

29th

APPROVED THIS MARCH DAY OF 20 05

DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR CHESWICK PLACE SUBDIVISION

PIKE TOWNSHIP ASSESSOR

~~DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR CHESWICK PLACE SUBDIVISION~~

THIS DECLARATION OF COVENANTS, EASEMENTS, ~~CONDITIONS AND RESTRICTIONS~~ FOR CHESWICK PLACE SUBDIVISION ("Declaration"), made this 29th day of MARCH, 2005, by M/I Homes of Indiana, LP, by M/I First Indiana, LLC, its sole general partner, 8500 Keystone Crossing, Suite 190, Indianapolis, Indiana, 46240 (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A" ("Real Estate"); and

WHEREAS, Declarant intends to develop the Real Estate, by subdividing the Real Estate and platting same into residential Lots, which shall be known as Cheswick Place Subdivision (hereinafter sometimes referred to as "Cheswick"); and

WHEREAS, Declarant intends to sell and convey the Lots within Cheswick and desires to subject the Real Estate to certain covenants, conditions, and restrictions ("Covenants") in order to ensure that the development and use of the various Lots on the Real Estate are harmonious and do not adversely affect the value of surrounding Lots on the Real Estate and the future owners of the property; and

WHEREAS, Declarant desires to provide for maintenance of the Common Areas, Landscape and Utility Easements, Streets and other improvements located on the Real Estate which are of common benefit to the Owners of the various Lots within said subdivision, and to that end desires to establish certain obligations on said Owners and a system of assessments and charges upon said Owners for certain maintenance and other costs in connection with the operation of Cheswick;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real

MARION COUNTY RECORDER
APRIL 1, 2005
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Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part of parts thereof.

ARTICLE I.

GENERAL PURPOSE OF THIS DECLARATION

The Real Estate is hereby subject to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive structures and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may not be harmonious with other improvements on the Real Estate, to preserve and maintain proper setbacks from streets and adequate free space between structures, to provide for adequate and proper maintenance of the Real Estate so as to ensure a high quality appearance and condition of the Real Estate and so as to meet the requirements of certain governmental agencies, all for the purpose of preserving the values of all Lots within Cheswick and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Cheswick.

ARTICLE II.

DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1: Architectural Control Committee. The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Cheswick to be appointed in accordance with this Declaration to review, approve or disapprove and oversee construction of, and all subsequent modifications, additions or alterations to, Improvements.

Section 2: Annual Assessment. Amount to be paid to the Association by each Owner of a Developed Lot annually.

Section 3: Assessment. Collectively referring to Initial Assessments, Annual Assessments, Lot Assessments and Special Assessments.

Section 4: Association. "Association" means Cheswick Homeowners' Association, Inc., a not-for-profit Indiana Corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

Section 5: Association Documents. This Declaration (as the same may be amended and/or supplemented from time to time) and the formative documents of the Association, consisting of the articles of incorporation, code of regulations and any and all procedures, rules, regulations or policies adopted by the Association.

Section 6: Board. The Board of trustees of the Association and when context requires, means the Architectural Control Committee.

Section 7: Carriage Home Lot. Carriage lots shall be lots developed with homes with attached garages having alley access.

Section 8: Cheswick. "Cheswick" means the Real Estate as it is platted and recorded by Declarant in accordance with the provisions of this Declaration.

Section 9: Common Areas. "Common Areas" means certain areas not amenable to development which may be designed as streets, alleys, landscape areas, utility and drainage easements or other such areas shown on the Plat and which are intended for the common benefit of all Lots.

Section 10: Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, streets, alleys, certain sewer and water lines, Easements, Drainage System, real estate taxes and assessments, if any, attributable to the Common Area or consumed in

furtherance of the Association's duties and obligations and conducting its affairs and generally discharging the duties and obligations imposed upon it by this Declaration or assumed by it pursuant to authorization granted by this Declaration.

Section 11: Community Standard. Community standard is the standard of conduct, maintenance, or other activity, generally prevailing throughout the Property, as determined by the ACC from time to time.

Section 12: Developed Lot. Any Lot owned by anyone other than the Declarant.

Section 13: Declarant. "Declarant" means M/I Homes of Indiana, LP, or any other person, firm, corporation or partnership which succeeds to the interest of M/I Homes of Indiana, LP, as developer and/or owner of Cheswick.

