

**DEDICATION, PROTECTIVE RESTRICTIONS, COVENANTS,
LIMITATIONS, EASEMENTS, AND APPROVALS
OF THE PLAT OF BEAR CREEK ESTATES, SECTION II,
A SUBDIVISION IN JACKSON TOWNSHIP, DEKALB COUNTY, INDIANA**

Southwest Development of Jackson Township, LLC, an Indiana limited liability company, by Gregory C. Walbridge, Manager, declares that it is the owner of the real estate shown and legally described in the addendum attached to this document as "Exhibit A" ("Real Estate"), and lays off, plats, and subdivides the Real Estate in accordance with the information shown on the certified plat attached to, and incorporated by reference in, this document. The platted subdivision shall be known and designated as Bear Creek Estates, Section II, a Subdivision in Jackson Township, DeKalb County, Indiana.

The lots are numbered 114 to 123 inclusive and 140 to 144 inclusive, and all dimensions are shown in feet and decimals of a foot on the plat. All streets and easements specifically shown or described are expressly dedicated to public use for their usual and intended purposes.

PREFACE

Bear Creek Estates, Section II is part of a tract of real estate which is currently planned to be subdivided into a maximum of 90 residential lots. In addition to the recordation of the Plat and this document, there will be recorded articles of incorporation of Bear Creek Estates Community Association, Inc., it being Developer's intention that each owner of a lot in Bear Creek Estates, Section II will become a member of said association, and be bound by its articles of incorporation and bylaws.

SECTION 1. Definitions: The following words and phrases shall have the meanings states, unless the context clearly indicates that a different meaning is intended:

1.1 **"Articles":** The articles of incorporation adopted by the Association and approved by the Indiana Secretary Of state, and all amendments to those articles.

1.2 **"Association":** Bear Creek Estates Community Association, Inc., an Indiana nonprofit corporation, and its successors and assigns.

1.3 **"Board Of Directors":** The duly elected board of directors of the Association.

1.4 **"Building Commissioner"**: The official designated by the DeKalb County Plan Commission, and authorized to enforce the DeKalb County Zoning Ordinance, or upon annexation into the City of Auburn, the official designated by the City or Auburn Plan Commission, and authorized to enforce the City of Auburn Zoning Ordinance.

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

1.6 **"Committee"**: The Architectural Control Committee established under section 5 of the Covenants.

1.7 **"Common Area"**: All real property owned by the Association for the common use and enjoyment of Owners. Common Area is designated as Common Area on the face of the Plat.

1.8 **"Covenants"**: This document and the restrictions, limitations and covenants imposed under it.

1.9 **"Developer"**: Southwest Development of Jackson Township, LLC, an Indiana limited liability company, and its successors in interest in the Real Estate.

1.10 **"Lot", and in plural form, "Lots"**: Any of the platted lots in the Plat, or any tract(s) of the Real Estate which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance; provided, however, that no tract of land consisting of part of Lot, or parts of more than one Lot, shall be considered a "Lot" under these Covenants unless the tract has a frontage of at least 80 feet in width at the established front building line as shown on the Plat.

1.11 **"Manufactured Home"**: A dwelling unit or other residence constructed in an off-site manufacturing facility, transportable in one or more sections, which may or may not be built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. Mobile homes and modular homes also shall be considered "Manufactured Homes" under this section 1.11.

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

1.13 **"Plan Commission"**: The DeKalb County Plan Commission, or its successor agency. Upon annexation into the City of Auburn, the City of Auburn Plan Commission.

1.14 **"Plat"**: The recorded secondary plat of Bear Creek Estates, Section II.

1.15 **"Subdivision"**: The platted subdivision of Bear Creek Estates, Section I.

SECTION II. Property Rights:

2.1 **Owner's Easements Of Enjoyment:** Each Owner shall have the right and an easement of enjoyment in the Common Area that is appurtenant to and passes with title to every Lot, subject to the following rights which are granted to the Association.

2.1.1 To charge reasonable admission and other fees for the use of any recreational facility located in the Common Area.

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

2.1.3 To dedicate or transfer all or any part of the Common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association's members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds of each class of Association members agreeing to such dedication or transfer, is recorded, and is accepted by DeKalb County or the City of Auburn.

2.2 **Delegation Of Use:** Any Owner may delegate, in accordance with the Bylaws, the Owner's right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner's family and tenants or contract purchasers who reside on the Owner's Lot.

