

12198

DECLARATION OF COVENANTS AND  
RESTRICTIONS FOR WILLOW LAKES

THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR WILLOW LAKES ("Declaration"), made this 10th day of December 1985, by Thomas Homes, Inc., an Indiana corporation, (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

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

WHEREAS, Declarant is developing the Real Estate and certain surrounding lands within the tract described in the attached Exhibit B, upon which Declarant may, but is not obligated to, construct residential facilities, which shall be known as "Willow Lakes" and which may be platted by Declarant in sections from time to time;

WHEREAS, the Real Estate has been platted by Declarants as Section One of Willow Lakes on December 13, 1985 as Instrument No. 12197 in the Office of the Recorder of Johnson County, Indiana, in Plat Book C Page 124-130; and

WHEREAS, Declarant desires to subject the Real Estate to certain covenants 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 or within Willow Lakes; and

WHEREAS, Declarant desires to provide for maintenance of the Lakes, Common Areas, and other improvements located or to be located in Willow Lakes, 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 Willow Lakes;

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.

## 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 buildings and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate or within Willow Lakes, 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 Willow Lakes and to ensure desired high standards of maintenance of the Real Estate, to the benefit of all Owners within Willow Lakes.

## 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. Assessment. "Assessment" means the share of the Common Expenses imposed upon each Lot, as determined and levied pursuant to the provisions of Article IV.

Section 2. Association. "Association" means Willow Lakes 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 3. Common Areas. "Common Areas" means certain areas not amenable to development which may be designated by Declarant as lakes or Common Area on the plat or plats of Willow Lakes, as the same may be recorded from time to time, and which is intended for the common benefit of all Lots.

Section 4. Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance,

management, operation, repair, improvement, and replacement of Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas.

Section 5. WILLOW LAKES. The term "Willow Lakes" means and includes all sections thereof as shall have been platted and recorded from time to time by Declarant in accordance with the provisions of this Declaration.

Section 6. Declarant. "Declarant" means Thomas Homes, Inc., an Indiana Corporation, or any other person, firm, corporation or partnership which succeeds to the interest of Thomas Homes, Inc. as developer of Willow Lakes.

Section 7. Drainage System. "Drainage System" means the 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 Willow Lakes.

Section 8. Easements. "Easements" refer to those areas reserved as easements on the plat or plats of Willow Lakes, as the same may be recorded from time to time.

Section 9. Lot. "Lot" means any of the separate parcels numbered and identified on the plat or plats of Willow Lakes, as the same may be recorded from time to time.

Section 10. Mortgagee. The term "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Lot.

Section 11. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 12. 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 therefor.

Section 13. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as shown on the plat or plats of Willow Lakes, as the same may be recorded from time to time, which have been or hereafter are

constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Lots.

### ARTICLE III.

#### General Restrictions

Section 1. Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant, the appropriate governmental authority of Johnson County, Indiana, or the Association to cut weeds or clear the refuse from the Lot at the expense of the Owner, and there shall be a lien against said Lot for the expense thereof.

Section 2. 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. 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 aggregate of the side yards on any lot shall be twenty feet (20'), provided, however, that no building shall be located less than eight feet (8') to an interior lot line or within an easement. For the purposes of this covenant, eaves, steps and open porches 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. No dwelling shall be erected or placed on any lot having a width of less than that shown on the recorded plat at the minimum building setback line nor shall any dwelling be erected or placed on any lot having an area of less than that shown on the recorded plat.

Section 5. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

Section 6. At no time shall any unlicensed, unoperative automobile or truck be permitted on any lot.

Section 7. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Trailers,

boats and similar equipment shall not be kept or stored in the front or side yard.

Section 8. No structure of a temporary character, trailer, boat, tractor, semi-truck, motor home, basement, tent, shack, garage, barn or other outbuilding shall be permitted on any lot at any time. Nor shall a partially completed dwelling be permitted. No storage buildings shall be permitted.

Section 9. The Architectural Control Committee shall be composed of three members appointed by the directors of the Association. The Architectural Control Committee approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representatives fail to approve or disapprove within 30 days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 10. With written approval of the Architectural Control Committee, and where, in the opinion of the said Committee, the location will not detract materially from the appearance and value of other properties, a dwelling may be located nearer to a street than above provided.

