DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS

LIMITATIONS, EASEMENTS, AND APPROVALS

OF THE PLAT OF DIAMOND LAKE ESTATES, SECTION I,

A SUBDIVISION IN SECTION 30 OF JACKSON TOWNSHIP,

DeKALB COUNTY, INDIANA

Ultimate Development, LP, and Indiana limited partnership, by Stuart M. Stier and Tamra S. Stier, General Partners, declares that it is the owner of the Real Estate (as defined below), and lays off, plats and subdivides the Real Estate in accordance with the information shown on the certified plat attached to and incorporated by reference in these Covenants (as defined below). The platted subdivision shall be known and designated as Diamond Lake Estates Subdivision, Section I, a Subdivision in Section 30, Jackson Township, DeKalb County, Indiana.

The Lots in the Plat (as defined below) are numbered from 1 to 35 inclusive, and all dimensions are shown on the Plat are in feet and decimals of a foot. All streets and easements specifically shown or described on the Plat are expressly dedicated to public use for their usual and intended purposes.

RECITALS

A. All capitalized terms used in these Recitals shall have the meanings given them in Section 1.

B. The Subdivision is part of a tract of real estate which is currently planned to be subdivided into a maximum of 100 residential lots.

C. Developer intends that each Owner of a Lot will become a Member of the Association, and be bound by the Articles and the Bylaws.

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

1.1 "***Annual Assessment".*** A regular assessment made by the Association under Section 4.3, on an annual basis.

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

1.3 "***Assessments" (and the singular form), "Assessment".*** Collectively, Assessments and Special Assessments.

1.4 "***Association".*** Diamond Lake Estates Homeowners Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

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

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

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

1.8 "***Common Area" (and in the plural form), "Common Areas".*** The following tracts of real property as shown and designated on the face of the Plat: "Block A", "Block B" (including "Common Area Pond #1"), "Block C", "Block D", Block "E", and to the extent applicable, such other tracts of real property that may be shown and designated as "Common Area" or "Block __" on future recorded plats of the Subdivision.

1.9 ***"Common Area Ponds"(and in the singular form), "Common Area Pond.".*** The retention ponds located or to be located within Block "B" that is designated as "Common Area Pond #1", as shown on the Plat, and such other retention ponds that may be shown and designated as a "Common Area Pond" on future recorded plats of the Subdivision.

1.10 "***Covenants".*** This Dedication, Protective Restrictions, Covenants, Limitations, Easements, and Approvals of the Plat of Diamond Lake Estates, Section I, a Subdivision in Section 30 of Jackson Township, DeKalb County, Indiana.

1.11 "***Developer".*** Ultimate Development, LP, an Indiana limited partnership, and its assigns and successors in title to the Real Estate.

1.12 "***Lot" (and in the plural form), "Lots".*** A lot in the Plat, or any tract of real estate that consists of one or more Lots, or a part of a Lot, upon which a residence is constructed in accordance with these Covenants, or such further restrictions as may be imposed by the Zoning Ordinance or any applicable governmental permit or requirement; provided, however, that no tract of land consisting of part of Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 65 feet in width at the established front building line as shown on the Plat.

1.13 "***Member"*** (***and in the plural form), "Members".*** A member in good standing of the Association.

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

1.15 "***Plan Commission".*** The DeKalb Plan Commission, or its successor agency.

1.16 "***Plat".*** The recorded secondary plat of Diamond Lake Estates, Section I.

1.17 "***Real Estate".*** The tract of real property legally described in the addendum attached to these Covenants as Exhibit "A".

1.18 "***Special Assessments".*** A special assessment made by the Association under Section 4.4 for capital improvements or special or unbudgeted expenditures the Association is authorized to make under these Covenants, the Articles, or the Bylaws.

1.19 ***"Subdivision".*** All platted sections of Diamond Lake Estates Subdivision.

1.20 ***"Zoning Administrator"*****.** The duly appointed and acting Zoning Administrator of DeKalb County, Indiana, or the person succeeding to such position.

1.21 "***Zoning Ordinance".*** The DeKalb County Zoning Ordinance, or such other zoning ordinance that is applicable to the Real Estate.

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

2.1 ***Use of Common Areas.***

2.1.1 **Common Area Pond #1.** The use of Common Area Pond #1 is governed by the provisions in Section 6.26.

