

**AMENDED AND RESTATED
DEDICATION, PROTECTIVE RESTRICTIONS,
COVENANTS, LIMITATIONS, EASEMENTS, AND
APPROVALS OF THE PLAT OF
LOFTON WOODS, SECTION II AND
LOFTON WOODS, SECTION III,
SUBDIVISIONS IN ALLEN COUNTY, INDIANA**

PREFACE

The undersigned, being the owners of at least 60% of the lots in Lofton Woods, Section II, according to the plat thereof, and the owners of certain lots in Lofton Woods, Section III, according to the plat thereof, consent to and approve the following amendment and restatement of the Dedication, Protective Restrictions, Covenants, Limitations, Easements, and Approvals of Lofton Woods, Section II (recorded on April 30, 1971 in Plat Book 33, pages 14-16 and as Document No. 71-6844, which was subsequently amended by document recorded on April 25, 1996 as Document No. 960022052), and of Lofton Woods, Section III (recorded on May 12, 1977 in Plat Book 39, pages 44-50 and as Document No. 77-11265, which was subsequently amended by document recorded on November 28, 1978 as Document No. 78-38464); all in the office of the Recorder of Allen County, Indiana:

PROVISIONS

Section 1. **DEFINITIONS.** The following words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 "**Annual Assessments**", and in the singular form, "**Annual Assessment**". Annual assessments made by the Association under section 4.3.

1.2 "**Articles**". The articles of incorporation adopted by the Association and approved by the Indiana Secretary of State, and all amendments to those articles.

1.3 "**Assessments**". Collectively, Annual Assessments and Special Assessments made by the Association under section 4.

1.4 "*Association*". Lofton Woods Community Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

1.5 "*Board of Directors*". The duly elected board of directors of the Association.

1.6 "*Bylaws*". The bylaws adopted by the Association, and all amendments to those bylaws.

1.7 "*Committee*". The Architectural Control Committee established under section 5 of these Covenants.

1.8 "*Common Areas*". All real property in the Subdivision now or subsequently owned by the Association.

1.9 "*Covenants*". This document and the restrictions, limitations, and covenants imposed under it.

1.10 "*Lot*", and in plural form, "*Lots*". Any of the platted lots in the Subdivision, or any tract(s) of real estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance; provided, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot, shall be considered a "Lot" under the Covenants unless the tract has a frontage of at least the minimum width specified in section 6.4.

1.11 "*Members*". Members in good standing of the Association.

1.12 "*Original Covenants*". Collectively, the Dedication, Protective Restrictions, Covenants, Limitations, Easements, and Approvals of Section II of the Subdivision (recorded on April 30, 1971 in Plat Book 33, pages 14-16, which were subsequently amended by document recorded on April 25, 1996 as Document No. 960022052), and of Section III of the Subdivision (recorded on May 12, 1977 in Plat Book 39, pages 47-50, which were subsequently amended by document recorded on November 28, 1978 as Document No. 78-38464; all in the office of the Recorder of Allen County, Indiana.

1.13 "*Owner*", and in the plural form, "*Owners*". The record owner(s) (whether one or more persons or entities) of fee simple title to the Lots, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

- 1.14 "*Plan Commission*". The Fort Wayne Plan Commission, or its successor agency.
- 1.15 "*Plat*", and in the plural form, "*Plats*". The recorded secondary plat of a section in the Subdivision.
- 1.16 "*Special Assessments*". Special assessments made by the Association under section 4.4.
- 1.17 "*Subdivision*". Section II and Section III of the subdivision of Lofton Woods, according to the plats thereof.

Section 2. ***PROPERTY RIGHTS.***

2.1 ***Owners' Easements of Enjoyment.*** Each Owner shall have the right and an easement of enjoyment in the Common Areas that is appurtenant to and passes with title to every Lot, subject to the following rights which are granted to the Association:

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Areas.