SECTION 3. Membership And Voting Rights:

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

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

3.2.1 **Class A.** Class A membership consists of all Owners, except Developer. Class A members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall be members. The vote for such Lot shall be exercised as its Owners among themselves determine; but in no event shall more than one vote be cast with respect to a Lot.

3.2.2 **Class B.** Class B membership consists of Developer. The Class B member shall be entitled to 250 votes less that number of votes which Class A members are entitled to exercise. Class B membership shall cease upon the happening of either of the following events, whichever occurs first:

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

3.2.2.2 On January 1, 2009.

SECTION 4. Covenant For Maintenance Assessments:

4.1 **Creation Of Lien And Personal Obligation Of Assessment:** Each Owner, except Developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements. Such assessments shall be established and collected as provided in these Covenants and the Bylaws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 Purpose Of Assessments And Association's Maintenance Obligations:

4.2.1 The assessments levied by the Association under these Covenants shall be used exclusively for the purposes of promoting the recreation, health, and welfare of Owners and other occupants in all present and future sections of the Subdivision. Items for which assessments may be made include,

without limitation, improvement, maintenance, and operational costs of the following:

4.2.1.1 Common Areas;

4.2.1.2 Street lighting in the Subdivision;

4.2.1.3 The costs of garbage and other solid waste disposal for which the Association is obligated to contract under section 10;

4.2.1.4 The surface and subterranean storm water drainage facilities and the common impoundment basin located in the Subdivision, through and into which the Subdivision's surface waters drain, which facilities are not publicly maintained;

4.2.1.5 The 60 foot emergency access easement; and

4.2.1.6 Such other facilities in the Subdivision which the Board Of Directors reasonably determines are necessary to achieve the purposes described in section 4.2.1.

4.2.2 The Association shall be obligated to maintain all facilities and items for which assessments may be made under section 4.2.1.

4.3 **Maximum Annual Assessments:** Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be \$400.00 per Lot. Subsequent assessments may be made as follows:

4.3.1 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board Of Directors, by a percentage not more than 8% above the annual assessment for the previous year, without a vote of the membership.

4.3.2 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased by a percentage in excess of 8%, only by the vote or written assent of a majority of each class of members of the Association.

4.4 **Special Assessments For Capital Improvements:** In addition to the annual assessments authorized in section 4.3, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying,

in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement in the Common Area, including fixtures and related personal property; provided that any such assessment shall require the vote of written assent of 51% of each class of members of the Association; and provided, further, that no such special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain the Common Area, or pay its share of the cost of maintaining any common impoundment basin.

4.5 Notice And Quorum For Any Action Authorized Under Section 4.3 and 4.4: Any action authorized under sections 4.3.2 and 4.4 shall be taken at a meeting of the Association called for that purpose, written notice of which meeting shall be given to all members in accordance with the Bylaws. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within 30 days of the date of such meeting.

4.6 Uniform Rate Of Assessment: Both annual and special assessments must be fixed at a uniform rate for all Lots, and may be collected no more frequently than quarterly and no less frequently than annually.

4.7 Date Of Commencement Of Annual Assessments/Due Dates: The annual assessments allowed under section 4.3 shall commence as to all Lots then subject to an assessment, on the first day of the month following the first conveyance of a Lot by Developer. The first annual assessment shall be pro rated according to the number of months remaining in the calendar year. The Board Of Directors shall fix the amount of the annual assessment against each Lot as least 30 days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The due dates shall be established by the Board Of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment against a Lot has been paid.

4.8 Effect Of Nonpayment Of Assessments/Remedies Of The Association:

4.8.1 Any assessment not paid within 30 days after its due date shall bear interest from the due date at the

rate of 12% per annum, or at the legal rate of interest in Indiana, whichever is higher.

4.8.2 The Association may bring an action at law against each Owner personally obligated to pay the same, and foreclose the lien of an assessment against a Lot. No Owner may waive or otherwise escape liability for the assessment made under the Covenants by non-use of the Common Area or abandonment of a Lot. The lien for delinquent assessments may be foreclosed in the same manner as mortgages are foreclosed in Indiana. The Association shall also be entitled to recover the attorney fees, costs and expenses incurred because of the failure of an Owner to timely pay assessments made under this section 4.

4.9 **Subordination Of Assessment Lien to First Mortgage Liens:** The lien of assessments made under the Covenants shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect an assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for any assessment subsequently becoming due, or from the lien of an assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer.