Section 14: Drainage System. "Drainage System" means storm sewers, subsurface drainage tiles, pipes, retention ponds, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over and across Cheswick.

Section 15: Easements. "Easements" refer to those areas reserved as Easements, on the Plat of Cheswick.

Section 16: Improvements. "Improvements" means all man-made or man-installed alterations to the property which cause the property to deviate from its natural condition, including but not limited to buildings, outbuildings and garages; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools, tennis courts, swing sets and recreational structures of all descriptions; slope and drainage alternations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches, trees, hedges, shrubs and other forms of landscaping.

and all other structures or every type.

Section 17: Initial Assessment. The "initial assessment" is the one time charge paid to the declarant from the owner of a developed lot at the time such owner acquires title to such lot.

Section 18: Lot. "Lot" means any of the separate parcels numbered and identified on the Plat of Cheswick, as recorded in the Public Records, as amended or revised from time to time as a separate building lot and continuing a separate tax parcel identification number, and any other discrete parcel of real property designated by Declarant, excluding the Common Property and any portion of the Property dedicated for public use. Declarant has and reserves the right to split and/or combine Lots into new Lots without the consent or approval of any other Owners, as Declarant may deem such split or combination to be beneficial to the Property from time to time. Any and all references herein to a "Lot" shall include any such replatted Lots. Once a split/combination is completed, the former lots shall cease to be "Lots" for any and all purposes hereunder. Lots include both Developed and Undeveloped Lots.

Section 19: Lot Assessment. "Lot assessment" means an assessment that the Committee may levy against one or more Developed Lots to reimburse the Association for costs incurred on behalf of those. Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owners of those Lots; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expense chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Lot Assessment by the Board.

Section 20: Manager: "Manager" means the person or entity retained by the Committee to assist in the management of the Association.

Section 21: Member. "Member" means any member of the Association.

Section 22: Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 23: Operating Fund. "Operating Fund" means the fund established pursuant to Article IX.

Section 24: Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 25: Plat. "Plat" means the final Plat recorded for Cheswick.

Section 26: Property. "Property" means all of the real property described in Exhibit A attached hereto and that is owned in fee simple by the Association, together with all easements and appurtenances.

Section 27: Public Records. "Public Records" means the records maintained in the Office of the Recorder, Marion County, Indiana.

Section 28: Reserve Fund. "Reserve Fund" means the fund established pursuant to Article IX.

Section 29: Rules. "Rules" means the rules and regulations governing (i) use of the Property and the Common Property and (ii) the conduct of Members and their respective families, guests, licensees and invitees, as the same may be established by the Association from time to time pursuant to Article VIII.

Section 30: Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed to provide for the discharge of sanitary sewage from any or all Lots, as the same are or may be constructed at any time, and any replacement thereof or substitute thereof.

Section 31: Special Assessment: "Special Assessment" an assessment levied by the Association against all Developed Lots pursuant to Article IX or at a special meeting of the Members of the Association to pay for capital expenditures or interest expense on indebtedness

incurred for the purpose of making capital expenditures and not projected to be paid out of the Reserve Fund, or any other extraordinary expense not included in the Association budget.

Section 32: State. "State" means the State of Indiana, and, unless the context requires otherwise, any political subdivision thereof exercising jurisdiction over the Property.

Section 33: Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the Plat of Cheswick, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

Section 34: Turnover Date. "Turnover Date" means the date described in Article VII.
Section B.

Section 35: Undeveloped Lot. "Undeveloped Lot" - any Lot owned by Declarant.

Section 36: Village Lot. Village lots shall be developed with homes with attached garages having public street access.

ARTICLE III.

GOALS

The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes:

- A. Compliance with all zoning and similar governmental regulations;
- B. Promotion of the health, safety and welfare of all Owners and residents of the property;
- C. Preservation, beautification and maintenance of the Property and all Improvements;
and
- D. Establishment of requirements for the development and use of the Property.

ARTICLE IV

GENERAL RESTRICTIONS

The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon Declarant and every Owner or occupant thereof, their respective heirs, successors and assigns as well as their family members, Guests, licensees and invitees.