2.1.2 To suspend the voting rights and right of an Owner to use the recreational facilities in the Common Areas for any period during which an assessment against the Owner's Lot remains unpaid, or if an Owner is in violation of the Covenants, the Articles, the Bylaws, or any published rule of the Association.

2.1.3 To dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded.

2.2 ***Delegation of Use.*** Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family and tenants or contract purchasers who reside on the Owner's Lot.

Section 3. **MEMBERSHIP AND VOTING RIGHTS.**

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

3.2 Each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

Section 4. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

4.1 **Creation of Lien and Personal Obligation of Assessments.** Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay Assessments to the Association. Assessments shall be established and collected as provided in these Covenants and the Bylaws. Payment of Assessments, together with interest, costs, and reasonable attorney fees, also shall be the personal obligation of the person who was the Owner of such Lot at the time when the Assessments became due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. Liens against Lots for nonpayment of Assessments shall be created and enforced in accordance with section 4.8.

4.2 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of residents in the Subdivision, and for the improvement of facilities in the Subdivision, and in particular for the improvement and maintenance of the Common Areas, including without limitation, repair, maintenance, the cost of labor, equipment, and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Board of Directors. In addition, Assessments shall be levied to provide for the proportionate burden of the maintenance of any common impoundment basin into which the Subdivision's surface waters drain.

4.3 **Annual Assessments.**

4.3.1 The minimum Annual Assessment shall be ~~300~~^{\$41.00} per Lot.

4.3.2 The minimum Annual Assessment may be increased each year by the Board of Directors by a percentage not more than 10% above the Annual Assessment for the previous year, without a vote of the membership of the Association.

4.3.3 The minimum Annual Assessment may be increased by a percentage in excess of 10% only by the vote or written assent of at least 60% of the Members.

4.3.4 The Board of Directors may decrease an Annual Assessment for a given year. However, if the Board of Directors does so, the Board of Directors also may increase the Annual Assessment for the succeeding year, to the amount of the Annual Assessment the year prior to the decrease, without approval of the Members.

4.3.5 If the Board of Directors increases an Annual Assessment by 10% or less, or increases an Annual Assessment under section 4.3.4, the Members may veto such increase by the vote or written assent of at least 60% of the Members.

4.4 *Special Assessments for Capital Improvements.* In addition to the Annual Assessments, the Association may levy, in any assessment year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of new construction of a capital improvement to serve the Subdivision, the Common Areas, or elsewhere in the Subdivision, including fixtures and related personal property; provided that:

4.4.1 Any Special Assessment shall require the vote or written assent of at least 75% of the Members; and

4.4.2 No Special Assessment shall be made if the Special Assessment in any way jeopardizes or affects the Association's ability to improve and maintain the Common Areas, or to pay the Association's *pro rata* share of the cost of maintaining any common impoundment basin serving the Subdivision.

4.5 *Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4.* Any action authorized to be taken by the Members under sections 4.3.3 or 4.4.1 shall be taken at a meeting of the Association called for that purpose. Written notice of such meeting shall be sent to all Members not less than 30 days, nor more than 60 days, in advance of the meeting. If the proposed action is favored by at least 60% of the votes cast at such meeting, but such vote is less than the requisite percentage of votes of the Members required under sections 4.3 or 4.4 (whichever applies), Members who were not present in person or by proxy may give their consent to the proposed action in writing, provided the written consent is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 *Uniform Rate of Assessments.* Assessments shall be fixed at a uniform rate for all Lots, and may be collected on a monthly or yearly basis, as determined by the Board.

4.7 *Due Dates.* The Board of Directors shall fix the amount of an Assessment against each Lot at least 30 days in advance of the date the Assessment is due. Written notice of an Assessment shall be given to every Owner. The due dates to pay an Assessment shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether Assessments against a Lot have been paid.