Section 11. 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 the Johnson County Drainage Board. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Johnson County Drainage Board.

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 10 days notice by certified mail to repair said damage, after which time, if no action is taken, the Johnson County Drainage Board will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property owner for the immediate payment. Failure to pay will result in a lien against the property.

Section 12. No individual water supply system or sewage disposal system shall be permitted on any lot unless such system is approved by Johnson County and is located and constructed in

accordance with requirements, standards, and recommendations of the Indiana State Board of Health.

Section 13. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 14. 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 15. 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 16. No lot shall be used or maintained as dumping ground for rubbish, trash, or garbage, other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 17. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 8 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 lines, or in the case of a rounded property corner, from the intersections of the street lines 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 18. Any field tile or underground drain which is encountered in construction or any improvement within this subdivision shall be perpetuated, and all owners of lots in this subdivision and their successors shall comply with the Indiana Drainage Code of 1965.

Section 19. Minimum floor areas shall be as follows:

a. A one story single family home shall have no less than 1,500 square feet living area.

b. A two story home shall have 1,100 square feet of living area on the ground floor.

Section 20. No multi-family dwelling, as the term is used in the Johnson County Zoning Ordinance shall be permitted.

Section 21. No detached garages or manufactured housing shall be permitted on any lot.

Section 22. All driveways must be of a hard surface. No car ports are permitted.

Section 23. Fireplace flues must be covered. No exposed metal flues are permitted, however metal furnace vents shall be allowed.

Section 24. No fence which obstructs vision shall be allowed in the rear or side yards of any lot abutting a lake area without the prior approval of the Architectural Control Committee.

#### ARTICLE IV.

##### 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 values of the Lots within Willow Lakes, as the same may be platted from time to time, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, fencing, repairing, operating, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Common Property; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to 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.
- (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. Each assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot

and shall constitute a lien from and after the due date thereof in favor of the Association upon each Lot. Each such assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each Lot at the time when the assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 3. Pro-rata Share. The pro-rata share of each Owner for purposes of this Article IV shall be the percentage obtained by dividing one by the total number of Lots shown on the plat or plats of Willow Lakes, as the same may be recorded from time to time, that have been conveyed by the Declarant to an Owner ("Pro-Rata Share").

Section 4. Basis of Annual Assessments. 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 Assessments. Should the Board of Directors of the Association at any time during the fiscal year determine that the assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such 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 Assessments.

Section 6. 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 assessments on each Lot in Willow Lakes shall commence on the day on which Declarant first conveys ownership of the Lot to an Owner. The first annual assessment for each Lot shall be prorated 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 7. 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 any 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 assessments have been levied and paid with respect to such requesting Owner's or Mortgagee's Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any assessments therein stated to have been paid.
- (c) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws or this Declaration which is not cured within sixty (60) days.

Section 8. Non-payment of Assessments; Remedies of

Association.

- (a) If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such assessment becomes due.
- (b) If any assessment upon any Lot is not paid within fifteen (15) days after the due date, such assessment and all costs of collection thereof, including attorneys' fees, shall bear interest from the date of delinquency until paid at an annual rate which is two times the rate in effect for ninety-day U.S. Treasury Bills at the time such assessment is due, but in no event greater than the maximum rate allowable under any applicable usury laws, and the Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such assessment all costs of such action, including the Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, costs, and attorneys' fees.

Section 9. Adjustments. In the event that the amounts actually expended by the Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual assessments or by the making of one or more special assessments for such purpose, at the option of the Association. In the event that the amounts budgeted and assessed for Common Expenses in any fiscal year exceed the amount actually expended by the Association for Common Expenses for that fiscal year, a Pro-Rata Share of such excess shall be a credit against the assessment(s) due from each Owner for the next fiscal year(s).