Section 1: Maintenance of Premises. In order to maintain the standards of Cheswick, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant, authorized agents of Marion County or the Association to cut the growth or weeds, or clear the refuse from the Lot at the expense of the Owner. The Association shall place and record a lien against said Lot in an amount equal to the expenses therefore and costs which costs may include reasonable attorneys' fees for the placement of said lien should such be deemed necessary by the Association. Said liens shall be subject and subordinate only to taxes, municipal liens, and the lien of any bona fide mortgage upon any Lot. At the option of the Association, said liens may be foreclosed upon in any court of competent jurisdiction by the Association as Plaintiff for the amount of lien with interest, attorneys' fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws.

Section 2: Residential Purpose. No Lot shall be used except for residential purposes and ancillary home occupations as may be permitted by law and/or ordinance. No other buildings shall be erected, altered, placed or permitted on any Lot until a dwelling not to exceed two (2) stories in height has been erected on said Lot. A dwelling shall have an attached garage of a minimum size of 400 square feet to accommodate at least two (2) cars.

Section 3: Easements. Easements for installation and maintenance of utilities, drainage facilities, and ingress-egress are reserved as shown on the recorded Plat.

Section 4: Inoperable Vehicles. At no time shall any unlicensed and/or inoperable vehicle be permitted on any Lot, Common Area, street or easement unless kept entirely within a garage.

Section 5: Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

Section 6: Drainage Ditches. Drainage swales (ditches) along roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of authorized agents of Marion County. Any Owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Marion County may cause said repairs to be accomplished and the bill for the cost of said repairs will be sent to the affected property Owner for the immediate payment.

Section 7: Use of Lots. Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a residence. No improvements may be constructed on any Lot until and unless the plans therefore have been approved by the ACC. All improvements, excepting only landscaping, shall be constructed no nearer the street or streets on which a Lot fronts than the platted setback line(s) for such Lot, unless a variance to permit construction forward of a setback line has been approved by the appropriate governmental entity exercising jurisdiction over the property, and by the ACC.

Section 8: Use of Common Property. Any Common Property may be used only in accordance with the purposes for which it is intended and for any reasonable purposes incidental to the residential use of a Lot. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Owners and occupants, and shall comply with the provisions of this Declaration, the laws of the State, and the Rules.

Section 9: Hazardous Actions or Materials. Nothing shall be done or kept in or on any Lot or in or on any portion of the Common Property that is unlawful or hazardous, that might

reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Property or that might unreasonably disturb the quiet occupancy of any person residing on any other Lot. This paragraph shall not be construed so as to prohibit Declarant from construction activities consistent with its residential construction practices.

Section 10: Signs. No signs of any character shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by Declarant while marketing the Lots and residences for sale; (ii) street and identification signs installed by the Association or Declarant; and (iii) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is for sale.

Section 11: Animals. No person may keep, breed, board or raise any animal, livestock, reptiles, or poultry of any kind for breeding or other commercial purpose on any lot, or in or upon any part of the Common Property, unless expressly permitted by the Rules. All domestic pets shall be properly restrained and shall not be permitted to roam free or loose on the Property, other than on the Lot of the owner of such pet(s). No animal, including a domestic pet, shall be kept on the Property if the size, type or characteristics of such animal constitute a nuisance. Proper Lot maintenance as required elsewhere herein shall include the obligation to regularly remove pet waste from an Owner's Lot.

Section 12. Nuisances. No noxious or offensive trade shall be permitted on the Property or within any dwelling located on the Property, nor shall any use be made nor condition allowed to exist on any Lot which unreasonably disturbs or interferes with the quiet occupancy of any person residing on any other Lot.

Section 13: Business. No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on the Property, without the prior written approval of the Board. This provision shall not prohibit a "home office" use, in connection with which no

non-resident employees are working on the Property, and no customers, employees, subcontractors or other third parties park on the Property.

Section 14: Storage. No open storage of any kind is permitted. No storage buildings of any kind are permitted, including without limitation, sheds, barns or any freestanding building.

Section 15: Trash. Except for the reasonably necessary activities of Declarant during the original development of the Property, no burning or storage of trash of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers, screened from view and stored either inside of a permitted structure or to the side or rear of the home constructed on the Lot.

Section 16: Antennae. To the extent such prohibition is permitted by federal legislation, no radio, satellite dish, television or other electronic antennae or aerial may be erected or maintained on any Lot or the exterior of any Improvement, without the prior written approval of the ACC. No satellite dishes larger than 24 inches in diameter shall be permitted and shall not be installed on the front façade of the house.

Section 17: Utility Lines. All utility lines on the Property shall be underground, subject to the requirements of relevant governmental authorities and utility companies.