4.8 *Effect of Nonpayment of Assessments/Remedies of the Association.*

4.8.1 If any Owner shall fail, refuse, or neglect to make any payment of any Assessment when due, the Board of Directors may, in its discretion, declare the entire balance of all unpaid Assessments to be due and payable, with interest, attorney's fees, title expenses, interest, and any costs of collection. The Association also shall have a lien against each Lot for which there is a delinquent Assessment, for all sums due under this section 4, which lien shall run with the land. The Board of Directors then may file written notice of a lien against the Owner's Lot in the Office of the Recorder of Allen County, Indiana, which notice shall perfect the Association's lien.

4.8.2 Any Assessment not paid within 30 days after its due date shall bear interest from the due date at the rate of 12% per annum, or the legal rate of interest in Indiana, whichever is higher.

4.8.3 No Owner may waive or otherwise escape liability to pay Assessments by non-use of the Common Areas or abandonment of the Owner's Lot.

4.8.4 The lien for delinquent Assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association (and only the Association) may bring an action against each Owner of a Lot for which there is a delinquent Assessment to foreclose the Association's lien, to recover the total amount due the Association for all delinquent Assessments, together with the attorney fees, costs, and expenses incurred by the Association because of the Owner's failure to timely pay an Assessment made under this section 4, or both such actions. No Owner may personally bring an action against another Owner for failure of the other Owner to timely pay an Assessment.

4.8.5 The Board of Directors may make arrangements with the Owner who owes a delinquent Assessment to accept installment payments or a lesser amount, or may defer or decide not to foreclose a lien, if the Board of Directors, in its sole opinion, determines that the Owner has a financial hardship.

4.9 *Subordination of Assessment Lien to First Mortgage Liens.* The Association's lien for delinquent Assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect an Assessment lien against it. No sale or transfer of a Lot shall relieve an Owner or Lot from liability for any Assessment subsequently becoming due, or from the lien of an Assessment.

Section 5. *ARCHITECTURAL CONTROL.*

5.1 No building, fence, wall, in-ground swimming pool, or other structure shall be commenced, erected, or maintained on a Lot, nor shall any exterior addition, change, or alteration be made to a structure until the plans and specifications showing the structure's nature, kind, shape, height, materials, and location are submitted to, and approved by, the Committee in writing as to the structure's harmony of external design and location in relation to surrounding structures and topography in the Subdivision. Approval of such plans and specifications may not be unreasonably withheld.

5.2 The Committee shall be composed of three Members. The Committee members shall be appointed by the Board of Directors. All members of the Committee shall serve for a term of one year, but may be reappointed any number of terms. Members of the Committee shall not be entitled to any compensation for services performed.

5.3 The Committee shall have the exclusive authority and responsibility to review plans for construction of all buildings and other structures described in section 5.1 in the Subdivision. All decisions of the Committee shall be submitted to the Board of Directors, in writing, within ten days of the decision. Any Owner may appeal any decision of the Committee to the Board of Directors, which shall have final authority to approve or disapprove all such construction. Such appeal must be made in writing to the Board of Directors within 20 days from the date of the Committee's decision (including a deemed decision under section 5.4, concerning plans submitted to the Committee).

5.4 In the event the Committee fails to approve or disapprove the design and location of a proposal made under section 5.1 within 15 days after the applicable plans and specifications have been submitted properly to the Committee, approval under this section 5 will be deemed to be given.

5.5 In the event construction subject to review by the Committee under section 5 is commenced without the submission of plans to the Committee, either the Committee or the Board of Directors may, within 60 days from the commencement of the construction, review the structure under construction and approve or disapprove the construction. If the construction is

disapproved, the structure must be removed, and the Lot shall be returned to its condition prior to the commencement of the construction, with the cost of such undertaking paid entirely by the Owner or any other person or entity responsible for the initiation of the construction.