## ARTICLE V

### Construction Approvals

No building or structure of any kind, including additions, alterations, fences, screens and walls shall be erected or altered on the property until the plans and specifications, locations and plot plan thereof, in detail and to scale, shall have been submitted to and approved by the Architectural Control Committee in writing before any construction begins. The plans and specifications of and location of all construction shall be in compliance with the building, plumbing, and electrical requirements of all applicable regulatory codes, and shall also comply to all zoning covenants and restrictions which are applicable to the Real Estate. Refusal of approval of plans and specifications, location and plot plan by Declarant may be based on any ground, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committee. Declarant shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

The plans and specifications submitted to Declarant shall contain a plot plan to scale 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 all parking strips and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

## ARTICLE VI.

### Organization and Duties of Association

Section 1. Organization of Association. The Association shall be organized as a not-for-profit corporation under the laws of the State of Indiana, to be operated in accordance with The Articles of Incorporation 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 Willow Lakes as the same may be platted from time to time, 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 Developer 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 among 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 Developer, 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, 1996.

Section 3. General Duties of the Association.

The Association is hereby authorized to act and shall act on behalf of, and in the name, 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 Article III and Article IV of this Declaration. Neither the Association nor its 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 a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

Section 4. 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 the Owners of at least two-thirds of the Lots and the Mortgagees of at least two-thirds of the Mortgagees requesting notice of such action; provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant so long as Declarant owns at least six (6) Lots within Willow Lake. 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 facts sufficient to indicate compliance with this paragraph, including as an exhibit or addendum thereto a certified copy of the minutes of the Association meeting at which the necessary actions were taken, and such amendment shall not be effective until recorded in the Office of the Recorder of Johnson County. Article III shall be subject to amendment, provided that all of the above procedures for amendment are observed, and provided further, that such amendment does not effect a modification of zoning covenants or commitments undertaken in connection with any rezoning without the prior approval of the Johnson County Plan Commission.

Section 5. 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) for any single occurrence, occurring on or in connection with any and all Common Areas. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions, in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Lot 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 Willow Lake, 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 cancelled 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 on June 30, 1983, or as such guidelines may be amended thereafter from time to time.

Section 6. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority 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; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 7. Transfer of Control of Owner's Association. Declarant must transfer control of the Owner's Association to the Lot Owners no later than the earlier of (a) four (4) months after three-fourths (3/4) of the Lots in Willow Lakes have been conveyed to Lot purchasers or (b) five (5) years after the first Lot is conveyed in Willow Lakes.

Section 8. Mortgagees' Rights. The Mortgagees shall have the right, at their option, jointly or 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 therefor from the Association.

## ARTICLE VII

### LAKE COVENANTS

Section 1. The lake area as shown on the plats shall be owned and controlled as tenants in common of an undivided 1/30th interest each by the owners of lots 3 through 7, and 17 through 23, inclusive, in Section One of Willow Lakes, and the eighteen lots proposed to abut the lakes in Section Two of Willow Lakes.

Section 2. The owners of said lake lots of Willow Lakes, together with guests in their presence, shall have the exclusive rights to use and enjoyment may not interfere with the drainage system of the subdivision of which the lakes are a part.

Section 3. Until such time as eighteen lots are sold adjacent to said lakes, it shall be the responsibility of the Declarant, its successors and assigns, for the maintenance, repair and upkeep of said lake. To this end, such owner shall distribute to each lot purchaser reasonable rules and regulations concerning use of the lakes.

Section 4. Upon conveyance of eighteen lots adjacent to the lakes, the co-owners shall form an association in which each lot owner shall have one vote in the selection of a Board of Managers which shall consist of not less than three nor more than nine members. Thereafter, on the first Saturday in March of each calendar year, the voting members shall elect the Board of Managers for the ensuing year to a term commencing April 1st and expiring March 31st.

Section 5. The Board of Managers shall thereafter be responsible for establishing rules and regulations pertaining to lake usage as well as establishing an annual budget to assure adequate maintenance, upkeep and repair of the lake property including the easement adjacent thereto. Such budget shall be established annually on or before April 1st of each year for the ensuing twelve (12) month period.

Section 6. Assessments shall be equally paid by each voting member within thirty days from the date of billing, and there shall be a late charge of 2% per month on all delinquent payments.

Section 7. Assessments for maintenance shall be a lien upon the properties subordinate only to the lien of a first mortgage, which lien can be enforced by the Board of Managers of any lake lot owner subject to these Lake Covenants. By acceptance of deed of

title to these properties, the grantee consents to the lien of assessment and its enforcement provisions together with the costs of collection including reasonable attorneys' fees.