Section 18: Tanks. No tanks for the storage of propane gas or fuel oil shall be permitted to be located above or beneath the ground of any Lot except that propane gas grills are permitted.

Section 19: Street Trees. Declarant may designate one (1) or more trees to be planted along the street in front of each Lot. If Declarant determines to designate street trees, then Lot Owners shall be deemed to have agreed to such uniform street trees. Each Lot Owner shall care

for, and if necessary, replace such tree or trees at the Lot Owners expense with a like type and size of tree (a minimum 3" caliper).

Section 20: Mailbox. Declarant may designate a curbside mailbox for each Lot with a uniform design. If the mailbox is damaged, destroyed or deteriorates, then each Lot Owner, at such Lot Owner's expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailbox.

Section 21: Fencing. The ACC shall have the authority to establish standards according to which fencing and walls may be permitted in Cheswick. Said authority shall include the power to prohibit fencing or walls, or both, entirely, to prohibit or require fencing or walls of certain types, and to prohibit or require fencing or walls of certain types (or entirely) in certain areas. All fencing and walls shall meet any applicable requirements set forth by the Architectural Control Committee and must be approved by the Architectural Control Committee in writing, prior to the installation thereof. Nothing contained herein shall be interpreted or construed to permit the use of approved fencing materials to accomplish a purpose or use otherwise prohibited hereunder and in no event shall chain link or similar metal or wire fencing be permitted.

Section 22: Compliance with Zoning. Certain provisions of this Declaration may have been included herein as a result of governmental requirements established through the zoning and development plan approval processes in the State, County and/or City in which the Property is located. Compliance with all such governmental requirements, for so long as such requirements are effective and binding, is required by this Declaration. However, in the event the governmental entity(ies) change or agree to a modification of such underlying obligation(s), or if such obligations lapse or for any reason whatsoever become legally unenforceable, this Declaration

shall be deemed modified, ipso facto and without the need for further action on the part of the Declarant or any Member, such that this Declaration requires compliance with the obligation as affected by such change or modification.

Section 23: Swimming Pools. Above-ground swimming pools are prohibited.

Section 24: Decorative Appurtenances. Decorative appurtenances such as statues, bird baths, etc. may be placed in a rear yard of a Lot only.

Section 25: Lighting. All homes shall have dusk to dawn carriage lights or yard lights.

Section 26: Garages. All homes shall be constructed with attached garages capable of storing two automobiles.

Section 27: Outside Storage. No outside storage or extended parking of RV's, campers, trailers, boats, boat trailers, snow removal equipment, unlicensed or inoperable vehicles or trucks larger than ½ ton pick-up shall be permitted, with the exception of 24 hour periods.

Section 28: Carports. No carport or outbuildings shall be permitted.

Section 29: Rentals. No home shall be sold for the purpose of rental and no home may be leased for a time period of longer than six (6) months without specific approval by the Home Owners Association.

Section 30: Parking. No vehicular parking will be allowed in the alleyways. This restriction will be enforced by the HOA.

Section 31: Home Owners Association. The Home Owners Association declaration of Covenants shall include language to strongly encourage the residents of the Carriage Homes along Lincoln Drive and 39th Street to use the garage in the alley behind the homes and strongly discourage residents from use of the parking on the street in front of the homes. Residents should

endeavor to use good judgment and be a “good neighbor” in regard to parking within the community.

Section 32: Tree Preservation.

1. The plan provides for tree planting along the interior streets, one tree per lot, being three inches (3”) in caliper at the time of planting to create a true boulevard effect within the development.
2. A landscape easement shall be provided to buffer 39th Street. A minimum of 30 feet in width shall be provided along the southern right of way of 39th Street. The easement area shall preserve the existing tree line. Said landscape easement shall remain undisturbed with the exception of walking paths/sidewalks, off-street parking nodes and required utilities. Future owners of these lots may only remove trees that are diseased or dead only after verification and approval by HOA. Mitigation measures for any tree removal outside the specifications of this commitment shall be determined by the HOA.
3. The existing tree line along the western side of Lincoln Road shall be preserved to the greatest extent possible with the exception of walking paths/sidewalks, off-street parking nodes and required utilities.
4. Along the north side of the 38th Street right of way, at a minimum, 80 feet in width shall be provided as a landscape easement, exclusive of any right of way existing or dedicated as a part of this rezoning. Said landscape easement shall remain undisturbed with the exception of required detention area and required utilities. Additional tree preservation shall occur in the area of lots 208 through 212 as described in paragraph II, A.1, above.
5. The existing perimeter tree lines shall be preserved to the greatest extent possible

with the exception of walking paths/sidewalks, off-street parking and required utilities. In particular the tree lines the northern property lines immediately adjacent to Robertson Village and Northern Estates lots shall be preserved to the greatest extent possible with the exception of any required drainage or utilities.