5.6 The Committee, any member of the Committee, and any of their respective heirs, personal representatives, successors, or assigns, shall not be liable to anyone by reason of any mistake in judgment, negligence, or non-feasance arising out of or related to the approval, disapproval, or failure to approve any plan submitted under this section 5; nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or for any drainage problems resulting from those plans. Every person or entity who submits plans to the Committee agrees, by submission of those plans, that the person or entity is not entitled to bring an action or suit against the Committee, any member of the Committee, or the Association to recover any damages, or to require the Committee, any member of the Committee, or the Association to take or refrain from taking any action whatever in regard to such plans, or in regard to any building or structure erected in accordance with those plans and specifications.

5.7 The submission of any plans and specifications to the Committee, or the approval of those plans and specifications by the Committee, shall not be deemed to guarantee or require the actual construction of the building or structure described; and no Lot Owner may claim any reliance upon the submission or approval of any such plans or the buildings or structures described in those plans.

Section 6. ***GENERAL PROVISIONS.***

6.1 *Use.*

6.1.1 Lots may not be used except for single-family residential purposes.

6.1.2 No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height.

6.1.3 Each residence shall include not less than a two-car garage, which shall be built as part of the residence and attached to it.

6.1.4 If use of a Lot or structure on it, or construction on a Lot, is in violation of these Covenants, and such use is discontinued, or such structure is damaged or destroyed, the use may not be resumed, or the structure may not be repaired or reconstructed, unless the use or structure complies with these Covenants.

6.2 *Dwelling Size.*

6.2.1 *Section II.* No residence shall be built on a Lot in Section II of the Subdivision having a ground floor area upon the foundation (exclusive of one-story open porches, breezeways, or garages) of less than 1,300 square feet for a one-story residence, or less than 850 square feet on the ground floor of a residence that has more than one story.

6.2.2 *Section III.* In Section III of the Subdivision, no residence having a ground floor area upon a foundation (exclusive of one-story open porches, breezeways, or garages), with less than the following described minimum areas, shall be built on the Lots indicated below:

LOT NUMBERS	ONE STORY	MORE THAN ONE STORY
117 — 139	1,120 sq. ft.	850 sq. ft.
94 — 116 and 140 — 151	1,300 sq. ft.	850 sq. ft.
58 — 93 and 152 — 188	1,400 sq. ft.	900 sq. ft.

6.3 *Building Lines.*

6.3.1 *Front Lines.* No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat.

6.3.2 *Side Lines.* No structure (except fences) shall be located on a Lot nearer than a distance of 10% of the Lot width at the building line, and the combined width of both side yards shall not be less than the distance equal to 25% of the Lot width on all Lots except Lot No. 71. On Lot 71, no structure (except fences) shall be located nearer than a distance of 4.5 feet to an interior lot line, and the combined width of both side yards shall be at least 25 feet.

6.3.3 *Rear Lines.* No structure (except fences) shall be located on an interior Lot nearer than 25 feet to the rear Lot line.

6.4 *Minimum Lot Size.*

6.4.1 *Section II.* No residence shall be erected or placed on a Lot in Section II of the Subdivision having a width of less than 70 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area less than 10,000 square feet.

6.4.2 *Section III.* No residence shall be erected or placed on a Lot in Section III of the Subdivision having a width of less than 70 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area less than 8,500 square feet.

6.5 *Utility Easements.* Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear 7 feet of each Lot. No Owner of a Lot shall erect or grant to any person, firm, or corporation, the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any kind for electrical, telephone, or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision) without the prior approval of the Committee. Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, shall carry not less than three wires, and shall have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which such installations are located for operation, maintenance and replacement of service connections.

6.6 *Surface Drainage Easements.* Surface drainage easements and Common Areas used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the surface of the applicable real estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition. The Allen County Surveyor (or other proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

6.7 *Nuisance.* No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on a Lot which, in the opinion of the Board of Directors, may be, or become, an annoyance or nuisance to an Owner.

6.8 *Temporary Structures.* No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, shed, detached garage, barn, or other outbuilding shall be constructed, erected, located, or used on any Lot for any purpose (including use as a residence), either temporarily or permanently; provided, however, that basements may be constructed in connection with the construction and use of a single-family residence.