2.1.2 **Block "A".** "Block "A" shall be used only for the purposes of (i) access to and from what will be a Common Area Pond that will be located in a future section of the Subdivision, and the respective public street adjacent to Block "A", and (ii) surface water drainage; and a perpetual easement is reserved by Developer, and granted to the Association, for such purposes, and to the Owners, but only for surface water drainage purposes.

2.1.3 **Block "B".** Block "B" shall be used only for the following purposes: (i) access to, from, and around, and maintenance of, Common Area Pond #1, (ii) the use of Common Area Pond #1 in accordance with the provisions in this Agreement, (iii) the exercise of the rights and obligations set forth in Section 12, and (iv) surface water drainage; and a perpetual easement is reserved by Developer, and granted to the Association, for such purposes. Additionally, each Owner of Lots 9-17 shall have a perpetual easement for access over the area in Block "B" that is located between the boundary of the Owner's respective Lot, and to and from the water's edge of Common Area Pond #1.

2.1.4 **Block "C".** Block "C" shall be used only for the purpose of surface water drainage from the Subdivision to the James Ferguson Regulated Drain; and a perpetual easement is granted to Developer, the Association, and the Owners for such purpose.

2.1.5 **Block "D" and Block "E".** Block "D" and Block "E" are intended to be used for the purposes of constructing and maintaining identification signs for the Subdivision; and a perpetual easement is reserved by Developer, and granted to the Association, for such purposes.

2.2 ***Additional Rights of Association.*** The Association shall have the following additional rights regarding the Common Areas:

2.2.1 To suspend the voting rights and right of an Owner to use the Common Area for any period during which an Assessment against the Owner's Lot remains unpaid, or the Owner is in violation of these Covenants, the Articles, the Bylaws, or any published rule of the Association; and

2.2.3 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; provided however, that no such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of the Members agreeing to such dedication or transfer, is recorded.

2.3 ***Right of Entry.*** Developer, the Association, and the Committee, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect a Lot, whether prior to, during, or after completion of any improvement on it, for the purposes of (i) determining compliance with these Covenants, or (ii) exercising all rights and powers conferred upon Developer, the Committee, and the Association under these Covenants, with respect to the enforcement, correction, or remedy of any failure of an Owner to comply with or observe these Covenants. In exercising the rights of entry under this Section 2.3, Developer, the Committee, the Association, and any of their authorized representatives shall not be deemed to have committed a trespass as a result of such action. Notwithstanding the foregoing, an occupied residence on a Lot may not be entered under this Section 2.3 unless written notice of intent to enter is given to the Owner of the Lot at least five days prior to such entry.

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

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

3.2 The Association shall have the following two classes of voting memberships:

3.2.1 **Class A.** Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be Members. The vote for such Lot shall be exercised

as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

3.2.2 **Class B.** Class B membership consists of Developer. The Class B member shall be entitled to 100 votes. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

3.2.2.1 When fee simple title to all Lots have been conveyed by Developer; or

3.2.2.2 On December 31, 2015.

Section 4. ***COVENANT FOR MAINTENACE ASSESSMENTS*.**

4.1 ***Creation of Lien and Personal Obligation of Assessments.*** Each Owner (except Developer) by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments and (ii) Special Assessments. Assessments shall be established and collected as provided in these Covenants, the Articles, and the Bylaws. Assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land, and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was Owner of a Lot at the time when the Assessment against it became due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 ***Purpose of Assessments.*** Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, and welfare of Owners and other occupants in all present and future sections of the Subdivision, including, but not limited to, improvement and maintenance of Common Areas and street lighting in the Subdivision (to the extent the Association is obligated to maintain such Common Areas and street lighting), goose and water fowl control and mitigation measures as set forth in Section 12, and the improvement and maintenance of such other facilities in the Subdivision as the Board reasonably determines is necessary to achieve such purpose. Additionally, Assessments shall be levied by the Association (i) to pay for the proportionate burden of maintenance of the Subdvision's drainage system and the common impoundment basins through and into which the Subdivision's surface waters drain, and (ii) to pay for the cost of garbage and other solid waste disposal for which the Association is obligated to contract under Section 9.

4.3 ***Maximum Annual Assessments.*** Until January 1st of the year immediately following the date the first deed from Developer conveying title to a Lot is recorded, the maximum Annual Assessment shall be $250 per Lot. Subsequent Annual Assessments may be made as follows:

4.3.1 From and after January 1st of the year immediately following the date the first deed from Developer conveying title to a Lot is recorded, the maximum Annual Assessment may

be increased each year by the Board, by a percentage not more than 8% above the Annual Assessment for the previous year, without a vote of the Members.