6. A tree preservation plan shall be submitted for Administrative approval prior to application for Improvement Location Permits. This plan shall, at a minimum: a) delineate the location of existing treed areas to be preserved, b) a tree inventory of a 20' by 20' sample area to characterize the size and species of such trees, c) indicate proposed development, and d) identify the method of preservation (e.g. provision of snow fencing or stake straw bales at the individual drip line during construction activity).

7. All non-invasive trees greater than ten caliper inches in diameter, which are healthy and disease free, as determined by an arborist shall be saved, or if removed shall be mitigated by the planting of additional trees at a ratio of one to one between the caliper inches of trees removed and the total caliper inches of trees replanted.

ARTICLE V.

DECLARANT'S/ASSOCIATION'S RIGHT TO GUARANTEE COMPLIANCE

Section 1: In the event that the Owner of any Lot in Cheswick shall fail to maintain that Lot or any of its improvements situated thereon in accordance with the provisions of these Covenants, the Association, or prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter

upon said Lot, perform such acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from the Owner of said Lot. Neither Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon. The Association/Declarant may place a lien on any Lot in Cheswick for non-payment of fees.

ARTICLE VI.

CHESWICK ARCHITECTURAL CONTROL COMMITTEE

Section 1: Appointment of Architectural Control Committee. The Board of Directors of the Association, or Declarant if the Association is not yet incorporated, shall appoint the members of the Architectural Control Committee (hereinafter sometimes referred to as "ACC"). The ACC shall consist of three (3) members who shall be appointed by the Association. The term of any Association appointed member of the ACC shall be one (1) year in length.

Section 2: Construction Approvals. No construction of any building or structure of any kind, including additions, alterations, swimming pools, fences, screens and walls shall begin within Cheswick until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. However, no freestanding storage building of kind shall be permitted on any Lot in Cheswick Place. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any defects in such plans

or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale showing, among other things, the development standards for Cheswick which were made part of the City of Indianapolis Metropolitan Development Commission commitments for rezoning petition 2003-ZON-148, 2003-DP-020 now filed and recorded in the office of the Recorder of Marion County, Indiana. The determination of whether satisfactory provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. Once the ACC has approved a set of plans and specifications the applicant/Owner shall complete construction of the project which is the subject of the approved plans within one (1) year of obtaining ACC approval. The required landscaping and driveways shall be complete at the time of completion of the building, or as soon as weather and season permit. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

Section 3: Duties of ACC. The ACC shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the ACC for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons therefore.

Section 4: Liability of ACC. Neither the ACC nor any agent thereof, nor Declarant, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 5: Inspection. The ACC or its agents may inspect work being performed to assure compliance with the approved plans and this Declaration.

ARTICLE VII.

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1: Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Lots within Cheswick and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvements, fencing, operation, and maintenance of the Common Areas, Landscape Easements, Utility Easements, and Drainage System, including, but not limited to, the payment of taxes and insurance thereon and for the costs of labor, equipment, material, and management furnished with respect to the Common Areas, Landscape Easements and Utility Easements; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each owner hereby covenants and agrees to pay the Association:

- (a) A pro-rata share (as hereinafter defined) of the annual Assessments fixed, established, and determined from time to time as hereinafter provided; and
- b) A pro-rata share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2: Liability for Assessments. All Assessments shall be a prior lien on the Lots with respect to which said Assessments are in favor of the Association, subject and subordinate only to taxes, municipal liens, and to the lien of any bona fide mortgage upon any Lot, and at the option of the Association Assessments may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of the Assessment with interest, attorneys' fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws. Each Owner of any of said Lots from the time of obtaining title thereto shall be held to have covenanted personally to pay to the Association all charges and Assessments provided herein which were due and unpaid at the time he/she obtained title and all such charges and Assessments thereafter made or falling due during his/her ownership thereof.

