

**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF  
THE ESTATES OF CLAY WEST**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made as of the \_\_\_\_ day of \_\_\_\_\_, 2001, by THE ESTATES, LLC (“**Declarant**”).

**Recitals**

- A. Declarant is the legal or equitable owner of the real estate located in Hamilton County, Indiana, described in Exhibit A, upon which Declarant intends, but is not obligated, to develop a residential subdivision to be known as The Estates of Clay West (“**The Estates**”).
- B. Declarant has or will construct certain improvements and amenities which shall constitute Community Area.
- C. Declarant desires to provide for the preservation and enhancement of the property values and amenities in The Estates and for the maintenance of the Tract and the improvements thereon, and to this end desires to subject the Tract to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Tract and the future owner thereof.
- D. Declarant deems it desirable, for the efficient preservation of the values and amenities in The Estates, to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, promoting the recreation, health, safety and welfare of the Owners of Lots in The Estates and performing the duties and obligations required under this Declaration.
- E. Declarant shall incorporate under the laws of the State of Indiana a non-profit corporation known as The Estates Homeowners Association, Inc., for the purpose of exercising such functions.

Declarant hereby declares that all of the Lots and lands in the Tract as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of Lots in the Tract, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tract as a whole and of each of the Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its successors and assigns, and upon the parties having or acquiring any interest in the Tract or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant and its Successors in title to the Tract or any part or parts thereof.

## Article 1. DEFINITIONS

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall have the following meanings:

“**Architectural Guidelines**” means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.

“**Architectural Review Board**” or “**Review Board**” means that entity established pursuant to this Declaration for the purposes therein stated.

“**Articles**” means the Articles of Incorporation of the Corporation, as amended from time to time.

“**Assessments**” means all sums lawfully assessed against the Members of the Corporation or as declared by this Declaration, any Supplemental Declaration, the Articles or the By-Laws.

“**Board of Directors**” means the governing body of the Corporation elected by the Members in accordance with the By-Laws.

“**Builder**” means a person or entity engaged in the organized construction of a Residence on a Lot.

“**Building Setback Lines or B.S.L.**” are established on the Plat between which lines and the nearest Lot line, no structure shall be erected.

“**By-Laws**” means the Code of By-Laws of the Corporation, as amended from time to time.

“**Common Area**” means (i) those portions of the Property, including the Entry Ways and other improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Corporation from time to time for the common use, benefit and enjoyment of the Owners (as hereinafter denied), and (ii) items (if any) deemed Common Area for maintenance purposes only. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated on the Plat (as hereinafter defined) as a “Block”, “Common Area”, or “C.A.”. The Common Area is to be conveyed to the Corporation at the time of the conveyance of the first Lot to an Owner and shall be held by the Corporation for the use and benefit of the Owners subject to such rules and regulations established from time to time by the Corporation.

“**Community Area**” means (i) the Drainage System, (ii) the area designated on the Plat as Common Area, (iii) the Entry Ways, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that are located on, over or below or through the Tract, (v) any areas of land (1) shown on any Plat, (2) described in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of some, but not necessarily all, of the Owners of Lots; and (vi) the private streets within the Common Area.

“**Corporation**” means The Estates Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns, (sometimes “**Association**”).

**“Declarant”** means The Estates, LLC, its successors and assigns to its interest in the Tract other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant).

**“Development Area”** means the land described in Exhibit A (sometimes referred to herein as **“Tract”**).

**“Drainage Board”** means the Hamilton County Drainage Board, its successors or assigns.

**“Drainage System”** means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention ponds, and the other structures, fixtures, properties, equipment and Facilities located within the Tract and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Tract including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

**“Entry Ways”** means the structures constructed as an entrance to The Estates including signage, brick walls, fencing, and the entry gate.

**“Facilities”** means the Common Areas, Community Areas and all improvements thereto (including landscaping) and all property owned by the Corporation.

**“General Plan of Development”** means that plan prepared by Declarant and approved, if necessary, by appropriate public agencies that outlines the total scheme of development and general uses of land in the Development Area, as such may be amended from time to time.

**“Lot”** means a platted lot as shown on a Plat.

**“Maintenance Costs”** means all of the costs necessary to keep the Facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any part of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility, and all expenses related to the performance of the duties of the Association under this Declaration.

**“Member”** means a Class A or Class B member of the Corporation and **“Members”** means Class A and Class B members of the Corporation.

**“Mortgagee”** means the holder of a first mortgage on a Residence.

**“Owner”** means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely as security for the performance of an obligation.

**“Person”** means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof

**“Plat”** means a final secondary plat of a portion of the Development Area recorded in the Office of the Recorder of Hamilton County, Indiana.

**“Reserve for Replacements”** means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.

**“Residence”** means any structure intended exclusively for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.

**“Restrictions”** means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration, as the same may from time to time be amended.

**“The Estates of Clay West”** or **“The Estates”** means the name by which the Tract shall be known.

**“Tract”** means the real estate described in Exhibit A (sometimes referred to herein as the **“Development Area”**).

**“Zoning Authority”** with respect to any action means the Director of the Department Of Community Services of the City of Carmel or, where he lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals from, or review the action, or the failure to act of the Director.

**“Zoning Ordinance”** means The Zoning Ordinance of the City of Carmel/Clay Township, Indiana, as amended.

## Article 2. DECLARATION

Declarant hereby expressly declares that the Tract shall be subject to these Restrictions. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

## Article 3. DRAINAGE SYSTEM

The Drainage System has or will be constructed for the purpose of controlling drainage within and adjacent to the Development Area. Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the Drainage System is accepted as a legal drain by the Drainage Board. After such date, the Corporation shall maintain the Drainage System to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any portion of the Drainage System located entirely upon his Lot which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.

#### Article 4. MAINTENANCE OF ENTRY WAYS AND COMMUNITY AREA

The Corporation shall maintain the Entry Ways and the Community Area, and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs and other plantings located on an Entry Way or within the Community Area shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive entrance to The Estates or a part thereof or a planting area within The Estates. All entrance signs located on an Entry Way shall be maintained at all times in good and sightly condition appropriate to a first-class residential subdivision.

#### Article 5. CONSTRUCTION OF RESIDENCES

A. **Land Use.** Lots may be used only for residential purposes (occupied by only one (1) immediate family) and only one Residence may be constructed thereon. No portion of any Lot may be sold or subdivided. Notwithstanding any provision in the applicable Zoning Ordinance to the contrary, no Lot may be used for any “Special Use” that is not clearly incidental and necessary to single family dwellings.