Section 8. In the event of a dispute arising from the maintenance, repair and upkeep of the lakes, any voting member upon giving notice in writing designating a time and place not less than seven (7) days from date of notice, which time may be shortened in case of dire emergency, at which meeting, by a majority vote, such dispute shall be resolved.

Section 9. The Board of Managers shall not be held personally liable in the discharge of their official duties except for wilfull and wanton misconduct, and there may be included in the maintenance budget a sufficient sum to provide insurance form liability in favor of the Board of Managers as well as public liability and property damage insurance covering all voting members for liabilities incurred by reason of lake ownership.

Section 10. No voting member or third party shall do or permit to be done any action or activity which could result in pollution of the lakes, diversion of water, elevation of lake levels, earth disturbance resulting in silting or any conduct which could result in an adverse affect upon water quality, drainage of the subdivision or proper lake management.

The Board of Managers, in behalf of the property owners in Willow Lakes or any lake lot owner subject to these Lake Covenants, and the Johnson County Drainage Board 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 lakes or interference with the drainage system, together with any damages incurred, and upon recovery of judgment shall be entitled to costs together with reasonable attorneys' fees.

## ARTICLE VIII

### Expansion of Subdivision

Section 1. Method and Scope of Expansion. Declarant, at its option, and from time to time, may expand Willow Lakes to include all or any parts of the tract described in the attached Exhibit B, by the addition of further sections consisting of one or more Lots and any Common Area which in the discretion of Declarant is appropriate for addition with such section. Such further sections, if added, shall be added by the recordation of a plat of such section, consistent in detail and layout with plats of sections previously recorded, and by the recordation of a supplemental declaration imposing upon such section the terms and conditions of



this Declaration. Declarant hereby covenants that the total number of Lots in Willow Lakes shall not exceed one hundred thirty (130) and that no real estate shall be added thereto which is not within that described in Exhibit B.

Section 2. Time for Expansion. No additional sections shall be added after the date which is seven (7) years after the date on which the plat for Willow Lakes was recorded without the written approval of any federal agency which has granted project approval such as FHA, FNMA, etc.

## 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 therefor, 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, 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 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 of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

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

Section 4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 5. Rights of Mortgagees. Except to the extent otherwise provided in Article IV 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 VI 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 hereof.

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 IV; or (b) seventy-two 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 fewer than six (6) lots within Willow Lakes.

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 and Restrictions For Willow Lakes pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana",

and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

Section 11. Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 12. Reservations of Declarant. The provisions of Article VI hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, so long as Declarant owns at least six (6) Lots within Willow Lakes without the approval or consent of the Owners or Mortgagees of the Lots; provided that except for any amendment required by a federal agency such as FHA, FNMA, etc., Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

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

In witness whereof, the Declarant has caused this Declaration to be executed on the date first above written.

THOMAS HOMES, INC.

Norman Thomas, President  
by: Norman Thomas, President

STATE OF INDIANA )

COUNTY OF Johnson )

Before me, a Notary Public in and for said county and state personally appeared Norman Thomas, President of Thomas Homes, Inc who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath stated that the representations therein contained are true.

*Elizabeth Melvin*  
\_\_\_\_\_  
Notary Public  
Printed: Elizabeth Melvin  
County of Residence: Johnson

My commission expires:

June 21, 1989

ELIZABETH MELVIN  
NOTARY PUBLIC STATE OF INDIANA  
JOHNSON CO.  
MY COMMISSION EXPI. JUN 21, 1989  
ISSUED THRU INDIANA NOTARY ASSOC.

This instrument was prepared by Deborah D. Robertson, Van Valer & Williams, 300 South Madison, P. O. Box 405, Greenwood, IN 46142

BOUNDARY OF  
WILLOW LAKES-SECTION ONE  
EXHIBIT "A"

