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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR TIMBERFIELD**

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR TIMBERFIELD**

This Declaration of Covenants, Conditions and Restrictions for Timberfield ("Declaration"), Made this 24<sup>TH</sup> day of MAY, 2001, by Timberlake Dev. Co., LLC.

WITNESSETH THAT:

Whereas, Declarant is the Owner of certain real estate located in Marion County, Indiana, more particularly described in the attached Exhibit "A-1" collectively, ("Real Estate"); and

Whereas, Declarant intends to develop the real estate, by constructing residential facilities, which shall be known as "Timberfield"; and

Whereas, a plat for the real estate to be developed by Declarant as Timberfield is to be recorded in the office of the recorder of Marion County, Indiana; and

Whereas, Declarant intends to sell and convey the residential facilities and lots within Timberfield and desires to subject the real estate to certain Covenants, Conditions, and Restrictions ("Covenants") in order to ensure that the development and use of the various lots on the real estate are harmonious and do not adversely affect the value of surrounding lots on the real estate; and

Whereas, Davis Homes, LLC desires to subject that portion of the real estate which it presently owns (described in the attached Exhibit "A-2") to the aforementioned plat and to the Covenants; and

Whereas, Declarant desires to provide for maintenance of the Lakes, Landscape Easements and other improvements located on the real estate which are of common benefit to the owners of the various lots within said subdivision, and to that end desires to establish certain obligations on said owners and a system of assessments and charges upon said owners for certain maintenance and other costs in connection with the operation of Timberfield.

Now therefore, Declarant hereby declares that all of the real estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used occupied and improved, is subject to the following covenants. All of the covenants shall run with the real estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the real estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the real estate or any part or parts thereof including without limitation Davis Homes, LLC.

SOUTH HALF OF SECTION 13, TOWNSHIP 14 NORTH, RANGE 4 EAST  
OF THE SECOND PRINCIPAL MERIDIAN, MARION COUNTY, INDIANA

## **ARTICLE I.**

### **GENERAL PURPOSE OF THIS DECLARATION**

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

## **ARTICLE II.**

### **DEFINITIONS FOR ALL PURPOSES OF THIS DECLARATION**

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

**SECTION 1 ARCHITECTURAL CONTROL COMMITTEE.** The Architectural Control Committee, or "ACC", means the Architectural Control Committee for Timberfield to be appointed in accordance with this Declaration.

**SECTION 2. ASSESSMENT.** "Assessment" means the share of the common expenses imposed upon each lot as determined and levied pursuant to the provisions of this Declaration.

**SECTION 3. ASSOCIATION.** "Association" means Timberfield Homeowners' Association, Inc., an Indiana Corporation, formed or to be formed for the purpose of determining and collecting the assessments and overseeing and enforcing the terms of this Declaration.

**SECTION 4. COMMON AREAS.** "Common Areas" means certain areas not amenable to development which may be designated as landscape easements on the plat and which is intended for the common benefit of all lots.

**SECTION 5. COMMON EXPENSE.** "Common Expense" means the actual or estimated cost to the association for maintenance, management, operation, repair, improvement, and replacement of common areas, landscape easements, drainage system, and other cost or expense incurred by the association for the benefit of the same.

**SECTION 6. DECLARANT.** "Declarant" means Timberfield Dev. Co., LLC or any other person, firm, corporation or partnership which succeeds to the interest of Timberfield Dev. Co., LLC, as developer and/or owner of Timberfield.

**SECTION 7. DRAINAGE SYSTEM.** "Drainage System" means the lakes, storm sewers, subsurface drainage tiles, pipes and structures, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the common areas, easements, or streets and designed for the purpose of expediting the drainage of surface and subsurface waters from, over, and across Timberfield.

**SECTION 8. EASEMENTS.** "Easements" refer to those areas reserved as easements, on the plat of Timberfield.

**SECTION 9. TIMBERFIELD.** "Timberfield" means the real estate as it is platted and recorded by Declarant in accordance with the provisions of this Declaration.

**SECTION 10. LANDSCAPE EASEMENTS.** "Landscape Easements" refer to those areas reserved as landscape easements on the plat of Timberfield.

**SECTION 11. LOT.** "Lot" means any of the separate parcels numbered and identified on the plat of Timberfield.

**SECTION 12. MORTGAGEE.** "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any lot.

**SECTION 13. OWNER.** "Owner" means any person or persons who acquire, after the date of this declaration, legal and/or equitable title to any lot; provided, however, that "owner" shall not include any holder of any mortgage of all or part of any lot, so long as such hold does not hold both legal and equitable title thereto.