B. **The Estates Architectural Guidelines.** The ownership, use, and enjoyment of each Lot is subject to The Estates Architectural Guidelines, a copy of which is attached hereto, made a part hereof, and marked Exhibit B.

C. **Building Location.** No building may be erected between the building line (“B.S.L.”) shown on the Plat and the front, side or rear Lot line.

D. **Storage Tanks.** No gas or oil storage tanks shall be located on the Tract.

E. **Construction and Landscaping.** All construction upon, landscaping of, and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. All landscaping specified on the landscaping plan approved by the Architectural Review Board shall be installed on the Lot strictly in accordance with such approved plan within thirty (30) days following substantial completion of the Residence unless the Board agrees to a later landscaping completion date.

F. **Sanitary Sewer Systems.** The sole sanitary sewerage collection system for each Lot shall be operated by the Clay Township Regional Waste District or a successor public agency or public utility.

G. **Water Systems.** Domestic water service will be available to each Lot from an Indianapolis Water Company water line located within the right-of-way of an adjacent street and each Owner shall connect to such water line to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto.

H. **Drainage.** In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of such Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage

Board, the “**Drainage Easements**” reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are located such that water from any adjacent Lot shall have adequate drainage along such swale and such Owner shall install necessary culverts upon their respective Lots as necessary to permit proper drainage. Lots within The Estates may be included in a legal drain established by the Drainage Board. In such event, each Lot in The Estates will be subject to assessment by the Drainage Board for the cost of maintenance of the portion of the Drainage System and/or the Lakes included in such legal drain, which assessment will be a lien against the Lot. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of surrounding Lots. Perimeter foundation drains, sump pump drains and downspouts shall not be outletted into streets or street rights-of-way. These drains shall be connected whenever feasible into a subsurface drainage tile. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

I. **Diligence in Construction.** Every building whose construction on any Lot is begun shall be completed within eighteen (18) months after the beginning of such construction. If an improvement has been partially or totally destroyed by fire or otherwise, such structure shall be razed or restored within three (3) months from the time of such destruction or damage, provided, if the Owner is restoring the Residence and has commenced such restoration and is diligently prosecuting the completion thereof, such Person shall have a total of twelve (12) months to complete such restoration.

J. **Prohibition of Used Structures.** All structures constructed or placed on any Lot shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

K. **Restrictions on Use.** The following Restrictions on the use and enjoyment of the Lots, Residences and Common Areas shall be in addition to any other covenants or restrictions contained herein and in any subdivision plat of any part of the Tract heretofore or hereafter recorded, and all such Restrictions are for the mutual benefit of and be enforceable by any Owner, or by Declarant or the Corporation. Present or future Owners or the Declarant or Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These Restrictions are as follows:

(i) Nothing shall be done or kept in any Residence, or on any Lot, which will cause an increase in the rate of insurance on any Common Areas. No Owner shall permit anything to be done or kept in his Residence or on his Lot which will result in a cancellation of insurance on any part of the Common Areas, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(ii) No nuisance shall be permitted and no waste shall be committed in Common Area, Residence or on any Lot.

(iii) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Residence or placed on the outside walls of

any building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board unless otherwise expressly authorized herein, or in any recorded subdivision plat, or by the rules, regulations and guidelines of the Architectural Review Board.

(iv) No Residence or Lot shall be used in any unlawful manner or in any manner which might cause injury to the reputation of the subdivision developed or to be developed on the Tract, or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Residence or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(v) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(vi) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Tract.

(vii) All Owners and members of their families, their guests, or invitees, and all occupants of any Residence or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Architectural Review Board or Corporation governing the operation, use and enjoyment of the Common Areas.

(viii) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission from the Architectural Review Board.

(ix) Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Architectural Review Board or Corporation.

## Article 6. MAINTENANCE OF LOTS

A. **Vehicle Parking.** No camper, motor home, truck, trailer, boat, motorcycle, bus, commercial vehicle of any kind, or disabled vehicle may be parked or stored overnight or longer on any Lot.

B. **Signs.** Except for such signs as Declarant may in its absolute discretion display in connection with the development of The Estates and the sale of Lots therein, no sign of any kind shall be displayed to the public view on any Lot except that one (1) sign of not more than four (4) square feet may be displayed at any time for the purpose of

advertising the property for sale or may be displayed by a Builder to advertise the property during construction.

C. **Nuisances/Animals.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. No animals shall be kept or maintained on any Lot except the usual household pets, and, in such cases, such household pets shall be kept reasonably confined so as not to become a nuisance. Barking dogs shall constitute a nuisance.

D. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers approved by the Architectural Review Board and out of public sight, except for the evening prior to and the day of garbage pickup. All equipment for storage or disposal of such materials shall be kept clean and sanitary. No Owner shall burn or permit the burning outdoors of garbage, refuse, leaves, branches or other debris.

E. **Livestock and Poultry.** No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Owners of dogs shall so control or confine them so as to avoid barking which will annoy or disturb adjoining Owners.

F. **Outside Burning.** No trash, leaves, or other materials shall be burned upon a Lot.

G. **Electric Bug Killers.** Electric bug killers, “zappers” and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners and shall only be operated when outside activities require the use thereof and not continuously.

H. **Garage Doors.** All garage doors shall remain fully lowered and closed except when in use for ingress and egress to the garage.

I. **Periodic Watering of Lawns.** Each Owner shall water the lawn area of the Lot on a regular basis sufficient to maintain a lush green yard. If an Owner fails to comply with this restriction, the Architectural Review Board shall have the right to water the lawn at the expense of the Owner thereof and the Architectural Review Board shall have a lien against the watered Lot for the expense thereof

J. **Maintenance of Lots** Declarant shall have the responsibility to maintain all lots owned by Declarant. Once a Lot(s) has been purchased by the Owner, the Owner of said Lot(s) shall at all times maintain the Lot(s) and any improvements situated thereon in such a manner as to prevent the Lot(s) or improvements from becoming unsightly and, specifically, such Owner shall:

- (i) Mow the Lot(s) at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- (ii) Remove all debris or rubbish;

- (iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Tract;
- (iv) Cut down and remove dead trees;
- (v) Where applicable, prevent debris and foreign material from entering drainage areas; and
- (vi) Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

**K. Declarant's and the Corporation's Right to Perform Certain Maintenance.** In the event that any Owner of a Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the Declarant, until the Applicable Date (as hereinafter defined), and, thereafter, the Corporation, shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof to the Declarant or the Corporation shall be collected as a special assessment against such Owner and his Lot in the manner provided for herein for the collection of Maintenance Costs. Neither the Declarant nor the Corporation, nor any of its agents, employees, or contractors, shall be liable for any damage which may result from any maintenance work performed hereunder.