4.3.2 From and after January 1st of the year immediately following the date the first deed from Developer conveying title to a Lot is recorded, the maximum Annual Assessment may be increased by a percentage in excess of 8%, only by the vote or written consent of a majority of each class of Members.

4.4 ***Special Assessments for Capital Improvements.*** In addition to Annual Assessments, the Association may levy, in any year, a Special Assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement in the Common Area, including fixtures and related personal property; provided that any such Special Assessment shall require the vote or written consent of 75% of each class of Members; and provided, further that no such Special Assessment for any such purpose shall be made if the Special Assessment in any way would (i) jeopardize or affect the Association's ability to improve and maintain the Common Area, (ii) pay the Association's share of the cost of maintaining any common impoundment basin, or (iii) pay or satisfy the Association's other financial obligations.

4.5 ***Notice and Quorum for Any Action Authorized Under Sections 4.3.2 and 4.4.*** Any action authorized under Section 4.3.2 and Section 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which meeting shall be given to all members in accordance with the Bylaws. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage of each class of Members, Members who were not present in person or by proxy may give their consent in writing, providing the such consent is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 ***Uniform Rate of Assessment.*** Both Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Lots, and may be collected no more frequently than quarterly, and no less frequently than annually.

4.7 ***Date of Commencement of Annual Assessments.*** Annual Assessments shall commence as to all Lots then subject to Annual Assessments, on the first day of the month following the first conveyance of a Lot by Developer. The first Annual Assessment shall be pro rated according to the number of months remaining in the calendar year. The Board shall fix the amount of the Annual Assessment against each Lot at least 30 days in advance of the date the Annual Assessment is due. Written notice for the payments of the Annual Assessment shall be given to every Owner.

4.8 ***Due Dates***. The due dates for payment of Assessments shall be established by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certification signed by an officer of the Association stating whether an Assessment against a Lot has been paid.

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

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

4.9.2 The Association may bring an action at law against each Owner personally obligated to pay a delinquent Assessment, and foreclose the lien of an Assessment against the Owner's Lot. No Owner may waive or otherwise escape liability for Assessments made under these Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent Assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association shall also be entitled to recover the reasonable attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay an Assessment.

1. ***Subordination of Assessment Lien to First Mortgage.*** The lien of Assessments shall be subordinate to the line of any first mortgage. Sale or transfer of any Lot shall not affect the lien of an Assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for payment of any Assessment subsequently becoming due, or from the lien of any Assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien of such Assessment as to payments that become due prior to such sale or transfer.

1. ***Single Owner Contiguous or Multiple Lots.*** Whenever two or more Lots are owned by the same person, contiguously situated or otherwise, such Owner shall be subject to and agree to pay the Association for each Lot owned, all Assessments and other charges collectible by the Association.

Section 5. ***ARCHITECTURAL CONTROL.***

5.1 No building, fence, wall, attached solar heating panels, flagpole to display the national flag, or other structure, or initial landscaping shall be commenced, erected, installed, or maintained upon a Lot, nor shall any exterior addition, change or alteration be made to such a structure on a Lot, until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the structure or initial landscaping are submitted to and approved by the Committee in writing. The Committee shall review such plans and specifications to determine whether the external design and location of the proposed structure or initial landscaping is in harmony with the surrounding structures and topography in the Subdivision. The Committee shall be composed of two members. The first Committee members shall be: Stuart M. Stier and Tamra S. Stier. A majority of the Committee may appoint a representative to act for it. In

the event of death or resignation of any member of the Committee, the remaining members shall have full authority to appoint a successor.

5.2 The Committee shall have the exclusive authority and responsibility to review plans for the initial landscaping and the initial construction of all residences in the Subdivision. The Committee may delegate to the Board (or to such other entity designated in the Articles or the Bylaws) the authority and responsibility to review plans for construction of fences and other structures in the Subdivision. Such delegation shall be made in writing, signed by a majority of the Committee members, and delivered or mailed to the Association's registered office.

5.3 After residences are initially constructed on all Lots in the Subdivision, the Board (or other entity designated under the Articles or the Bylaws) shall succeed to the Committee's responsibilities under Section 5 to review subsequent construction, modifications, and additions of structures in the Subdivision.