**SECTION 14. PLAT.** "Plat" means the final plat recorded for Timberfield.

**SECTION 15. SEWAGE SYSTEM.** "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the common areas, easements, or streets and designed to provide for the discharge of sanitary sewage from any or all lots, as the same are or may be constructed at any time, and any replacement thereof or substitute therefore.

**SECTION 16. STREETS.** "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the plat of Timberfield, which have been or hereafter are constructed for the purpose of providing commons access for owners, occupants and their guests and invitees, to any or all lots.

### **ARTICLE III.**

#### **GENERAL RESTRICTIONS**

**SECTION 1. MAINTENANCE OF PREMISES.** In order to maintain the standards of Timberfield, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All owners shall maintain their lots and improvements situated thereon in a manner so as to prevent the lot or improvements from becoming unsightly, and specifically, owner shall:

- (a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.
- (b) Cut down and remove dead trees.
- (c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly.
- (d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the lot and/or Timberfield.

Failure to comply shall warrant the Declarant, authorized agents of Marion County or the Association to cut the growth or weeds, or clear the refuse from the lot at the expense of the owner. The Association shall place and record a lien against said lot in an amount equal to the expenses therefore and costs which costs may include reasonable attorneys fees for the placement of said lien should such be deemed necessary by the Association. said liens shall be subject and subordinate only to taxes, municipal liens, and the lien of any bona fide mortgage upon any lot. At the option of the Association, said liens may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of lien with interest, attorney's fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws.

**SECTION 2. RESIDENTIAL PURPOSE.** No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any lot other than a dwelling not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

**SECTION 3. SETBACKS.** No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. The minimum side yard setback shall be seven feet (7') and minimum aggregate of the side yards on any lot shall be nineteen feet (19'). The minimum rear yard setback shall be twenty-five feet (25') from the rear lot line. For the purposes of this covenant, eaves, steps and open porches or patios shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

**SECTION 4. EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.



**SECTION 5. LANDSCAPE EASEMENTS.** The landscaping within the landscape easements shall initially be determined by the Architectural Control Committee and developed by Declarant in accordance with the landscape plan for Timberfield. The Declarant, prior to the incorporation of the association, and the association thereafter, shall maintain the landscape easements. The landscape easements located within the dedicated county road right-of-way shall be subject to termination by the county if, in its discretion, the county determines that the landscape easements are not being properly maintained and/or constitute a hazard to the motoring public.

**SECTION 6. INOPERABLE VEHICLES.** At no time shall any unlicensed and/or inoperable vehicle be permitted on any lot, common area, street or easement unless kept entirely within a garage.

**SECTION 7. TRUCKS, BOATS, RECREATIONAL VEHICLES.** No semi-truck, trailer, boat or trailer, mobile home, or recreational vehicle, or any similar equipment shall be permitted to be kept on any lot unless kept entirely within a garage.

**SECTION 8. NUISANCES.** No noxious, obnoxious, or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become any annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

**SECTION 9. OUTDOOR STORAGE.** No large machinery or equipment shall be permitted to be kept or stored on any lot except within the dwelling.

**SECTION 10. DRAINAGE DITCHES.** Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of authorized agents of Marion County.

Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten (10) days notice by certified mail to repair said damage, after which time, if no action is taken, authorized agents of Marion County may cause said repairs to be accomplished and the bill for cost of said repairs will be sent to the affected property owner for the immediate payment.

**SECTION 11. SIGNS.** No sign of any kind shall be displayed to the public view on any lot except one (1) professionally manufactured sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period.

**SECTION 12. CHILDCARE SERVICES.** No pre-school, babysitting business or such childcare services for more than six (6) children shall be allowed to operate upon any lot.

**SECTION 13. MINING OPERATION.** No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

**SECTION 14. ANIMALS.** No animals, 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 bred, kept or maintained for any commercial use.

**SECTION 15. RUBBISH, TRASH, AND GARBAGE.** Rubbish, trash, garbage or any other waste shall not be allowed to be compiled, accumulated or dumped on any lot. Garbage and trash shall be kept in appropriate containers which are not visible from the street, except on collection day and except for normal construction debris during construction of a home by a builder.