**L. Model Homes.** No Owner of any Lot shall build or permit the building upon his Lot of any dwelling house that is to be used as a model home, without permission to do so from the Declarant.

**M. Temporary Structures.** No temporary house, trailer, tent, garage or other outbuilding shall be placed or erected on any Lot, nor shall any overnight camping be permitted on any Lot.

## Article 7. THE ESTATES HOMEOWNERS ASSOCIATION, INC.

**A. Membership.** Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person would realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

**B. Powers.** The Corporation shall have such powers as are set forth in this Declaration and in the Articles, together with all other powers that belong to it by law.

**C. Classes of Members.** The Corporation shall have two (2) classes of members as follows:

Class A. Every Person who is an Owner shall be a Class A Member.

Class B. Declarant shall be a Class B Member. No other person, except a successor to substantially all of the interest of Declarant in the

Development Area, shall hold a Class B membership in the Corporation. The Class B membership shall terminate upon the written resignation of the Class B Member, when the Declarant no longer owns any of the Lots in the Development Area (as depicted on the General Plan of Development) or shown on the Plat, or on December 31, 2010, whichever first occurs (the “**Applicable Date**”).

**D. Voting and Other Rights of Members.** The voting and other rights of members shall be as specified in the Articles and By-Laws, except that a Class B Member shall have ten (10) votes for each Lot owned by the Class B Member.

**E. Reserve for Replacements.** Declarant, or the Board of Directors (once the Declarant relinquishes responsibility for operating and maintaining the Community Areas), may establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Declarant or the Board, as the case may be, to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area. In determining the amount the Declarant or the Board, as the case may be, shall take into consideration the expected useful life of the Community Area, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Declarant or the Board, as the case may be, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

**F. Limitations on Action by the Corporation.** Unless the Class B Member and either (a) at least two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned) or (b) two-thirds (2/3) of the Class A members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not (i) except as authorized by Article 9A., by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause), (ii) fail to maintain fire and extended coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost), (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area, (iv) change the method of determining the obligations, Assessments, dues or other charges that may be levied against the Owner of a Residence, (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and upkeep of the Community Area, or (vi) fail to maintain the Reserve or Replacements in the amount required by this Declaration.

**G. Mergers.** Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its Articles of

Incorporation or, alternately, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the Restrictions established by this Declaration within the Tract together with the Restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Tract except as hereinafter provided.

**H. Termination of Class B Membership.** Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time as the Class B membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in this Declaration.

## Article 8. ASSESSMENTS

**A. Creation of the Lien and Personal Obligation of Assessments.** Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation the following: (1) General Assessments; and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided.

All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due.

### **B. General Assessment.**

(i) **Purpose of Assessment.** The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety' and welfare of the Owners of Lots, for the improvement, maintenance and operation of the Community Area and Lots, and for the performance of the duties and responsibilities of the Corporation established by this Declaration.

(ii) **Basis for Assessment:**

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

(b) **Lots Owned by Declarant.** No Lot owned by Declarant shall be assessed by the Corporation.

(c) **Change in Basis.** The basis of assessment may be changed with the assent of the Class B Member and of (i) two-thirds (2/3) of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first

mortgage owned) who are voting in person or by proxy at a meeting of such members duly called for this purpose.

(iii) **Method of Assessment.** The Declarant shall (until Declarant relinquishes such responsibility to the Corporation) or, after such time, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The Declarant shall (until Declarant relinquishes such responsibility to the Corporation) or, after such time, the Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid. Until changed by the Board of Directors of Corporation, the General Assessment shall be paid in two (2) installments with the installments being due on or about June 1 of each year and December 1 of each year. Upon closing on a Lot or Lots, the Owner shall pay to Declarant (i) the pro-rated portion of the next installment of the assessment due for the current year, (ii) the next installment of the assessment which will be due, and (iii) a Five Hundred Dollar (\$500.00) one-time reserve assessment.

C. **Special Assessment.** In addition to such other Special Assessments as may be authorized herein, the Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall require only the approval of the Class B Member through and including the Applicable Date, and after the Applicable Date such Assessment shall require the vote of the Class B Member (if any) and a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.

D. **Effect of Nonpayment of Assessments: Remedies of the Corporation.** Assessments not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect a delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment or installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.

E. **Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in

favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due more than six (6) months prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof

F. **Certificates.** The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.

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

H. **Declarant Loan.** All monies spent by and/or advanced by Declarant through the Applicable Date for the benefit of The Estates of Clay West and the Owners (as determined in Declarant's sole discretion) shall constitute a loan to the Owners which shall be repaid by the Association over three (3) years commencing on the Applicable Date, with interest accruing at a rate of ten percent (10%) per annum, repayable in equal monthly payments beginning on the first day of the first month after the Applicable Date. The Association shall, on the Applicable Date, be required to sign a Promissory Note in favor of Declarant evidencing such loan.

## Article 9. COMMUNITY AREA

A. **Ownership.** The Community Area shall remain private, and neither Declarant's execution or recording of an instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or any part of the Community Area to any public utility.

B. **Obligations of the Corporation.** The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.

C. **Easements of Enjoyment.** No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or any Supplemental Declaration executed by Declarant. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted.

D. **Extent of Easements.** The easements of enjoyment created hereby shall be subject to the following:

(i) the right of the Corporation to establish reasonable rules for the use of the Community Area;

(ii) the right of the Corporation to suspend the right of an Owner, and all Persons whose rights to use the Community Area derives from such Owner's ownership of a Lot, to use such portions of the Community Area for any period during which any Assessment against his Lot remains unpaid for more than thirty (30) days after notice;

(iii) the right of the Corporation to suspend the right of an Owner, or any Person claiming through the Owner, to use the Community Area for a period not to exceed sixty (60) days for any other infraction of this Declaration, any Supplemental Declaration or the Register of Regulations;

(iv) the right of the Corporation to mortgage any or all of the Community Area and the Facilities constructed therein for the purposes of improvements to, or repair of, the Community Area or Facilities constructed thereon, pursuant to approval of the Class B Member and two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and

(v) the right of the Corporation to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B Member, if any, and the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or two-thirds (2/3) of the Mortgagees (based on one vote for each mortgage owned), agreeing to such dedication or transfer, has been recorded.

E. **Additional Rights of Use.** The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and Facilities shall be subject to such general regulations consistent with the provisions of this Declaration and all Supplemental Declarations as may be established from time to time by the Corporation.