SECTION 5. ARCHITECTURAL CONTROL:

5.1 No building, fence, wall, in-ground swimming pool, attached solar heating panels, or other structure, or initial landscaping shall be commenced, erected, or maintained upon a Lot, nor shall any exterior addition, change, or alteration be made to such a structure on a Lot until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the structure or initial landscaping are submitted to and approved by the Committee in writing. The Committee shall review such plans and specifications to determine whether the external design and location of the proposed structure or initial landscaping is in harmony with the surrounding structures and topography in the Subdivision.

5.2 The Committee shall be composed of three members. The first Committee members shall be Gregory C. Walbridge, Ranel Bradfield, and Ray Weber. A majority of the Committee may appoint a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to appoint a successor.

5.3 The Committee shall have the exclusive-authority and responsibility to review plans for the initial landscaping

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

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

5.5 In the event the Committee (or Board Of Directors or other entity acting under sections 5.3 or 54), fails to approve or disapprove the design and location of a proposed structure within 30 days after said plans and specifications have been submitted to it, approval will not be required, and approval under this section 5 will be deemed to have been given.

SECTION 6. General Provisions:

6.1 **Use:** Lots may not be used except for single-family residential purposes.

6.2 **Residences:** No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not exceeding two and one-half stories in height, and an attached garage which conforms to the requirements of section 6.4. However, any building greater than 25' in height must obtain a variance from the DeKalb County Board Of Zoning Appeals.

6.3 **Manufactured Homes:** No Manufactured Homes shall be erected, placed, or permitted to remain on any Lot. However, this section 6.3 shall not prohibit or limit the use of prefabricated materials or components in a site-built residence constructed on a Lot.

6.4 **Garages:** Each residence shall include not less than a two-car attached garage. Such garage shall be built as part of the residence, shall have a floor area of not less than 390 square feet, and shall have one or more doors with an aggregate width of not less than 16 feet.

6.5 **Dwelling Size:** No residence shall be built on a Lot in the Subdivision having a ground floor area upon the foundation (exclusive of one-story open porches, breeze ways and garages) of less than 1,300 square feet for a one-story residence, or less than 1,600 square feet of total living area (excluding one-story open porches, breeze ways and garages) for a residence that has more than one story.

6.6 **Building Lines:** No structure except patios shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. In any event, no building shall be located nearer than a distance of 40 feet to the front Lot line. No dwelling shall be located on an interior Lot, nearer than 30 feet to the rear Lot line. No residence or attached garage may be located on a Lot closer to a side Lot line than 10 feet unless a development standard variance is granted under applicable Indiana law and local ordinance.

6.7 **Minimum Lot Size:** No residence shall be erected or placed on a Lot having a width of less than 80 feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area less than 10,000 square feet.

6.8 **Utility Easements:** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear 20 feet of each Lot. No Owner shall erect on a Lot, or grant to any person, firm, or corporation, the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any kind for electrical, telephone, or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service entrance facilities installed for any residence or other structure on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence or structure, and shall carry not less than three wires and have a capacity of not less than 200 amperes. Any public utility charge with the maintenance of underground installations shall have access to all easements in which such installations are located for operation, maintenance, and replacement of service connections.

6.9 **Surface Drainage Easements:** Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as

conductors for the flow of surface water runoff to a suitable outlet, and the surface of the Real Estate shall be constructed and maintained so as to achieve this intention. Such easements shall be maintained in an unobstructed condition, and the Plan Commission (or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed.

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

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

6.12 **Outside Storage:** No boat, boat trailer, recreational vehicle, motor home, truck, camper, or any other wheeled vehicle shall be permitted to be parked ungaraged on a Lot for periods in excess of 48 hours, or for a period which is in the aggregate in excess of 8 days per calendar year. The term "truck" as used in this section 6.12, means every motor vehicle designed, used, or maintained primarily for the transportation of property, which is rated one-ton or more.

6.13 **Freestanding Poles:** No clothesline or clothes poles, or any other freestanding, semi-permanent, or permanent poles, rigs, or devices, regardless of purpose (except freestanding basketball goals and freestanding bird feeders) shall be constructed, erected, located, or used on a Lot. Flag poles are permitted with approval of architectural committee.

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

6.15 **Antennas and Solar Panes:**

6.15.1 **Freestanding Items:** The following items are prohibited on a Lot, if they are freestanding or detached from a residence:

6.15.1.1 A radio or television antenna.

6.15.1.2 A satellite dish or disk.

6.15.1.3 Solar heating panels.

6.15.2 **Attached Items:** The following items shall not be attached to a residence on a Lot:

6.15.2.1 A radio or television antenna that has more than 6 square feet of grid area, or that is more than six feet in height above the roof of the residence.