**SECTION 16. CORNER LOT.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above roadways shall be placed or permitted on any corner lot within the triangular area formed by the street property line and a line connecting them at points 25 feet from the intersection of the street liens extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

**SECTION 17. FIELD TILES.** Any field tile or underground drain which is on any lot must be allowed to perpetuate and all owners of the lots in this subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

**SECTION 18. MINIMUM LIVING SPACE.** The minimum square footage of living space of dwellings within Timberfield, exclusive of porches, garages or basements shall be no less than:

- (a) 1700 square feet for a single story dwelling; and
- (b) 2200 square fee for a two story dwellings.

**SECTION 19. OUTBUILDINGS.** No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be maintained on any lot.

**SECTION 20. DRIVEWAYS AND CARPORTS.** All driveways must be paved with concrete. No carports are permitted.

**SECTION 21. COMMUNICATION DEVICES.** Only external t.v. antenna or satellite dish shall be placed behind the residence.

**SECTION 22. MAILBOXES.** All mailboxes in Timberfield shall be uniform in appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the mailboxes approved by the ACC. Owners shall be responsible to keep the mailboxes in a good state of repair and to replace them with a substantially identical one if necessary.



**SECTION 23. YARD LIGHTS.** All lots shall upon their initial development and thereafter have yard lights or coach lights of uniform appearance. The style, type and location shall be determined by the Architectural Control Committee (ACC). Owners shall be prohibited from removing, altering, or substituting the yard lights approved by the ACC. Owners shall be responsible to maintain the yard lights in the form in which they were originally installed, kept functional at all times and in a state of good repair.

**SECTION 24. WELLS AND SEPTIC TANKS.** No water wells shall be drilled on any lot. Septic tanks shall be prohibited.

**SECTION 25. SWIMMING POOLS.** Above-ground swimming pools are prohibited.

**SECTION 26. CONSTRUCTION, EARTH-MOVING, EXCAVATION.** No construction, significant earth-moving, or excavating work of any nature may be conducted on any lot without first having any development plans approved by the Architectural Control Committee.

**SECTION 27. FENCES, WALLS, BARRIERS.** All fences, walls, barriers or like structures must be approved in writing by the Architectural Control Committee prior to construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front lot line than the furthest back front corner of the residence. Any farm fence existing along the perimeter of Timberfield shall be repaired or replaced as necessary and maintained at all times. Any fencing erected with the back yards of the lots along Shelbyville Road, or the lots which border any common area(s) easement(s), right-of-way or detention/retention ponds along Shelbyville Road shall be uniform in type and shall be either vinyl coated chain link or aluminum, brick, wrought iron or some combination thereof.

**SECTION 28. DECORATIVE STRUCTURES.** No decorative structure, statue, or other structure may be placed on the lot closer to the front lot line than the front building setback line.

**SECTION 29. NOTICE.** Upon the sale of any home within Timberfield the buyer shall be informed by the seller in writing at the time of closing of the existence of a licensed ham radio operator in the immediate vicinity.

#### **ARTICLE IV.**

#### **LAKE COVENANTS AND RESTRICTIONS**

**SECTION 1.** The area to be known as the lakes and which is shown as a storm detention or variable drainage easement on the plat (hereinafter "lakes") shall be maintained and controlled by the individual lot owners holding title to the land which the lakes are comprised of.

**SECTION 2.** The lake lot owners shall be responsible for formulating rules and regulations pertaining to the lake as well as creating an annual budget to assure adequate maintenance, upkeep and repair of the lake property, said budget shall be included as part of the owners' annual assessment.

**SECTION 3.** The lake may be used only in the manner authorized by the lake lot owners which shall not be inconsistent with the provisions of this declaration.

**SECTION 4.** No privately owned personal property of any kind shall be allowed to remain within the lake area except when the owner of such property is present.

**SECTION 5.** No docks or piers will be allowed.

**SECTION 6.** No owner or third party shall do or permit another to do any act which could result in pollution of the lake, diversion of any water, raise the elevation of the water, significantly disturb the earth or the embankment of the lake areas, or any other conduct which could result in an adverse effect upon the water quality, embankment and adjacent property, drainage, or any other general condition of the lake.

**SECTION 7.** The association, on behalf of the owners, or authorized agents of Marion County, shall have the authority to institute an action for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the lake or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to cost, together with reasonable attorneys' fees.