F. **Damage or Destruction by Owner.** In the event the Community Area or any Residence or Lot is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or members of his family, such Owner authorizes the Corporation to repair said damaged area, provided neither Declarant nor Corporation shall ever be required to repair any damage to a Residence or Lot, unless caused by Declarant or Corporation, as the case may be. If the Corporation shall undertake the repair of the damaged area, the repair shall be in a good and workmanlike manner, in conformance with the original plans and specifications of the area involved or as the area may have been modified or altered subsequently by the Corporation, in the discretion of the Corporation. An amount equal to the costs incurred to effect such repairs shall be assessed against such Owner as a Special Assessment and shall constitute a lien upon the Lot of said Owner.

**G. Conveyance of Title.** Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon but notwithstanding any provision herein, the Community Area shall be conveyed to the Association not later than two (2) years from the date the Community Area or part thereof is subjected to this Declaration. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

## Article 10. ADDITIONAL DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION

The Association shall provide snow removal for the streets within the Community Area, and the Owners shall be assessed for their share of the costs associated therewith.

## Article 11. EASEMENTS

**A. Plat Easements.** In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Hamilton County, Indiana, the Tract is subject to drainage easements, sewer easements, utility easements, entry way easements, landscape easements, general maintenance easements, signage easements, regular conservation easements, and non-access easements, either separately or in any combination thereof, as are shown on the Plats, which are reserved for the use of Declarant, Owners, the Corporation, the Architectural Review Board, public utility companies and governmental agencies as follows:

(i) **Drainage Easements (“DE”)** are created to provide paths and courses for area and local storm drainage, either over land or in adequate underground conduits, to serve the needs of The Estates and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner to maintain the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the waterflow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Architectural Review Board, but neither Declarant nor the Architectural Review Board shall have any duty to undertake any such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

(ii) **Sanitary Sewer Easements (“SSE”)** are created for the use of the local governmental agency having jurisdiction over any storm and sanitary waste disposal system which may be designed to serve The Estates for the purpose of installation, maintenance, replacement and repair of sewers that are a part of said system.

(iii) **Utility Easements (“UE”)** are created for the use of Declarant, the Corporation and all public utility companies, not including transportation

companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.

(iv) Landscape Easement (“LE”) are created for the use of Declarant to install plant material, an entrance wall and other improvements. Following the initial planting and installation the Corporation shall maintain such plant material and improvements.

(v) Non-Access Easements (“NAE”) are created to designate the area on the Plat over which vehicular ingress and egress is prohibited.

(vi) Private Drive Easement (“PDE”) is created to designate the part of the Tract, as shown on the Plat, over which vehicular ingress and egress is permitted.

(vii) Maintenance Access Easement (“MAE”) is created for access and use by Declarant, the Corporation and all entities hired by either of them for the purpose of accessing and maintaining all Facilities, Community Areas and all other areas of the Tract to which any of them need access in order to perform their obligations hereunder.

All easements mentioned herein include the right of reasonable ingress and egress over portions of the Tract as necessary to utilize the easements. No structure, including fences, shall be built on any drainage, sewer or utility easement if such structure would interfere with the utilization of such easement for the purpose intended or violate any applicable legal requirement or the terms and conditions of any easement specifically granted to a Person who is not an Owner by an instrument recorded in the Office of the Recorder of Hamilton County, Indiana, but a concrete or asphalt driveway necessary to provide access to a Lot from a public street and a sidewalk installed by or at the direction of Declarant (and replacements thereof shall not be deemed a “structure” for the purpose of this Restriction.)

**B. General Easement.** There is hereby created a blanket easement over, across, through and under the Tract for ingress and egress, installation, replacement, repair and maintenance of all Common Areas, Community Areas, underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant, Corporation or the providing utility or service company to install and maintain Facilities and equipment on the Tract and to excavate for such purposes, provided Declarant or such company restores the disturbed area as nearly as is practicable to the condition to which it was found. No sewers, electrical lines, water lines, or other utility service lines or Facilities for such utilities may be installed or relocated except as proposed and approved by Declarant prior to the conveyance of the first Lot to an Owner or by the Architectural Review Board thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Corporation shall have the right to grant such easement on the Tract without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Tract and shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence has been constructed.

C. **Public Health and Safety Easements.** An easement is hereby created for the benefit of and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar persons to enter upon the Community Area in the performance of their duties.

D. **Drainage Board Easement.** An easement is hereby created for the benefit of, and granted to, the Drainage Board to enter the Tract and all Lots therein to the extent necessary to exercise its rights with respect to any legal drain constituting a part of the Drainage System.

E. **Declarant's Easement to Correct Drainage.** For a period of ten (10) years from the date of conveyance of the first Lot, Declarant reserves a blanket easement and right on, over and under the Tract and all Lots to maintain and to correct the drainage of surface water including to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary, following which Declarant shall restore the affected property to its original condition as nearly as practicable. Declarant shall give reasonable notice of its intention to take such action to all affected Owners, unless in the opinions of Declarant an emergency exists which precludes such notice.

F. **Water Retention.** The Owner of each Lot, by acceptance of a deed thereto, consents to the temporary storage (retention) of storm water within the drainage easements (DE) on such Owner's Lot.

## Article 12. DECLARANT'S USE DURING CONSTRUCTION

Notwithstanding any provisions to the contrary contained herein or in any other instrument or agreement, Declarant or its sales agents or contractors may maintain during the period of construction and sale of Lots and Residences within the Tract, upon such portion of the Tract as is owned by the Declarant, such Facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots and Residences, including, without limitation, a business office, storage area, construction yards, signs, and sales offices.

## Article 13. ENFORCEMENT

The Corporation, any Owner or Declarant shall have the right to enforce, by proceeding at law or in equity, all Restrictions, liens and charges now or hereafter imposed by the provisions of this Declaration and of any Supplemental Declaration, but neither Declarant nor the Corporation shall be liable for damage of any kind to any Person for failure either to abide by, enforce or carry out any of the Restrictions.

No delay or failure by any Person for failure either to abide by, enforce or carry out any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that Person of the right to do so thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action to enforce this Declaration, the Person seeking enforcement shall be entitled to recover all costs of enforcement, including attorney's fees, if it substantially prevails in such action.

## Article 14. LIMITATIONS ON RIGHTS OF THE CORPORATION

As long as there is a Class B Member, the Corporation may not use its resources nor take a public position in opposition to the General Plan of Development or to changes thereto proposed by Declarant. Nothing in this paragraph shall be construed to limit the rights of the Members acting as individuals or in affiliation with other Members or groups as long as they do not employ the resources of the Corporation or identify themselves as acting in the name, or on the behalf, of the Corporation.