A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 13 NORTH, RANGE 3 EAST OF THE SECOND PRINCIPAL MERIDIAN IN WHITE RIVER TOWNSHIP, JOHNSON COUNTY, INDIANA, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER; THENCE NORTH 88 DEGREES 52 MINUTES 48 SECONDS EAST, 835.92 FEET ALONG THE SOUTH LINE OF SAID WEST HALF OF THE SOUTHWEST QUARTER TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 45 MINUTES 01 SECONDS EAST, 279.63 FEET; THENCE NORTH 44 DEGREES 14 MINUTES 59 SECONDS WEST, 156.35 FEET; THENCE NORTH 24 DEGREES 44 MINUTES 21 SECONDS WEST, 178.57 FEET; THENCE NORTH 34 DEGREES 38 MINUTES 31 SECONDS WEST, 112.33 FEET; THENCE NORTH 64 DEGREES 32 MINUTES 55 SECONDS EAST, 146.73 FEET; THENCE NORTH 25 DEGREES 27 MINUTES 05 SECONDS WEST, 13.19 FEET; THENCE NORTH 64 DEGREES 32 MINUTES 55 SECONDS EAST, 210.00 FEET; THENCE SOUTH 44 DEGREES 25 MINUTES 24 SECONDS EAST, 84.80 FEET; THENCE NORTH 45 DEGREES 45 MINUTES 01 SECONDS EAST, 95.64 FEET; THENCE NORTH 01 DEGREES 56 MINUTES 09 SECONDS EAST, 262.39 FEET; THENCE NORTH 28 DEGREES 42 MINUTES 00 SECONDS WEST, 191.68 FEET; THENCE NORTH 37 DEGREES 31 MINUTES 18 SECONDS WEST, 70.07 FEET; THENCE NORTH 48 DEGREES 54 MINUTES 40 SECONDS WEST, 71.17 FEET; THENCE NORTH 61 DEGREES 47 MINUTES 18 SECONDS WEST, 124.09 FEET; TO A NON-TANGENT POINT ON A CURVE HAVING A CENTRAL ANGLE OF 09 DEGREES 28 MINUTES 31 SECONDS, THE RADIUS POINT OF SAID CURVE BEARS NORTH 52 DEGREES 18 MINUTES 46 SECONDS WEST, 1032.65 FEET; THENCE ALONG SAID CURVE 170.78 FEET TO A POINT OF TANGENCY, THE RADIUS POINT OF SAID CURVE BEARS NORTH 61 DEGREES 47 MINUTES 18 SECONDS WEST, 1032.65 FEET; THENCE NORTH 28 DEGREES 12 MINUTES 42 SECONDS EAST, 5.00 FEET; THENCE NORTH 36 DEGREES 10 MINUTES 00 SECONDS EAST, 50.49 FEET; THENCE NORTH 28 DEGREES 12 MINUTES 42 SECONDS EAST, 175.72 FEET; THENCE NORTH 04 DEGREES 14 MINUTES 18 SECONDS WEST, 64.06 FEET; THENCE SOUTH 79 DEGREES 01 MINUTES 30 SECONDS EAST, 169.11 FEET, NORTH 71 DEGREES 24 MINUTES 23 SECONDS EAST, 55.89 FEET; THENCE SOUTH 89 DEGREES 14 MINUTES 59 SECONDS EAST, 170.84 FEET TO A POINT ON THE EAST LINE OF THE WEST HALF OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 45 MINUTES 01 SECONDS WEST, 1790.14 FEET ALONG SAID EAST LINE TO A POINT ON THE SOUTH LINE OF SAID WEST HALF; THENCE SOUTH 88 DEGREES 52 MINUTES 48 SECONDS WEST, 481.17 FEET TO THE BEGINNING POINT OF THIS DESCRIPTION, CONTAINING 19.34 ACRES, MORE OR LESS, SUBJECT TO ALL EXISTING HIGHWAYS, RIGHTS OF WAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

EXHIBIT "B"

TOTAL BOUNDARY-WILLOW LAKES

A part of the West half of the Southwest quarter of Section II, Township 13 North, Range 3 East of the Second Principal Meridian in Johnson County, Indiana, described as follows:

Beginning at the Southwest corner of said Southwest quarter; thence North 00 degrees 36 minutes 21 seconds East along the West line of said Southwest quarter 2681.80 feet to the North line of said half quarter section; thence North 89 degrees 02 minutes 19 seconds East, 1323.75 feet to the East line of said half quarter section; thence South 00 degrees 45 minutes 01 seconds West, 2678.34 feet to the South line of said Southwest quarter; thence South 88 degrees 52 minutes 48 seconds West, 1317.10 feet to THE PLACE OF BEGINNING and containing 81.204 acres, more or less, subject to all rights-of-way, easements, and restrictions of record.

DEC 13 8 56 AM '85