Each Owner, by accepting title to any Lot or Lots and by accepting membership in the Association shall be held to have vested the Association with the right and power in its own name to fix charges and levy Assessments and to prosecute all suits, legal or equitable or otherwise which may, in the opinion of the Association, be necessary or advisable for the collection of such charges and Assessments.

Section 3: Pro-Rata Share. The pro-rata share of each Owner for purposes of this Article VI shall be the percentage obtained by dividing one by the total number of Lots within Cheswick multiplied by the number of Lots owned by each Owner.

Section 4: Basis of Annual Assessment. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days of the beginning of each fiscal year of the Association.

Section 5: Basis of Special Assessment. Should the Board of Directors of the Association at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy special Assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessment.

Section 6: Notice of Meetings. Written notice of any meeting called for the purpose of taking action to authorize Assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 7: Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal

year of the Association shall be the calendar year but may be changed from time to time by action of the Association. The annual Assessment provided for herein shall commence on the date the Lot is transferred from Declarant to another owner. Declarant shall be responsible for all deficits of the Association prior to the turnover date of the Association. The first annual Assessment for each Lot shall be pro-rated for the balance of the fiscal year of the Association in which such Assessment is made. The annual Assessment for each year after the first Assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual Assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such Assessments in installments. Declarant is not responsible to pay Association for any maintenance assessments for lots it owns. Declarant may use any funds in Association bank account to pay Association expenses regardless of the year the funds were collected or the year the were expenses occurred.

Section 8: A common area initial assessment of two hundred dollars (\$200.00) shall be paid to the declarant from the owner of a developed lot at the time of closing for the purpose of upkeep to the common area(s).

Section 9: Duties of the Association.

(a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special Assessment to be kept and maintained, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all Assessments levied by the Association

upon the Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in the event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(b) The Association shall promptly furnish to any Owner or Mortgagee upon request a certificate in writing signed by an officer of the Association, setting forth the extent to which Assessment has been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

(c) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws of this Declaration which is not cured within forty-five (45) days.

(d) The Association shall, upon notification of conveyance of a Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

Section 9: Adjustments. In the event that 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 shall be carried over and become an additional basis for Assessments for the following fiscal year. 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. In the event that 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, a Pro-Rata Share of such excess shall be a credit against the Assessment(s) due from each Owner for the next fiscal

year(s).

ARTICLE VIII.

ORGANIZATION AND DUTIES OF ASSOCIATION

Section 1: Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with Cheswick Homeowners Association, Inc.'s Articles of Incorporation, Code of By-Laws and Declaration of Covenants, Conditions and Restrictions which have been filed or will be filed by Declarant.

Section 2: Membership. The members of the Association shall consist of the Declarant and the Owners of Lots in Cheswick provided that, in the event that any one Lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one (1) member for voting purposes. There shall be three classes of memberships, as follows

Class A Members shall be the owner(s) of any Carriage Home Lot;

Class B Members shall be the owner(s) of any Village Home Lot; and,

Class C shall be the Declarant.

Owners shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 3: Board of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4: Board Members. Initially, the Board of Directors shall consist of three (3) members. The Initial Board shall serve as said Board members until seventy-five percent (75%) of

the Lots in Cheswick have been sold and closed upon. Thereafter, the Board shall consist of three (3) members who shall be Association members and shall be elected by the Association membership. The Board membership may not consist of persons who have an interest in a common Lot. Other than the Initial Board, each Board member shall serve a three (3) year term. However, the first Board members elected by the Association shall serve terms as follows:

- (a) 1 newly elected Board member shall serve a one (1) year term;
- (b) 1 newly elected Board member shall serve a two (2) year term;
- (c) 1 newly elected Board member shall serve a three (3) year term.

All subsequent Board members shall serve three (3) year terms.

Section 5: General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name of, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the determination of Common Expenses, the collection of annual and special Assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall 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.

Section 6: Liability of Association. Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, unless such act or failure to act is in the nature of willful or reckless disregard of the rights of the Owners or in the nature of the willful, intentional, fraudulent, or reckless misconduct.

Section 7: Amendment of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10)

years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than fifty percent (50%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty-six and two-thirds percent (66 2/3%) of the Lot Owners. Any Amendment must be recorded.