## Article 15. APPROVALS BY DECLARANT

As long as there is a Class B Member, the following actions shall only require the proper approval of Declarant: (1) declarations affecting the Tract or other real estate; (2) mortgaging of the Community Area; (3) amendment of this Declaration and any Supplemental Declaration; and (4) changes in the basis for assessment or the amount, use and time of payment of the initial Assessment for the Community Area.

## Article 16. MORTGAGES

A. **Notice to Corporation.** Any Owner who places a first mortgage lien upon his Residence or the Mortgagee shall notify the Secretary of the Board of Directors of such Mortgage and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, any Supplemental Declaration, the Articles or the By-Laws (the “**Organizational Documents**”) shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Organizational Documents shall be required and no Mortgagee shall be entitled to vote by virtue of the Organizational Documents or a proxy granted to such Mortgagee in connection with the mortgage.

B. **Notices to Mortgagees.** The Corporation shall promptly provide to any Mortgagee of whom the Corporation has been provided notice under subparagraph A. above notice of any of the following:

(i) Any condemnation or casualty loss that affects a material portion of the Community Area;

(ii) Any delinquency in the payment of any Assessment by the Owner of any Residence on which said Mortgagee holds a mortgage or any default by an Owner under the Organizational Documents, if said delinquency or default continues for more than sixty (60) days;

(iii) Any lapse, cancellation or material modifications of any insurance policy or fidelity bond maintained by the Corporation;

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees; or

(v) Any proposed amendment of the Organizational Documents effecting a change in (i) the interests in the Community Area appertaining to any Residence or the liability for Maintenance Costs appertaining thereto; (ii) the vote appertaining to a Residence; or (iii) the purposes for which any Residence or the Community Area are restricted.

**C. Notice of Unpaid Assessment.** The Corporation shall, upon request of a Mortgagee, a proposed Mortgagee, or a proposed purchaser who has a contractual right to purchase a Residence, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Residence and the Owners, and any Mortgagee or grantee of the Residence shall not be liable for, nor shall the Residence conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement.

**D. Financial Statements.** Upon the request of any Mortgagee, the Corporation shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Corporation.

**E. Payments by Mortgagees.** Any Mortgagee may (i) pay taxes or other charges that are in default and that may or have become a lien upon the Community Area or any part thereof, and (ii) pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Community Area in case of a lapse of a policy. A Mortgagee making such payments shall be entitled to immediate reimbursement from the Corporation.

## Article 17. AMENDMENTS

**A. Generally.** This Declaration may be amended at any time by an instrument signed by (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, to the extent required herein (ii) Declarant.

**B. By Declarant.** Declarant hereby reserves the right unilaterally to amend and revise the standards, covenants and Restrictions contained in this Declaration during the period prior to December 31, 2010. Such amendments shall be in writing, executed by Declarant, and recorded with the Recorder of Hamilton County, Indiana. No such amendment, however, shall restrict or diminish the rights or increase or expand the obligations of Owners with respect to Lots conveyed to such Owners prior to the amendment or adversely affect the rights and interests of Mortgagees holding first mortgages on Residences at the time of such amendment. Declarant shall give notice in writing to such Owners and Mortgagees of any amendments. Except to the extent authorized herein, Declarant shall not have the right at any time by amendment of this Declaration to grant or establish any easement through, across or over any Lot which Declarant has previously conveyed, without the consent of the Owner of such Lot.

**C. Effective Date.** Any amendment shall become effective upon its recordation in the Office of the Recorder of Hamilton County, Indiana.

## **Article 18. INTERPRETATION**

The aforesaid titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

## **Article 19. DURATION**

The foregoing covenants and Restrictions are for the mutual benefit and protection of the present and future Owners, the Corporation, and Declarant, and shall run with the land and shall be binding on all parties and all Persons claiming under them until December 31, 2010, at which time said covenants and Restrictions shall be automatically extended for successive periods of ten (10) years, unless changes are made in whole or in part by vote of those Persons who are then the Owners of a majority of the Lots in the Tract.

## **Article 20. SEVERABILITY**

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions

## **Article 21. NON-LIABILITY OF DECLARANT**

Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed by acceptance of a deed to a Lot, and of the Builder of such Residence, and Owner shall be deemed to have agreed to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.

## **Article 22. RESPONSIBILITY OF OWNERS**

Each Owner will preserve and maintain the part of the Drainage Easement located on such Owner's Lot, consistent with the purpose of such area to provide and facilitate storm water drainage.

## Article 23. PRIVATE STREETS

Declarant hereby covenants that it shall convey and transfer the Private Streets included in and constituting a part of the Real Estate to the Association upon the completion of such Private Streets. The Private Streets so conveyed by Declarant to the Association shall, at the time of such conveyance, be subject to all easements, covenants, conditions, limitations and Restrictions then of record, but shall be free and clear of all liens and financial encumbrances, other than the lien of the then-current non-delinquent installment of real estate taxes and Assessments and subsequent installments thereof, which shall thereafter be paid when due by the Association, and shall be further subject to the terms and provisions of this Declaration. Declarant reserves unto itself, its successors and assigns, and hereby establishes for each Owner(s) of Lots, their guests and invitees, and all public and quasi-public vehicles, an easement for ingress and egress on and over the Private Streets. The terms “**public vehicles**” and “**quasi-public vehicles**” shall include, but shall not be limited to, vehicles operated for police and fire protection, ambulances and other emergency vehicles, for trash and garbage collection, and for mail and other delivery services operated in the performance of their duties.

## Article 24. NOTICE OF PRIVATE STREET

Each Owner, by the acceptance of a deed to a Lot, acknowledges that all streets in The Estates are Private Streets and that the maintenance, repair and replacement of such Private Streets is the sole responsibility of the Association as described herein; each Owner further agrees that by the acceptance of a deed to a Lot he waives the right to request the dedication of the Private Streets to the City of Carmel, Indiana, or to the Board of Hamilton County Commissioners.

## Article 25. COSTS AND ATTORNEYS' FEES

In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the Articles or the By-laws, or to comply with any provisions of this Declaration, the Articles, the By-Laws, or the rules, regulations and guidelines adopted pursuant thereto, as each may be amended from time to time, the Declarant or Corporation shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

IN TESTIMONY WHEREOF, Declarant has executed this Declaration as of the date set forth above.