6.9 *Outside Storage.* No boat, boat trailer, recreational vehicle, motor home, truck, camper, or any other wheeled vehicle (except automobiles and trucks which are rated 3/4 ton or less) shall be permitted to be parked ungaraged on a Lot for periods in excess of 48 hours, or for a period which is in the aggregate in excess of 8 days per calendar year. The term "truck" as used in this section 6.9, means every motor vehicle designed, used, or maintained primarily for the transportation of property, which vehicle is rated more than 3/4 ton.

6.10 *Clear Vision Area.*

6.10.1 No fence, wall, or plant material which obstructs clear vision from two feet to six feet above the paved streets shall be permitted in the following areas:

6.10.1.1 On corner Lots within a triangular area formed by the pavement edges of the two intersecting streets and a line connecting two points, which points are located 25 feet from the point of intersection of the two street pavements. Such area also shall be maintained on corner Lots with rounded corners by extending the street pavements to a point of intersection.

6.10.1.2 On all Lots within a triangular area formed by the pavement edge of the street, the edge of the driveway pavement on the Lot, and a line connecting two points, which points are located ten feet from the point of intersection of the street pavement and the driveway pavement.

6.10.2 Trees are permitted in the areas described in sections 6.10.1.1 and 6.10.1.2 if the foliage line of such trees is maintained at a minimum height of six feet.

6.11 *Swimming Pools.* No above-ground swimming pool which exceeds 60 inches in diameter or 12 inches in height shall be erected, located, or used on a Lot.

6.12 **Signs.** No sign of any kind shall be displayed to the public view on a Lot except:

6.12.1 One professional sign of not more than one square foot;

6.12.2 One sign of not more than five square feet advertising a Lot for sale or rent; or

6.12.3 Signs used by a builder to advertise a Lot during the construction and sales periods.

6.13 **Antennas, Satellite Dishes, and Solar Panels.** Notwithstanding any provision in these Covenants to the contrary, the following restrictions shall apply to all Lots and residences on them:

6.13.1 **Radio Antennas.** No radio antenna with more than 30 square feet of grid area, or which has a height in excess of six feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No free-standing radio antenna shall be permitted on a Lot.

6.13.2 **Television Antennas.** A freestanding television antenna, or a television antenna installed on the roof of a residence, may not be installed or constructed higher than is necessary to receive an acceptable quality signal. A freestanding television antenna also shall be installed to the rear of the residence on a Lot, unless such location precludes reception of an acceptable quality signal.

6.13.3 **Satellite Dishes.** No satellite receiving dish or disk in excess of one meter shall be permitted on a Lot. A satellite receiving dish or disk which is one meter or less in diameter may be installed on a Lot, provided that, in the opinion of the Committee, the dish or disk is not visible from the street in front of the Lot on which such installation occurs.

6.13.4 **Solar Panels.** No solar panels (attached, detached, or freestanding) shall be permitted on a Lot, without the prior approval of the Committee.

6.13.5 **Modification of Restrictions.** If an applicable federal or state law or regulation makes any height, area, or locational restriction in sections 6.13.1, 6.13.2, 6.13.3, or 6.13.4 unenforceable, the unenforceable restriction shall be deemed to be modified automatically to the extent necessary to allow the restriction to be enforceable under such law or regulation.

6.14 *Oil Drilling.* No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained, or permitted on a Lot.

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

6.16 *Dumping.* No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept on a Lot except in sanitary containers. No incinerators shall be kept or allowed on a Lot.

6.17 *Workmanship.*

6.17.1 All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roll siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot. No roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

6.17.2 In Section II of the Subdivision, at least 20% of the area of the front exterior walls of a one-story residence shall consist of brick, limestone, or other natural stone.