5.4 In the event the Committee (or the Board or other entity acting under Section 5.2 or Section 5.3), fails to approve or disapprove the design and location of a proposed structure or initial landscaping within 30 days after plans and specifications have been submitted to it, approval will not be required, and approval under Section 5 will be deemed to have been given.

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

6.1 ***Use.*** Lots may not be used except for single-family residential purposes. No building shall be erected, altered, places, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Each residence shall include not less than a three-car garage, which shall be built as part of the residence.

6.2 **Dwelling Size.** No residence shall be built on Lots numbered 1 through 35 having a ground floor area upon the foundation of less total living area (excluding one-story open porches, breezeways, and garages), than the following:

6.2.1 For a one-story residence, 2,000 square feet; and

6.2.2 For a residence with more than one-story, 2,400 square feet.

6.3 ***Building Lines.*** No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no structure (excluding fences approved under Section 5) shall be located nearer than a distance of seven feet to an interior Lot line. No residence shall be located on Lots 1-19 and 29-35 inclusive, nearer than 25 feet to the rear Lot line; and no residence shall be located on Lots numbered 20-28 inclusive, nearer than 75 feet to the rear Lot line.

6.4 ***Minimum Lot Size.*** No residence shall be erected or placed on a Lot having a width of less than 65 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area less than 8,000 square feet.

6.5 ***Continuity of Construction.*** The construction of every dwelling on a Lot shall be completed within 12 months after the commencement of such construction. No improvement that has been partially or totally destroyed by fire or other casualty shall be allowed to remain in such condition for more than three months from the time of such destruction or damage.

6.6 ***Utility Easements.*** Easements for the installation and maintenance of utilities and drainage facilities are reserved on the Lots, as shown on the Plat. No Owner shall erect on a Lot, or grant to any person, firm, or corporation, the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any kind for electrical, telephone, or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electrical public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than three wires, and have a capacity of not less than 200 amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which such installations are located for operation, maintenance, or replacement of service connections.

6.7 ***Public Utility Easements.*** In addition to the utility easements designated on the face of the Plat and granted in these Covenants, general utility easements in the rights-of-way of the public streets shown on the Plat, are reserved to Developer, and granted to the Association and to any public or quasi-public utility company engaged in supplying one or more of the utility services described in this Section 6.7, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain, and remove all and every type of gas main, water main, sewer main (sanitary and storm), cable television, and all other utilities, and with all necessary facilities, subject to all reasonable requirements of any governmental body having jurisdiction as to the maintenance and repair of said streets. All utility easements designated on the face of the Plat and granted under this Section 6.7, shall be kept free of all structures, other improvements, shrubbery, and trees, whether temporary or permanent, and shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain, or place their utility or sewage treatment works. Removal of any such obstruction by a benefited entity shall not obligate the entity either in damages or to restore the obstruction to its original form.

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

6.9 ***Nuisance.*** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision.

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

6.11 ***Outside Storage.*** No boat, boat trailer, recreational vehicle, motor home, truck, camper, or any other wheeled vehicle shall be permitted to be parked ungaraged on a Lot for periods in excess of 8 days per calendar year. The term “truck” as used in this Section 6.11, means every motor vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

6.12 ***Outbuildings.*** No detached outbuilding shall be permitted to be constructed, installed, or maintained on any Lot with an area having exterior dimensions of greater than 120 square feet, except Lots 18-25 inclusive, on which may be located outbuildings with larger areas, subject to approval by the Committee under Section 5.

6.13 ***Freestanding Poles.*** No clothesline or clothes pole, or any other freestanding, semi-permanent, or permanent pole, rig, or device, regardless of purpose, shall be constructed, erected, located, or used on a Lot, except one flagpole to display the national flag, the appearance and location of which shall be subject to approval by the Committee under Section 5.

6.14 ***Signs.*** No sign of any kind shall be displayed to the public view on a Lot except two professional signs of not more than two square feet, or one sign of not more than five square feet advertising a Lot for sale or rent, or used by a builder to advertise a Lot during the construction and sales periods.

6.15 ***Mailboxes.*** The initial type of mailboxes shall be a uniform design designated by Developer. The location and installation of mailboxes shall be the responsibility of Developer.

6.16 ***Yard Lights.*** An automatic dusk-to-dawn light of a type and at a location approved by the Committee under Section 5, shall be installed on each Lot by the Owner.