**Declarant**  
THE ESTATES, LLC

By: \_\_\_\_\_  
Steve A. Pittman, Member

STATE OF INDIANA            )  
  )SS:  
COUNTY OF HAMILTON        )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steve A. Pittman, a Member of The Estates, LLC, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public

My Commission Expires:

\_\_\_\_\_

County of Residence:

\_\_\_\_\_

This instrument prepared by Benjamin A. Pecar, Esq., Leagre Chandler & Millard LLP, 1400 First Indiana Plaza, 135 N. Pennsylvania Street, Indianapolis, Indiana 46204

**Exhibit A**  
**LEGAL DESCRIPTION**

[Add]

## **Exhibit B**

### **ARCHITECTURAL GUIDELINES**

#### **I. ARCHITECTURAL CONTROL**

##### **Article 1. ARCHITECTURAL REVIEW BOARD**

An Architectural Review Board (herein referred to as the “**Review Board**”) consisting of three (3) persons shall be appointed by the Class B Member. At such time as there is no Class B Member, the Review Board shall be appointed by the Board of Directors.

##### **Article 2. PURPOSE**

The Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

##### **Article 3. CONDITIONS**

Except as otherwise expressly provided in this Declaration, no improvements, alterations, repairs, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by Declarant to an Owner shall be made or done without the prior approval of the Review Board of a Lot Development Plan thereof, which approval may be granted or denied in the Review Board’s sole discretion. Prior to the commencement by any Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, or other structure on a Lot or (ii) any plantings or removal of existing trees on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Review Board, and no building, fence, wall, Residence or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, or existing trees removed, by any Person other than Declarant without the prior written approval of the Review Board of a Lot Development Plan relating to such construction, erection, alteration, plantings or tree removal. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over The Estates, and no Owner shall undertake any construction activity within The Estates unless all legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Review Board.

#### **Article 4. PROCEDURES**

In the event the Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after notice of such plan has been duly filed with the Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B Member, the Board of Directors' approval will be deemed denied. A decision of the Review Board (including a denial resulting from the failure of such Board to act on the plan within the specified period) may be appealed to the Board of Directors which may reverse or modify such decision (including approval of a Lot Development Plan deemed denied by the failure of the Review Board to act on such plan within the specified period) by a two-thirds vote of the Directors then serving.

#### **Article 5. GUIDELINES AND STANDARDS**

The Review Board shall have the power to establish and modify from time to time such written architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in Article 2 to the extent that such design guidelines and standards are not in conflict with the specific provisions of the Declaration. Any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3) vote of the Directors then serving.

#### **Article 6. APPLICATION OF GUIDELINES AND STANDARDS**

The Review Board may apply the guidelines and standards established as the Review Board shall decide, in their sole discretion. In disapproving any Lot Development Plan, the Review Board may (but shall not be required to) furnish the applicant with specific reasons for such disapproval and may suggest modifications in such plan which would render the plan acceptable upon resubmission to the Review Board. The Review Board, in its sole discretion, shall approve the builder/contractor each Owner desires to use to construct its residence. Owners shall have no recourse against the Review Board if the Review Board does not approve their requested builder/contractor other than to submit the criteria for another acceptable builder/contractor which is acceptable to the Review Board.

#### **Article 7. DESIGN CONSULTANTS**

The Review Board may utilize the services of architectural, engineering and other Persons possessing design expertise and experience in evaluating the Lot Development Plans. No presumption of a conflict of interest or impropriety shall be drawn or assumed by virtue of the fact that any of such consultants may, from time to time, represent Persons filing Lot Development Plans with the Review Board.

#### **Article 8. EXERCISE OF DISCRETION**

Declarant intends that the Members of the Review Board have the right to approve or make decisions delegated to the Review Board herein in their sole discretion, and every Owner by the purchase of a Lot shall be conclusively presumed to have consented to the exercise of said discretion by the Members of the review Board.

## Article 9. POWER OF DISAPPROVAL

A. The Review Board may refuse to grant permission to construct, place or make the requested improvement, when:

- (i) the plans, specifications, drawings or other material submitted are, themselves, inadequate or incomplete, or show the proposed improvement to be in violation of these Architectural Guidelines or any rules, regulations or guidelines adopted by the Review Board;
- (ii) the design or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or
- (iii) the proposed improvement, or any part thereof, would, in the opinion the Review Board, be contrary to the interests, welfare or rights of all or any part of other Owners.

B. **Duties of Review Board.** The Review Board shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One (1) copy of submitted material shall be retained by the Review Board for its permanent files.

C. **Liability of Review Board.** Neither the Review Board, nor any Member thereof, nor any agent thereof, nor the 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. Further, the Review Board does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made, any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

## Article 10. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS

Whenever two (2) or more contiguous Lots shall be owned by the same Person, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Residence, he shall apply in writing to the Review Board for permission to so use said Lots. If permission for such use shall be granted, the Lots constituting the site for such single Residence shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as, and only so long as, the Lots remain improved with one single Residence, provided, the Owner shall be liable for, and pay for, Assessments thereon for two (2) Lots.

## II. ARCHITECTURAL GUIDELINES

In order to create and maintain a high quality residential development on the subject Tract, certain criteria for all construction has been established by the Review Board. The Review Board shall have the right to review the plans and specifications required in Article 2 of these Architectural Guidelines and no construction shall commence until the Owner has obtained the written approval of the Review Board, which approval may be granted or denied in the Review Board's sole discretion. The Architectural Guidelines set forth herein shall be the minimum guideline for construction of a Residence in The Estates, and the Review Board shall have the right, in their discretion, to impose

additional guidelines or Restrictions on the Owners. The Architectural Guidelines shall apply to the initial construction of a Residence and to any modifications or alterations or additions to an existing Residence, which includes additions or alterations to the Residence or the Lot or the new construction of additional improvements on the Lot.

## Article 1. GENERAL REQUIREMENTS FOR CONSTRUCTION

A. **Square Footage.** All Residences have minimum square footage requirements which are specified as follows: 4,000 square feet for single level and 5,000 square feet for multilevel homes (3,000 square feet - first floor). The square footage of a Residence as referred to shall not include porches, terraces, garages, accessory buildings or basements.

B. **Setbacks.** The minimum side yard requirements have been established at fifteen feet (15') minimum with a thirty feet (30') aggregate side setback. Minimum rear yard requirement is twenty feet (20'); provided, the minimum rear yard setback on Lots 3, 4, 5 and 6 shall be forty feet (40') as depicted on the Plat. Front yard minimum requirements and additional easement restrictions are as illustrated on the Plat.

C. **Tree Preservation.** No existing tree larger than four inches (4") in diameter which is located fifteen feet (15') outside of any building structure, drive, walk, patio, swimming pool, tennis court, or like amenity, shall be removed without the prior written approval of the Review Board. Such approval shall only be granted upon proof of unusual hardship in the practical utilization of the Lot. The removal or destruction of any such trees without the consent of the Review Board shall result in the liability to the Owner of such Lot to replace said trees with trees of like kind, quality and size.