## **ARTICLE V**

### **DECLARANT'S / ASSOCIATION'S RIGHT TO GUARANTEE COMPLIANCE**

**SECTION 1.** In the event the owner of any lot in Timberfield shall fail to maintain that lot or any of its improvements situated thereon in accordance with the Provisions of these Covenants, the Association, or prior to the Association's Incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said lot and perform such acts as may be reasonably necessary to make such lot improvements thereon, if any, conform to the requirements of these Covenants. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from owner. the Association/Declarant shall not be liable for any damage which may result from any maintenance work performed hereunder at the time dwellings are constructed upon.

## **ARTICLE VI.**

### **TIMBERFIELD ARCHITECTURAL CONTROL COMMITTEE**

#### **SECTION 1. APPOINTMENT OF ARCHITECTURAL CONTROL COMMITTEE.**

The Board of Directors of The Association, or Declarant if the Association is not yet incorporated, shall appoint the members of the Architectural Control Committee (hereinafter sometimes referred to as "ACC"). However, initially the Architectural Control Committee shall consist of Jerry Martin, Jeff Smith and Mike Shotts (hereinafter "Martin, Smith and Shotts"). The term Martin, Smith and Shotts shall serve as the ACC shall be that period of time consisting of the sale and construction of residential structures on all lots within Timberfield. Thereafter, the ACC shall consist of three members who shall be appointed by the Association. The term of any Association appointed member of the ACC shall be one (1) year in length.



**SECTION 2. CONSTRUCTION APPROVALS.** No construction of any building or structure of any kind, including additions, alterations, swimming pools, fences, screens and walls shall begin within Timberfield until the plans and specifications, locations and plot plan thereof, in detail and to scale have been submitted to and approved by the Architectural Control Committee. The plans and specifications of and location of all construction shall be in compliance with all applicable regulatory codes, including those relating to building, plumbing, and electrical requirements, and shall also comply with all zoning covenants and restrictions which are applicable to the real estate. Refusal of approval of plans and specifications, location and plot plan by the ACC may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Neither Declarant, the ACC nor the Association shall be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

The plans and specification submitted to Delcarant shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committee. The required landscaping and driveways shall be complete at the time of completion of the building, or as soon as weather and season permit. Declarant shall not be responsible for any defects in such plans or specifications, or in any building or structure erected according to such plans and specifications.

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

**SECTION 4. LIABILITY OF COMMITTEE.** Neither the committee nor any agent thereof, nor Declarant, nor the Association shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

**SECTION 5. INSPECTION.** The ACC or its agents may inspect work being performed to assure compliance with the approved plans and this Declaration.

**ARTICLE VII.**  
**COVENANTS FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. PURPOSE OF THE ASSESSMENTS.** The assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the lots within Timberfield and promoting the health, safety, and welfare of the owners, users, and occupants of the same and, in particular, for the improvement, fencing, operating, and maintenance of the common areas and landscape easements and drainage system, including, but not limited to, the payment of taxes and insurance thereon and for the costs of labor, equipment, material, and management furnished with respect to the common areas and landscape easements; provided that the Association shall not be responsible for the replacement, repair or maintenance of any common area which is or hereafter may be dedicated to the public. Each owner hereby covenants and agrees to pay the Association:

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

**SECTION 2. LIABILITY FOR ASSESSMENTS.** All assessments shall be a prior lien on the lots with respect to which said assessments are in favor of the Association, subject and subordinate only to taxes, municipal liens, and to the lien of any bona fide mortgage upon any lot, and at the option of the Association assessments may be foreclosed upon in any court of competent jurisdiction by the Association as plaintiff for the amount of the assessment with interest, attorney's fees and costs. Any judgment obtained shall be without relief from valuation or appraisal laws. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien or such assessments as to payments which became due 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.

**SECTION 3. PRO-RATA SHARE.** The pro-rata share of each owner for purposes of this article shall be the percentage obtained by dividing one by the total number of lots within Timberfield ("pro-rata share").

**SECTION 4. BASIS OF ANNUAL ASSESSMENT.** The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all common expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each owner within thirty (30) days to the beginning of each fiscal year of the association.

**SECTION 5. BASIS OF SPECIAL ASSESSMENT.** Should the Board of Directors of the Association at the time during the fiscal year determine that the assessments levied with respect to such year are insufficient to pay the common expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy special assessments as it may deem necessary for meeting the common expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special assessments for the purpose of defraying, in whole, or in part any unanticipated common expense not provided for by the annual assessment.