6.18 *Driveways.*

6.18.1 All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width. Any driveway constructed within the boundary lines of a Lot prior to the existence of sidewalks shall be so constructed that the elevation of the driveway at a point one foot outside the Lot boundary line shall be four inches above the grade elevation of the established curb adjacent to the Lot. At such point shall be installed a one-half inch bituminous expansion joint, and then the driveway shall proceed at a gradient of one-fourth inch per foot to a point of six feet outside the Lot boundary, at which point another one-half inch bituminous expansion joint shall be installed. The remaining five and one-half feet of the driveway to the curb shall be a gradient of one-half inch per foot.

6.18.2 No driveway access to Maplecrest Road right-of-way shall be permitted from Lots numbered 63 through 65 inclusive, and 77-79 inclusive.

6.19 *Individual Utilities.* No individual water supply system or individual sanitary sewage disposal system shall be installed, maintained, or used on a Lot. No fuel or oil storage tanks, except an underground tank or tanks which have an aggregate storage capacity of 15 gallons, shall be maintained on a Lot.

6.20 *Street Utility Easements.* In addition to the utility easements designated on the plat and granted in these Covenants, easements in the streets (as shown on the Plat) are reserved and granted to all public utility companies, and the Owners and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain, and remove every type of gas main, water main, and sewer main (sanitary and storm) with all necessary appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction over the Subdivision as to maintenance and repair of said streets.

6.21 *Storm Water Runoff.* No rain and storm water runoff, or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving the Subdivision, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivision's storm and surface water runoff sewer system.

6.22 *Completion of Infrastructure.* Before any residence on a Lot shall be used and occupied as such, all infrastructure improvements serving the Lot shall be installed as shown on the approved plans and specifications for the Subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. This covenant shall run with the land, and shall be enforceable by the Plan Commission or by any aggrieved Owner.

6.23 *Certificate of Occupancy.* Before a Lot may be used or occupied, such user or occupier shall first obtain from the applicable zoning administrator, the improvement location permit and certificate of occupancy required by the applicable zoning ordinance.

6.24 *Subdivision.* No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, an Owner shall have the right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under section 1.10.

6.25 *Duration of Covenants.* These Covenants shall be effective for a period of ten years from the date these Covenants are recorded; after which time the Covenants shall be renewed automatically for successive periods of ten years.

6.26 *Amendments.* Any provision of these Covenants may be amended, but such amendment shall be subject to the following requirements and limitations:

6.26.1 An amendatory document must be signed by the Owners of at least 60% of all Lots in the Subdivision. For purposes of this section 6.26.1, the term "owner" shall have the same meaning with respect to Lots in such future sections, as the term "Owner" is defined in section 1.10.

6.26.2 The approval of the Plan Commission shall be obtained.

Section 7. ***ENFORCEMENT AND ATTORNEY FEES AND RELATED EXPENSES.***

7.1 Except where otherwise provided in these Covenants, the Association or any Owner (individually or collectively) shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association or an Owner to enforce any provision in these Covenants shall in no event be deemed as a waiver of the right to do so later.

7.2 In the event the Association, an Owner, or the Plan Commission prevails in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by any provision of these Covenants, the prevailing party shall be entitled to recover from the party against whom the proceeding was brought, the reasonable attorney fees and related costs and expenses incurred in such proceeding.

Section 8. ***MISCELLANEOUS PROVISIONS.***

8.1 *Binding Effect.* These Covenants shall run with the land, and shall bind and inure to the benefit of all pertinent parties identified in these Covenants.

8.2 *Invalidation.* Invalidation of any provision in these Covenants by judgment or court order shall not affect the other provisions in these Covenants, and such provisions shall remain in full force and effect.

8.3 *Governing Law.* These Covenants shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana.

8.4 *Headings.* The section headings in these Covenants are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this agreement.

8.5 *Time of Essence.* Time is of the essence in these Covenants.

8.6 *Computation of Time.* In computing a time period prescribed in these Covenants, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

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This instrument prepared by James A. Federoff, attorney at law.