D. **Construction Trash.** All Builders are required to utilize a thirty (30) cubic yard trash receptacle for each home during periods of construction in order to properly dispose of debris.

E. **Temporary Driveway.** All Builders are required to install and maintain a temporary stone drive on each Lot during construction. Such drive shall provide for access from the street to the building area.

F. **Colors and Materials of Homes.** Materials used on the exterior of homes and improvements are subject to the approval of the Review Board, and all exterior colors are, generally, to be subdued, earthen tones or white and compatible with other structures in or planned for the immediate area.

G. **Erosion Control and Tree Protection Measures.** Where earthwork, grading, or construction activities will take place in or adjacent to wooded areas, protection measures shall be undertaken through installation of temporary fencing or other approved measures. Such fencing or other measures shall be installed prior to commencing construction, and maintained throughout the period of construction. Grade changes to occur at any location of the property shall not result in alteration to soil or drainage conditions that would adversely affect existing vegetation to be retained.

H. **Utilities.** All utilities shall be installed underground.

I. **Builders.** Prior to commencement of construction of any Residence, the Owner shall submit for approval the name of their Builder, which the Review Board may approve or

deny in their sole discretion. No construction shall commence, or continue, until the Builder performing the construction has been previously approved by the Review Board.

## Article 2. PLANS AND SPECIFICATIONS

In order to properly review proposed construction (both new construction or additional construction on any Lot), the Review Board has established the following Lot Development Plan as a minimum for submittal to the Review Board. Submittal for approval shall include all items below. Clarification drawings and details may be requested by the Review Board prior to approval if adequate details are not included in the plans. All site related plans shall be drawn at a scale of not less than 1" = 20'. All architectural related plans are to be drawn at a scale of not less than 1/4" = 1'. All plans shall be fully dimensioned and presented in duplicate (two sets) on a 24"x36" sheet size format.

A. **Site Plan.** The site plan shall include location of the proposed structure, driveways, walks, terraces, fences, swimming pools, tennis courts, etc. In addition, the Site Plan shall illustrate the grading and utility information, including existing and proposed contours, finished floor elevations, proposed and existing utilities.

B. **Elevations.** Front, rear, sides.

C. **Floor Plan(s).**

D. **Foundation Plan.**

E. **Details and Specifications.** Exterior building colors, finishes and materials.

F. **Landscape Plan.** The landscape plan shall include location, size, type and species of all proposed plant material, planting beds, areas of sod and seed, etc. The plan shall also include all terraces, patios, walks, cabanas, swimming pools, tennis courts and any other hardscape elements that would have an impact on the Lot.

## Article 3. FENCES, WALLS AND SCREENING

Fencing, walls and screening will be designed and installed to be as harmonious as possible with the architectural character of the Community. No fence, wall or screen will be approved if its installation will obstruct necessary site lines for vehicular traffic. Undue obstruction of view or other amenities from adjoining properties will be taken into consideration by the Review Board. Except for decorative fences or walls, these shall not be located any closer to the front of the home than the rear foundation line of the home.

A. **Materials and Finish.** Wrought iron fences, as well as masonry or natural stone walls will be approved if the design is in conformity with the architectural design of the Community, subject to the Review Board's right to require landscaping on the exterior sides thereof. No chain link fence shall be erected upon a Lot.

B. **Height.** No fence, wall or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line. Height of any fence or wall shall be indicated on the submittal and, may additionally be subject to local building codes/permits.

#### **Article 4. LANDSCAPE MATERIALS**

All plant material will conform to the current issue of the “American Standard for Nursery Stock” published by the American Association of Nurserymen. The “landscape plan” must be implemented and completed at the time of closing on the completed house.

#### **Article 5. IRRIGATION**

All Lots will be required to have automatic irrigation on the entire Lot (including front, side and backyards). Such equipment shall be pop-up spray type and hooked up to the municipal water system available to each Lot.

#### **Article 6. SWIMMING POOLS**

Swimming pools must have the approval of the Review board before any work is undertaken. An application for a permanent pool should be accompanied by the related fencing and landscaping plans. No above ground pools will be allowed.

#### **Article 7. TENNIS COURTS, BASKETBALL GOALS, ETC.**

Tennis courts, basketball courts and other recreational or sporting facilities will be approved by the Review Board only after thorough consideration of the potential effect of such a structure or use to neighboring properties. The Review Board will not approve non-baffled lighted courts or facilities. An application for the construction of such facility should be accompanied by the related fencing and landscaping plans. Backboards of all basketball goals shall be translucent fiberglass with a black pole (or an approved equal).

#### **Article 8. RETAINING WALLS**

Retaining walls must be architecturally compatible with the exterior of the home (i.e. stone or brick veneer), and shall be approved by the Review Board.

#### **Article 9. ROOFS**

All roofing materials must be of either wood shingle, slate, tile or dimensional as approved by the Review Board

#### **Article 10. GARAGES**

The location and orientation of all garages and garage doors will be planned in such a manner as to not infringe on the privacy of the adjoining property. The site and landscape plans of the home submitted for approval, as well as the home on the adjoining property, will be taken into consideration by the Review Board.

#### **Article 11. DRIVEWAYS**

All driveways must be asphalt, concrete or an acceptable alternate as approved by the Review Board. Extensions, widening or re-routing of existing driveways must have the approval of the Review Board prior to construction.

## Article 12. MAILBOXES

All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacturer approved by the Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Review Board. No attachments of any kind shall be permitted to the mailbox post.

## Article 13. AIR COOLING UNITS

Air cooling units or other like utilities that are outside of the residential structure must be located at the side or rear of the home and screened from view by the use of architectural or landscape materials. Architectural screens must be compatible with the exterior of the home and constructed at a minimum height equal to the height of the unit.

## Article 14. EXTERIOR ANTENNAS

Unless specifically authorized by the Review Board, no television, satellite receiver, radio or other antennas may be erected on any Lot or exterior of structure.

## Article 15. EXTERIOR LIGHTING

No exterior lights shall be erected between the building line and the rear Lot line so as to shine or reflect directly upon another Lot. The Review Board will review the submitted lighting plan to insure that a consistency in the quality of light is maintained throughout the community.

## Article 16. SIDEWALKS

All Lots will be required to have a four foot (4') wide concrete sidewalk installed in a location to be approved by Declarant which sidewalk shall be parallel to the adjacent street and shall run the entire length of the Lot. Construction of the sidewalk shall be completed no later than the date of completion of construction of the Residence upon the Lot.