**SECTION 6. NOTICE OF MEETINGS.** Written notice of any meeting called for the purpose of taking action to authorize assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

**SECTION 7. FISCAL YEAR; DATE OF COMMENCEMENT OF ASSESSMENTS; DUE DATES.** The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual assessment provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first lot to a purchaser (other than builder). Declarant shall be responsible for all common expenses prior to this conveyance. The first annual assessment for each lot shall be pro-rated for the balance of the fiscal year of the Association in which such assessment is made. The annual assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such assessments in installments.

**SECTION 8. DUTIES OF THE ASSOCIATION.**

(a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special assessment to be kept and maintained, including a roster setting forth the identification of each and every lot and each assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each owner (or duly authorized representative of any owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all assessments levied by the Association upon the lots and upon the owners to be mailed to the owners or their designated representatives as promptly as practicable and in the event not less than thirty (30) days prior to the due date of such assessment or any installment thereof.

In the event such notice is mailed less than thirty (30) days prior to the due date of the assessment to which such notice pertains payment of such assessment shall not be deemed past due for any purpose if paid by the owner within thirty (30) days after the date of actual mailing of such notice.

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

(c) The Association shall notify any mortgagee from which it has received a written request for notice of any default in the performance by any owner of any obligation under the by-laws or this declaration which is not cured within sixty (60) days.

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

**SECTION 9. ADJUSTMENTS.** In the event that the amounts actually incurred by the Association for common expenses in any fiscal year exceed the amounts budgeted and assessed for common expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for common expenses in any fiscal year exceed the amount actually expended by the Association for common expenses for that fiscal year, a pro-rata share of such excess shall be a credit against the assessment(s) due from each owner for the next fiscal year(s).

**ARTICLE VIII.**  
**ORGANIZATION AND DUTIES OF ASSOCIATIONS**

**SECTION 1. ORGANIZATION OF ASSOCIATION.** The Association shall be organized as a not-for-profit corporation under the laws of the state of Indiana, to be operated in accordance with the Timberfield Homeowners Association, Inc. Articles of Incorporation, Code of By-Laws and Declaration of Covenants, Conditions and Restrictions which have been filed or will be filed by Declarant.

**SECTION 2. MEMBERSHIP.** The members of the Association shall consist of the Declarant and the owners of lots in Timberfield provided that, in the event that any one lot shall be owned by more than one person, partnership, trust, corporation or other entity, they shall be treated collectively as one member for voting purposes.

The Association shall have two classes of voting membership:

**CLASS A.** Class A Members shall be all owners with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they amongst themselves determine, but in no event shall more than one vote be cast with respect to any lot.

**CLASS B.** The Class B Members shall be the Declarant, who shall be entitled to three (3) votes for each lot owned, and the first Board of Directors during their respective terms, who shall have no voting rights. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or
- (b) On January 1, 2006.

**SECTION 3. BOARD OF DIRECTORS.** The Members shall elect a Board of Directors of the Association as prescribed by the by-laws. The Board of Directors shall manage the affairs of the Association.

**SECTION 4. BOARD MEMBERS.** Initially, The Board of Directors shall consist of three members, those persons being Jerome P. Martin, Jeffery K. Smith and Michael Shotts (hereinafter referred to as Initial Board). The Initial Board shall serve as said Board Members until 75% of the lots in Timberfield have been sold and developed on June 1, 2006 whichever occurs earlier. THEREAFTER, the Board shall consist of six members who shall be Association Members elected by the Association Membership. Each Board Member shall serve a two year term. However, the first Board Members elected by the Association shall serve terms as follows:

- (a) 2 newly elected Board Members shall serve one year terms
- (b) 2 newly elected Board Members shall serve two year terms
- (c) 2 newly elected Board Members shall serve three year terms

All subsequent Board Members shall serve two year terms.

**SECTION 5. GENERAL DUTIES OF THE ASSOCIATION.** The Association is hereby authorized to act and shall act on behalf of, and in the name of, place and stead of, the individual owners in all matters pertaining to the maintenance, repair and replacement, of the common areas, the determination of common expenses, the collection of annual and special assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such owners. The Association shall also have the right, but not the obligation, to act on behalf of any owner or owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration.

**SECTION 6. LIABILITY OF ASSOCIATION.** Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of willful or reckless disregard of the rights of the owners or in the nature of the willful, intentional, fraudulent, or reckless misconduct.