6.17 ***Fencing.*** No perimeter or privacy fencing shall be installed on a Lot unless approved by the Committee.

6.18 ***Pools and Hot Tubs***. No above ground pool that requires a filtration system, or other above ground pool that is more than six feet in diameter and 18 inches deep, shall be placed or maintained on any Lot. No in-ground pool, hot tub, or spa may be placed or maintained on any Lot unless approved by the Committee under Section 5.

6.19 ***Antennas.*** No radio or television antenna with more than 30 square feet of grid area, or that attains a height in excess of six feet above the highest point of the roof of residence, shall be attached to a residence on a Lot. No freestanding radio or television antenna, or satellite receiving disk or dish shall be permitted on a Lot. No detached or freestanding heating solar panels are permitted on a Lot. However, the Committee may approve solar heating panels attached to a residence or garage under Section 5.

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

6.21 ***Animals.*** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on a Lot, except for dogs, cats, and other household pets; provided, however, that such animals are not kept, bred, or maintained for any commercial purpose. Any such pet shall be kept by an Owner primarily indoors and within the confines of the Owner's residence at least a majority of the time. Further, should any such pet cross the property lines of its Owner's Lot for any reason, the Owner shall (i) keep the pet on a leash (or like harness), (ii) maintain control over the pet at all times, and (iii) immediately tend to the cleanup of any bodily or other waste left by the pet outside of the boundaries of the Owner's Lot.

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

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

6.24 ***Driveways.*** All driveways on Lots from the street to the garage shall be poured concrete, and shall be not less than 16 feet in width, or of such other width or composition as is specifically approved by the Committee under Section 5.

6.25 ***Individual Utilities.*** No individual sewage disposal system shall be installed, maintained, or used on a Lot.

6.26 ***Use of Common Area Ponds.***

6.26.1 The Owners of Lots 9-17 inclusive, and their invitees, shall have the right of access to, or use of Common Area Pond #1 (which abuts such Lots); and no other Owner or invitee shall have any such right of access to or use of Common Area Pond #1. No watercraft other than non-motorized watercraft shall be permitted to be used on Common Area Pond #1.

6.26.2 No Owner shall place, construct, or otherwise locate any pier, dock, or other similar structure on, in, or around any Common Area Pond, or make, construct, or otherwise add any improvement or materials contiguous to any Common Area Pond, including, without limitation, the placement of rocks or landscaping, without first receiving approval of the Committee under Section 5 prior to the commencement of any such construction or installation.

6.26.3 Each Owner and invitee of the Owner who uses any Common Area Pond for swimming, fishing, or boating, forever releases, indemnifies and holds Developer, the Association, and the Committee harmless from and against all claims, costs, expenses, and judgments (including reasonable attorney fees in defending any such claim), direct or indirect, whether now or subsequently existing, incurred as the result of the use of the Common Area Pond.

6.26.4 Developer reserves, and the Association, and their respective authorized agents or designees, are granted, a perpetual easement of ingress and egress over such areas of the Lots as is reasonably necessary, to and from the Common Areas, for the purpose of the exercise of the rights and obligations given under Section 12.

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

6.28 ***Completion of Infrastructure.*** Before any residence on a Lot shall be used and occupied as such, Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. The obligations in this Section 6.28 shall run with the land, and shall be enforceable by the Plan Commission or by any aggrieved Owner.

6.29 ***Subdivision.*** No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot), so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under Section 1.12.

6.30 ***Open Burning.*** The open burning of papers, grass, and other materials shall not be allowed except in receptacles or at locations approved by the Board. Either Developer or the Board may require the discontinuance of burning during such times as it is reasonably believed that such burning may be hazardous because of weather conditions or other factors.

6.31 ***Certificate of Occupancy.*** Before a Lot may be used or occupied, such user or occupier shall first obtain the improvement location permit and certificate of occupancy required by the Zoning Ordinance.

6.32 ***Enforcement.*** In addition to the rights and remedies provided under Section 4.9 and Section 12.4, the Association, Developer, or any Owner (individually or collectively) shall have the right to enforce by any proceeding at law or in equity, all obligations, restrictions, conditions, covenants, reservations, and charges now or subsequently imposed under or by these Covenants. Failure by the Association, Developer, or an Owner to enforce any provision in these Covenants shall in no event be deemed as a waiver of the right to do so later.