Section 8: Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any or all Common Areas or Easements. The Association shall also maintain in force adequate insurance, insuring all Common Property against windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount sufficient to cover any foreseeable maintenance, removal or replacement costs in the event of damage attributable to such hazards. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agents at any time, but in no event shall such fidelity bond

coverage be less than the sum of three (3) months' Assessments on all Lots in Cheswick, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason.

Section 9: Condemnation; Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority of votes of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 10: Mortgagees' Rights. The Mortgagee shall have the right, at their option, jointly and severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediately reimbursement therefor from the

Association.

ARTICLE IX.

GENERAL PROVISIONS

Section 1: Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 2: Scope of Covenants. Declarant and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, covenants and conditions, contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity. Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Lot; provided, however, that the relinquishing of all such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3: Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 4: Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in

no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 5: Rights of Mortgagees. Except to the extent otherwise provided in Article VI no breach of this Declaration shall 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 shall hold any and all land so purchased subject to this Declaration and any liens for past due assessments on the Real Estate shall be canceled and no longer providing a secured interest in said Real Estate. Similarly, if the Real Estate is transferred by way of deed-in-lieu of foreclosure any lien on the Real Estate for past due assessments shall be canceled and cease to provide a secured interest in the property to the lienor. The provisions of Article VII hereinabove notwithstanding, neither the Owners nor the Association shall 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.

Section 6: Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 7: Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way Owners define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 8: Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of Owner's names and addresses referred to in Article VI; or (b) seventy-two (72) hours after the deposit thereof in any United

States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 9: Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

“By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants, Conditions and Restrictions for Cheswick pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Marion County, Indiana”,
and properly identifying the recording instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against an Owner of any interest in any portion of the Real Estate.

Section 10: Provisions Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 11: Reservations of Declarant. The provisions of Article VI hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least thirty-two (32) Lots within Cheswick, without the approval or consent of the Owners or Mortgagees of the Lots; provided that Declarant shall not be entitled to make any amendment which has materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

Section 12: Owners' Easement of Enjoyment. Each Owner shall have a right and

easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of Common Areas by an Owner for any period during which any Assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of any published rules and regulations;

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Owners of at least two-thirds (2/3) of the Lots has been recorded.

Section 13: Rights to Common Areas. Title to all Common Areas shall be held in the Association, and each Owner shall have, as non-exclusive, reciprocal easements appurtenant to his or her Lot, a right of access to his or her Lot over the Streets or alleys, and the right of proper utilization and benefit of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his or her Lot; provided, however, that no Owner shall materially interfere with any other Owner in exercising his or her rights hereunder. In the event that any Owner's use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

Section 14: Transfer of Control of Owner's Association and Delivery of Warranty Deed to Common Areas. Declarant shall transfer control of the Owner's Association to the Lot Owners and give a Warranty Deed conveying the Common Areas to the Association free and clear of encumbrances no later than the earlier of (a) four (4) months after seventy-five percent (75%) of the Lots have been sold and closed upon or (b) three (3) years after the first Lot is sold and closed upon.

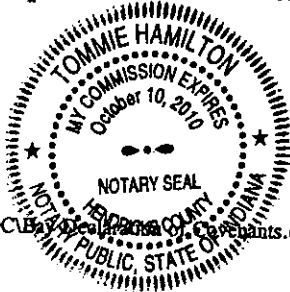
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed on the date first above written.

DECLARANT:

[Signature]
By: _____
Member

STATE OF INDIANA)
)SS:
COUNTY OF Marion)

Before me, a Notary Public in and for said County and State, personally appeared, Member, Steven H. Spencer, Area President the 29 day of March, 2005, who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath, stated that the representations therein contained are true.



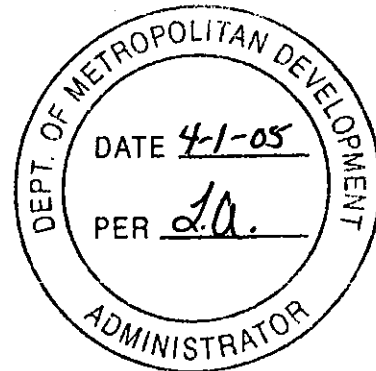
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Tommie Hamilton
Notary Public, Tommie Hamilton
Resident Hendricks County, IN
Commission Expires Oct. 10, 2010

50 FILED

APR 01 2005

Martha A. Womacke



Approved 03 / 29 / 2005
Washington Township Assessor
By: [Signature]
Real Estate Deputy