### **III. MISCELLANEOUS**

All construction trades performing work on any structure or other improvement on any Lot in the property subject to the Declaration of Covenants and Restrictions of The Estates are expected to do their work in a professional manner, and in accordance with all standards published by the recognized trade councils of their respective industries and in accordance with local governmental requirements. It is not the duty or the responsibility of the Review Board to supervise or inspect the construction performed. However, should the Review Board discover what it considers work not being performed in accordance with the plans approved by the Review Board, the Owner of the Lot may be notified and the work shall be corrected and made to conform to the approved plans.

Should the determination of the Review Board in this regard be challenged by the Owner of the Lot, such challenge shall be in writing and served upon the Review Board accompanied by a certified letter from an architect registered to practice in the State of Indiana and bearing his signed seal stating that, in his professional opinion, the work in question is in accordance with the plans approved by the Review Board and meets the standards herein required.

Should the Review Board still disagree and believe the work to be of substandard workmanship, or not in accordance with the approved plans, a panel of three architects will be chosen to review the work and the majority vote of said architects shall constitute the final determination as to what, if any, action is required. Should such panel of architects rule the work substandard or not in accordance with the approved plans, then the work shall be repaired, replaced or re-executed to professional standards and in accordance with the approved plans within thirty (30) days of such notification. In any case in which such a panel of architects is to make a determination hereunder, one such architect shall be selected by the Review Board one by the Owner, and the third by the two architects so selected. If either party fails to select it's architect and advise the other of such selection within five (5) days after the date upon which the Review Board notifies the Owner of the Lot that the Review Board believes the work to be substandard or not in accordance with the approved plans, then the single architect selected by one of the parties shall serve alone as the panel of architects to make the final determination. The cost and expenses of the architectural review panel selected to determine any such dispute shall be borne and paid in equal shares, one-half (1/2) by The Estates Homeowners Association, Inc., and one-half (1/2) by the Owner of the affected Lot.

Neither the Declarant of the property subject to the Declaration of Covenants and Restrictions of The Estates, nor any Member of the Review Board shall at any time have any liability whatsoever to the Owner of any Lot or to any holder of a building permit for any improvements to be located thereon nor to any other Person for any determination or decision made by the Review Board in the exercise of it's duties and responsibilities or for any actions taken or attempts made by Declarant or the Review Board to enforce quality construction practices on the subject property. The manufacturer's printed instruction and directions for the application or installation of their products shall constitute the minimum standard for the application or installation of that product.

**EXHIBIT A**  
LEGAL DESCRIPTION

**[Add]**

**THE ESTATES  
CONSTRUCTION PLAN SUBMITTAL FORM**

**Instructions**

The Owner or Owners of any Lot seeking approval of any construction at The Estates must complete this submittal form by supplying all information required below and submit together with two (2) copies of all plans and drawings referred to herein, to the Architectural Review Board for its action at the following address:

1. **General Information** *(Please complete the following)*

- (a) Lot number: \_\_\_\_\_
- (b) Architectural Style: \_\_\_\_\_
- (c) Total square footage: \_\_\_\_\_
  - (i) Square Footage (first floor) \_\_\_\_\_
  - (ii) Square Footage (second floor) \_\_\_\_\_
  - (iii) Square Footage (basement) \_\_\_\_\_

2. **Lot Development Plan** *(Please submit 2 sets of the following)*

	<u>Type of Plan</u>	<u>Prepared by</u>	<u>Latest Revision Date</u>
(a)	Site plan	_____	_____
(b)	Elevations	_____	_____
(c)	Floor plans	_____	_____
(d)	Foundation plan	_____	_____
(e)	Details and specifications	_____	_____
(f)	Landscape plan	_____	_____
(g)	Drainage plan	_____	_____

3. **Owner's Request for Approval**

The undersigned, Owner(s) of the Lot in The Estates identified above, as an inducement to The Estates Architectural Review Board to consider the approvals herein requested, hereby states and certifies (A) that he is the sole Owner of said Lot, (B) that the information set forth herein is true and correct, and (C) that the plans and drawings identified above and submitted herewith to the Review Board are the only plans and drawings being submitted for construction approval by the Review Board. The undersigned represents, warrants and agrees that all construction upon and improvement of the subject Lot will be performed in accordance with such plans and drawings as finally approved by the Review Board. The undersigned acknowledges and understands that any changes in plans and drawings, after the approval of those submitted to the Review Board, must be resubmitted to the Review Board for its consideration and ultimate approval. The undersigned further agrees to abide by all of the terms, provisions and requirements of the recorded Declaration of Covenants and Restrictions of The Estates and all amendments and supplements thereto, the subdivision Plat, the Architectural Review Guidelines, and the requirements of The Estates Homeowners Association, Inc. governing The Estates. The undersigned hereby requests Approval by the Board of the plans and drawings identified above and

submitted herewith to the Board and understands that the Architectural Review Board may approve or deny this request for approval in its sole and absolute discretion.

Date: \_\_\_\_\_

\_\_\_\_\_  
Owner Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Current Address

\*To Be signed by ALL Owners

4. **Action by Committee:**

(a) Date this checklist and all plans and drawings referred to herein were received by the Architectural Review Board: \_\_\_\_\_

(b) Plans and drawings are:

\_\_\_\_\_ (i) Disapproved since they are incomplete in the following respects:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (ii) Disapproved for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (iii) Approved as submitted and the Committee hereby authorizes the issuance by the Building Commissioner, in his discretion, of an improvement location permit and a building permit for the construction reflected on the plans and drawings approved by the Committee, each page of which bears the "Approved" stamp of the Architectural Review Board, subject, however, to revocation of any such permits in accordance with the provisions of the Declaration of Covenants and Restrictions of The Estates of Clay West.

(c) Date of action by the Architectural Review Board: \_\_\_\_\_, 2001.

(d) The foregoing action by the Architectural Review Board is valid only when this Construction Plan Submittal Form is executed by the Architectural Review Board and the seal of the Architectural Review Board is impressed thereon.

THE ESTATES ARCHITECTURAL REVIEW BOARD

[SEAL]

By: \_\_\_\_\_

**Instructions:** The applicant for approval of any construction upon or improvement of a Lot (that is, the Owner or Owners of such Lot) must complete this checklist by supplying all information required under Items 1, 2 and 3 hereof. The applicant must then date and execute the Construction Plan Submittal Form, have his signature witnessed, and submit this checklist **in duplicate**, together with two (2) copies of all plans and drawings referred to herein, to the Architectural Review Board for its action.