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

6.34 ***Duration of Covenants.*** These Covenants shall run with the land, and shall be effective for a period of 10 years from the date the Plat and these Covenants are recorded; after which time, these Covenants shall automatically be renewed for successive periods of 10 years each.

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

6.35.1 After residences are initially constructed on all Lots in the Subdivision, and certificates of occupancy are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of the Lots in the Subdivision and by the owners of at least 75% of the lots in future sections, if any, of the Subdivision. For purposes of this Section 6.35.1, the term “owner” shall have the same meaning with respect to Lots in such future sections, as the term “Owner” is defined in Section 1.14.

6.35.2 Until residences are initially constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, in order to amend the Covenants, Developer, in addition to those persons whose signatures are required under Section 6.35.1, also must sign the amendatory document.

6.35.3 **NOTWITHSTANDING THE PROVISIONS OF SECTIONS 6.35.1 AND 6.35.2**, Developer and its successors and assigns shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded, to amend any provisions in these Covenants (except Section 6.2), without approval of the Owners.

6.35.4 In order for any amendment of Section 12 to be effective, the approval of the Plan Commission shall be required.

Section 7. ***ATTORNEY FEES AND RELATED EXPENSES.*** In the event the Association, Developer, or an Owner brings an action, whether at law or in equity, to enforce any restriction,

covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by provisions of these Covenants, the prevailing party in any such action shall be entitled to recover from the party against whom the proceeding was brought, the reasonable attorney fees and related costs and expenses incurred in such proceeding.

Section 8. ***MINIMUM BUILDING ELEVATIONS.*** In order to minimize potential damage from surface water to residences constructed on Lots, and based on the recommendation of the DeKalb County Surveyor's Office, a minimum building elevation of 853.4 feet, as determined from the benchmark shown on the Plat, is established for Lots 9 through 17, 25 through 27, and 29 through 32, inclusive. Each residence on such Lots shall be constructed so that any external opening in the residence connecting to potential living space equals or exceeds the minimum building elevation established in this Section 8. However, the designation of a minimum building elevation in this Section 8 does not guarantee, and is not intended to be a guaranty of, a safe building site. Each Owner and the Owner's builder who constructs a residence on any Lot, must conduct an independent investigation of the site conditions on the applicable Lot to determine a safe minimum building elevation, and must rely exclusively on such investigation and determination. Neither Developer, Developer's surveyor or engineer, or the DeKalb County Surveyor's Office assumes any liability or responsibility whatsoever for any personal injury or property damage, to any Owner, invitee of an Owner, or occupant of a residence on a Lot by reason of the establishment of a minimum building elevation in this Section 8.

Section 9. ***MANDATORY SOLID WASTE DISPOSAL.*** The Association may (but is not obligated to) contract for disposal of garbage and other solid waste to service all Lots. Each Owner agrees that the Association may so contract, and may pay for the cost of such disposal through Assessments made under Section 4. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be excused from payment of any part of an Assessment attributable to the cost of waste disposal for which the Association contracts under this Section 9.

Section 10. ***GEOTHERMAL SYSTEMS.***

10.1 Owners of Lots in the Subdivision shall have the right to install and maintain the following described types of geothermal heating and cooling systems (each, a "System") to service residences located on the Owners' Lots, and the right to use the Association property described below:

10.1.1 A System with a closed loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lots; or

10.1.2 A System that uses and discharges well water from the System into storm sewers and into retention or detention ponds located in Common Areas adjacent to such Lots.

10.2 Any System so installed shall:

10.2.1 Satisfy regulations of the Indiana Department of Natural Resources, and all applicable federal, state, and local laws, ordinances, and regulations; and

10.2.2 Satisfy reasonable requirements of the DeKalb County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control;

10.2.3 Be installed according to approved guidelines of and by technicians certified by a recognized national trade organization related to geothermal heating systems, or some other nationally-recognized applicable standard; and

10.2.4 Be installed and operated in such a manner that the discharge of water from a geothermal system does not cause a Common Area Pond to thaw during freezing temperatures, or otherwise interfere with the goose/waterfowl mitigation measures described in Section 12.

10.3 Any Owner using property owned by the Association for the purposes described in Section 10.1 agrees to indemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with a System.