**SECTION 7. AMENDMENT OF DECLARATION.** The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors and the subsequent approval of such amendment by both owners of at least two-thirds of the lots and the mortgagees of at least two-thirds mortgagees requested notice of said action; provided, however, that any such amendment of this Declaration shall require prior written approval of the Declarant so long as Declarant owns any lots within Timberfield. Each such amendment must be evidenced by a written instrument, signed and acknowledged by duly authorized officers of the Association, and by Declarant when its approval is required, setting forth the facts sufficient to indicate compliance with the copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendments shall not be effective until recorded in the office of the Recorder of Marion County. As long as there is a Class B Membership, the following actions will require the prior approval of the Department of Housing and Urban Development or the Department of Veterans Affairs: annexation of additional properties, dedication of common area, and amendment of this Declaration of Covenants, Conditions and Restrictions.



**SECTION 8. INSURANCE.** The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than one million dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any common areas or landscape easements. The Association shall also maintain in force adequate insurance, insuring all common property against windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount sufficient to cover any foreseeable maintenance, removal or replacement costs in the event of damage attributable to such hazards. The Association shall notify all mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause hereby the insurer waives any right to be subrogated to any claim against the Association, its officers, board members, the Declarant, any property manager, their respective employees and agents, the lot owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' assessments on all lots in Timberfield, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association Lending Guide Chapter 3, part 5, as established on January 3, 1983, as amended on JUNE 30, 1983, or as such guidelines may be amended thereafter.

**SECTION 9. CONDEMNATION; DESTRUCTION.** In the event that any of the common areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage or destruction. Any sums recovered by the association shall be applied, first, to the restoration and repair of any common area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the common area or turned over to the owners in proportion to their pro-rate shares, whichever may be determined by a majority vote of the members of the Association. Each owner shall be responsible for pursuing his own action for damages to his lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the common areas. The Association shall notify all mortgagees of which it has notice of any condemnation, damage, or destruction of any common area.



**SECTION 10. MORTGAGEES' RIGHTS.** The mortgagee shall have the right, at their option, jointly and severally, to pay taxes or other charges which are in default or which may or have become a charge against the common area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the common area, and mortgagees making such payment shall be owed immediate reimbursement therefore from the association.

## **ARTICLE IX.**

### **GENERAL PROVISIONS**

**SECTION 1. COVENANTS RUN WITH THE LAND.** The covenants created by this Declaration shall attach to and run with the real estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the real estate.

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

**SECTION 3. ATTORNEYS' FEES.** As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting owner, such defaulting owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the court in such proceedings.

**SECTION 4. FAILURE TO ENFORCE NOT A WAIVER OF RIGHTS.** The failure of Declarant, the Association, or any owner to enforce any term, Covenant, or Condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such Term, Covenant or Condition.

**SECTION 5. RIGHTS OF MORTGAGEES.** Except to the extent otherwise provided in article vii no breach of this declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the real estate; provided, however, that if all or any portion of said real estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this declaration.

The provisions of article VIII hereinabove notwithstanding, neither the owners nor the association shall have any right to make any amendment to this declaration which materially impairs the rights of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the real estate at the time of such amendment.

**SECTION 6. EFFECT OF INVALIDATION.** If any provision of this declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

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

**SECTION 8. NOTICES.** All notices in connection with this declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the owner, as listed in the roster of owner's names and addresses referred to in article vii; or (b) seventy-two (72) hours after the deposit thereof in any united states main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

**SECTION 9. LIMITATIONS AND DECLARANT'S RIGHTS.** Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after such time as Declarant owns no lots within Timberfield.

**SECTION 10. DEED CLAUSE TO IMPLEMENT DECLARATION.** Each owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the grantee herein covenants and agrees to be bound by the Declaration of Covenants, Conditions and Restrictions for Timberfield pertaining to the real estate hereby granted, which is recorded in the office of the recorder of Marion County, Indiana",

And properly identifying the recording instrument number therein. however, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against owner of any interest in any portion of the real estate.

**SECTION 11. PROVISIONS AGAINST MERGER.** Declarant hereby intends that the real estate shall be subject to this Declaration, that the covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the real estate at the time this Declaration is executed or recorded.



Davis Homes, LLC  
By: Davis Holding Corporation, Managing Member

By: [Signature]  
C. Richard Davis, Vice President,

State of Indiana )  
County of Marion )

Before me, a notary public in and for said county and state, personally appeared C. Richard Davis, who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath, stated that the representations therein contained are true.

DEBORAH WHITE  
Notary Public, Deborah White  
Resident of Johnson County, IN  
Commission expires: 12-01-07