchased Lots from the Declarant.

10. Mailing Address. Each Owner of a Lot in the Development will file the correct mailing address of such Owner with Declarant and will notify Declarant promptly in writing of any subsequent change of address. Declarant will maintain a file of such addresses and make the same available to the Association. A written or printed notice, deposited in the United States Post Office, postage prepaid, and addressed to any Owner at the last address filed by such Owner with Declarant or Association will be sufficient and proper notice to such Owner wherever notices are required in this Declaration. Once Declarant transfers control of the Association to the Owners, any filing of correct mailing address or subsequent change will be to the Association which will make same available to Declarant as Declarant's interests may require.

VIII.

ENFORCEMENT

1. In General. Any party to whose benefit this Declaration inures, including Declarant, the Association and any Owner, may proceed at law or in equity to prevent the occurrence or continuation of any violation of this Declaration, but neither Declarant nor Association will be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any provision of this Declaration.

Notwithstanding any other provision in this Declaration of Covenants, Conditions, Easements and Restrictions to the contrary, the Association acting through the Board may elect to enforce any provision of the Declaration, the Association's By-Laws, the Rules and Regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for a violation for which abatement is sought or for which other action will be taken will pay all costs including attorneys fees actually incurred.

In addition thereto, any judgment for monetary damages arising from any such enforcement action, if not paid within 30 days from the due date, will constitute a lien on such Owner's lot in favor of the Association. Said lien will have the same priority as a lien for assessment and will be subject to foreclosure and such other provisions not inconsistent herewith.

In addition to and not in limitation of the foregoing, if the Association or any director, officer, or Member thereof, or any Owner incurs attorneys' fees or costs in enforcing its rights under this Declaration as a result of any breach hereof, regardless of whether the matter results in the filing of a suit in any court, the breaching Person will pay all reasonable attorneys' fees and costs incurred by the Association or such director, officer, or Member thereof, or such Owner.

2. Government Enforcement. The Plan Commission of the municipality having jurisdiction, its successors and assigns, will have no right, power, or authority, to enforce any covenants, commitments, restrictions, or other limitations contained herein other than those covenants, commitments, restrictions, or limitations that expressly run in favor of the Plan Commission of the municipality.

3. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of the Declaration will be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violating of this Declaration.

IX.

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PRIVATE AMENITIES AND SERVICES
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1. Private Amenities and Services. Elements comprising the Common Area will be owned and maintained by the Association so long as this Declaration remains in force. In the event of any termination of this Declaration and/or dissolution of the Association, the Association will convey the Common Area and any other applicable properties to a successor organization having similar purposes and powers as the Association (if any), and/or will use its best efforts to dedicate any or all applicable properties to the appropriate governmental agencies or utilities which normally hold and/or administer such properties. If and to the extent that such conveyance and/or dedication are not possible, all remaining properties will be disposed of as determined by the Superior Court of Lake County, Indiana, consistent with the purposes set forth in this Declaration.



X.

LIMITATION ON DECLARANT'S LIABILITY

1. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner acknowledges and agrees, that neither Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any partner, manager, member, director, officer or shareholder of Declarant (or any partner, member, officer, director or shareholder in any such assignee) will have any personal liability to the Association, or any Owner, Member or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration or the Association except, in the case of Declarant (or

its assignee), to the extent of its interest in the Real Estate and Additional Land (if any); and, in the event of a judgment, no execution or other action will be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgement debtor.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date above and caused this declaration to be signed.

Declarant:

PENN OAKS ENTERPRISES, LLC.

By:

Karl E. Hand
Member Karl E. Hand

ATTEST:

Thomas Fleming
Thomas Fleming

The above declaration is hereby approved and accepted this 3 day of Aug, 2000.

HOPPER CONSTRUCTION, INC.

By:

George Hopper
George Hopper

Attest:

Mary Jane Hopper
Mary Jane Hopper

F & H PROPERTIES, II, INC.

By:

Timothy G. Henderlong
Timothy G. Henderlong

Attest:

Thomas Fleming
Thomas Fleming

This instrument was prepared by:

Karl E. Hand
Hand Wilk & Hand
3235 - 45th Street
Highland, Indiana 46322
Telephone No. (219) 924-2640
FAX No. (219) 924-2694