Section 11. ***AIRPORT RESTRICTIONS.***

11.1 The Subdivision is located within the horizontal surface of the DeKalb County Airport, and is subject to certain limitations and restrictions as set out and specified in the DeKalb County Airport Zoning Ordinance. The maximum allowable height for any building, structure or tree in the Subdivision is limited to 75 feet above ground level, unless a variance is first obtained from the DeKalb County Board of Aviation Commissioners.

11.2 The Subdivision also is located within the "Noise Sensitive Zone" of the DeKalb County Airport. Each Owner agrees to recognize the existing and established "Noise Sensitive Zone", and understands that a "Waiver of Claim and Compensation by Landowner Within Airport Zone Area" in favor of the Board of Aviation Commissioners of DeKalb County, Indiana, acknowledging the preexisting noise sensitive condition in the area, shall be executed and filed before the issuance of any Improvement Location Permit by the Zoning Administrator.

Section 12. ***Goose/WaterFowl Easement/Mitigation.***

12.1 A perpetual easement on, over, across, Block "B" is reserved by Developer for the purpose of allowing the control and mitigation of the population of geese and other waterfowl in and around Common Area Pond #1. Such control measures shall include, without limitation, (i) the planting of certain grasses, (ii) harassment, (iii) chemical applications, (iv) egg management, (v) the construction of a subsurface shelf around the perimeter of Common Area Pond #1 to inhibit geese and other waterfowl from gaining footing, (vi) placement of rocks, plant material, and other impediments, to control and discourage nesting and attraction of geese and other waterfowl in and around Common Area Pond #1, and (vii) the hiring of experts to assist in such control or

mitigation measures. Further, no measure (including without limitation, aeration) shall be taken by Developer, the Association, or any Owner to prevent the natural freezing of Common Area Pond #1. The rights, powers, and obligations of Developer, and the easement reserved by Developer, under this Section 12, may be assigned by Developer to the Association if written evidence of such assignment is recorded in the Office of the Recorder of DeKalb County, Indiana.

12.2 The control and mitigation measures described in Section 12.1 shall be performed in such a manner that there will be minimum interference to the Owners' quiet enjoyment of the Lots adjacent to Common Area Pond #1.

12.3 All Owners are prohibited from interfering in any manner with any of the control and mitigation measures described in Section 12.1. **The Owners and their respective invitees further covenant and agree not to feed geese or other waterfowl at any time on any Lot or in any Common Area.**

12.4 Developer shall be responsible to install, construct, or implement all of the goose/water fowl mitigation measures described in Section 12.1, as soon as is reasonably practicable. Develop also shall maintain such mitigation measures so that they function properly and serve the intended purpose. If Developer records the written assignment described in Section 12.1, the Association then shall succede to all of Developer's obligations under this Section 12.4.

12.5 In the event of a violation or breach of any of the restrictions contained in Section 12 by any Owner, or an invitee of an Owner, Developer, or if Developer fails to act within a reasonable time period, the Association, shall enforce such violation or breach by compelling compliance with such restrictions. In the event Developer, or the Association if applicable, fails to perform or otherwise breaches the obligations described in Section 12.4, any Owner shall have the right (but not the obligation) to enforce such failure or breach by compelling compliance with such obligations. Enforcement under this Section 12.5 may include the filing of an action in a court of competent jurisdiction, at law or in equity, to compel compliance with the provisions of this Section 12, or to prevent the violation or breach of this Section 12. Additionally, the Plan Commission (or the authorized designee of the Plan Commission) shall have the independent right (but not the obligation) to enforce any violation or breach of any restriction or obligation imposed under Section 12. If the Plan Commission initiates an enforcement action under this Section 12.5, the Plan Commission also shall be entitled to recover all costs and expenses incurred in such action, including reasonable attorneys' fees, if it is the prevailing party.

12.6 The failure to enforce any right, reservation or restriction contained in Section 12, however long continued, shall not be deemed to be a waiver of the right to do so later as to the same breach, or as to a breach occurring prior or subsequent to the breach, and shall not bar or affect its subsequent enforcement.

12.7 The Zoning Administrator (or the Zoning Administrator's authorized designee) shall have the right to enter upon a Lot and the Common Areas to inspect for violations of Section 12, at all reasonable times.

[**REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Ultimate Development, LP, an Indiana limited partnership, by Stuart M. Stier and Tamra S. Stier, General Partners, as owner of the Real Estate, has signed these Covenants on the _____ day of_____, 2006.

ULTIMATE DEVELOPMENT, LP,

an Indiana limited partnership

By: ____

Tamra S. Stier, General Partner

By: ____

Stuart M. Stier, General Partner

STATE OF INDIANA)

) SS:

COUNTY OF ALLEN)

Before me, a Notary Public in and for said County and State, this ____ day of _____, 2006, personally appeared Tamra S. Stier and Stuart M. Stier, known to be the General Partners of Ultimate Development, LP, an Indiana limited partnership, and acknowledged the execution of the above and foregoing document as their voluntary act and deed and on behalf of said partnership for the purposes and uses set forth in this document.

_____

_____, Notary Public

Resident of _____County, Indiana

My Commission Expires:

_____

This instrument prepared by: James A. Federoff, Attorney at Law, Federoff Law Firm, LLP.

After recording, mail to: _____

EXHIBIT "A"

Legal Description of Real Estate

A part of the East Half (1/2) of the Northwest Quarter (1/4) and a part of the West Half (1/2) of the Northeast Quarter (1/4) of Section Thirty (30), Township Thirty-three (33) North, Range Thirteen (13) East, Second Principal Meridian, Jackson Civil Township, DeKalb County, Indiana and more particularly described as follows:

Commencing at a Harrison monument marking the Northeast corner of the Northwest Quarter (1/4) of said Section 30; thence South 89 degrees 01 minutes 35 seconds West (an assumed bearing and basis of all bearings to follow in this description), 524.14 feet on and along the North line of said Northwest Quarter (1/4) to a 5/8 inch rebar with cap marked "KLINE ASSOC. INC. #0043" marking the true point of beginning of this description; thence continuing South 89 degrees 01 minutes 35 seconds West, 800.05 feet on and along said North line of the Northwest Quarter (1/4) to the Northwest corner of the East Half (1/2) of said Northwest Quarter (1/4), said point marked by a 5/8 inch rebar with cap marked "KLINE ASSOC. INC. #0043"; thence South 01 degrees 36 minutes 42 seconds East, 2532.79 feet on and along the West line of said East Half (1/2) of the Northwest Quarter (1/4); thence North 85 degrees 53 minutes 02 seconds East, 702.03 feet to a point on the centerline of the James Ferguson Regulated Open Drain, Drain No. 86-00-0; thence easterly, northerly, and northeasterly on and along said centerline of the James Ferguson Regulated Open Drain No. 86-00-0 the following eight (8) courses and distances:

North 60 degrees 29 minutes 42 seconds East, 71.15 feet;

North 47 degrees 38 minutes 51 seconds East, 146.28 feet;

North 43 degrees 03 minutes 32 seconds East, 204.88 feet;

North 15 degrees 31 minutes 04 seconds East, 227.12 feet;

North 17 degrees 33 minutes 08 seconds West, 125.90 feet;

North 21 degrees 33 minutes 45 seconds East, 167.74 feet;

North 39 degrees 04 minutes 37 seconds East, 269.46 feet; and

North 45 degrees 32 minutes 19 seconds East, 159.20 feet; thence departing said centerline of open drain North 41 degrees 35 minutes 39 seconds West, 326.01 feet; thence North 38 degrees

12 minutes 47 seconds West, 240.22 feet; thence South 55 degrees 20 minutes 32 seconds West, 75.91 feet; thence North 51 degrees 30 minutes 08 seconds West, 335.85 feet; thence North 03 degrees 53 minutes 08 seconds East, 153.67 feet; thence North 61 degrees 58 minutes 40 seconds East, 101.54 feet; thence North 26 degrees 45 minutes 40 seconds West, 99.52 feet; thence North 01 degrees 36 minutes 42 seconds West, 508.00 feet to the point of beginning, containing 57.190 acres.

Prescribed by the County Form 170

State Board of Accounts

(2005)

Declaration

This form is to be signed by the preparer of a document and recorded with each document in accordance with IC 36-2-7.5(a).

I, the undersigned preparer of the attached document, in accordance with IC 36-2-7.5, do hereby affirm under the penalties of perjury:

1. I have reviewed the attached document for the purpose of identifying and, to the extent permitted by law, redacting all Social Security numbers; and

2. I have redacted, to the extent permitted by law, each Social Security number in the attached document, if any.

I, the undersigned, affirm under the penalties of perjury, that the foregoing declarations are true.

_____

Signature of Declarant

_____

Printed Name of Declarant