6.15.2.2 A satellite dish or disk that has a diameter greater than 24 inches.

6.15.2.3 Solar heating panels, unless their installation is approved by the Committee under section 5.

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

6.17 **Animals:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on a Lot, except that dogs, cats, and other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

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

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

6.20 **Workmanship:** All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of

new materials. No roof siding, asbestos siding, or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage on a Lot.

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

6.22 **Individual Utilities:** No individual water supply system or individual sewage disposal system shall be installed, maintained, or used on a Lot in the Subdivision.

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

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

6.25 **Sidewalks:** Plans and specifications for the Subdivision approved by and on file with the Plan Commission require the installation of concrete sidewalks within the street rights-of-way in front of each Lot, as shown on such plans and specifications. Installation of such sidewalks shall be the obligation of each Owner (exclusive of Developer) of a Lot. The Developer shall be responsible for the installation of sidewalks along common areas. A sidewalk located on a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. Sidewalks along common areas shall be installed within each phase of the development prior to the issuance of occupancy permits for any lot within that phase of the development. A violation of this Section is enforceable by the Plan Commission or its

successor agency, by specific performance or other appropriate legal or equitable remedy.

6.26 **Certificate Of Occupancy:** Before a Lot may be used or occupied, such user or occupier shall first obtain from the DeKalb County Zoning Administrator, or upon annexation, City of Auburn, the improvement location permit and certificate of occupancy required by the DeKalb County Ordinance, or upon annexation, City of Auburn Ordinance.

6.27 **Subdivision:** No Lot or combination of Lots may be further subdivided until approval for such subdivision has been obtained from the Plan Commission; except, however, Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot a part of an adjoining Lot (thus decreasing the size of such adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under section 1.10, or which does not conform with the standards for a "Lot" under the DeKalb County Subdivision Control Ordinance and Zoning Ordinance.

SECTION 7. Enforcement And Attorney Fees:

7.1 **Enforcement:** The Association, Developer, the Plan Commission, the Building Commissioner, and any Owner (individually or collectively) shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association, Developer, the Plan Commission, the Building Commissioner, or an Owner to enforce any provision in the covenants shall in no event be deemed as a waiver of the right to do so later. Upon annexation into City of Auburn, all enforcement of these covenants (excluding those requirements on Plat) shall be the responsibility of the Association or Owners.

7.2 **Attorney Fees And Related Expenses:** In the event the Association, Developer, an Owner, the Plan Commission, or the Building Commissioner is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenants, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

SECTION 8. Invalidation: Invalidation of any of these Covenants by judgment or court order shall not affect the

remaining provisions, and such provisions shall remain in full force and effect.

SECTION 9. Duration And Amendment Of Covenants:

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

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

9.2.1 After residences are initially constructed on all Lots in the Subdivision and certificates of occupancy are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by the Owners of at least 75% of the Lots in the Subdivision and by the owners of at least 75% of the lots in future sections, if any, of Bear Creek Estates. For purposes of this section 9.2.1, the term "owner" shall have the same meaning with respect to Lots in such future sections, as the term "Owner" is defined in section 1.12.

9.2.2 Until residences are initially constructed on all Lots in the Subdivision and certificates of occupancy are issued for those residences, in order to amend the Covenants, Developer, in addition to those persons whose signatures are required under section 9.2.1, also must sign the amendatory document.

9.2.3 **NOTWITHSTANDING THE PROVISIONS OF SECTIONS 9.2.1 AND 9.2.2,** Developer and its successors and assigns shall have the exclusive right for a period of two years from the date the Plat and these Covenants are recorded, to amend any of the Covenant provisions (except section 6.5) without approval of the Owners.

9.2.4 In order for any amendment of these Covenants to be effective, the approval of the Plan Commission shall be required.

SECTION 10. Mandatory Solid Waste Disposal: The Association shall be obligated to contract for disposal of garbage and other solid waste to service all Lots. Each Owner agrees that the Association may so contract, and may pay for the cost of such disposal through assessments established under section 4. An Owner who privately arranges for solid waste disposal to service the Owner's Lot shall not be excused from payment of any part of an assessment attributable to the cost of

waste disposal for which the Association contracts under this section 10.

SECTION 11. Waiver Of Right To Remonstrate Against Annexation: Each Lot Owner within the Subdivision, by accepting title to the real estate within the Subdivision, acknowledges waiver of their right to remonstrate against annexation by the City of Auburn as to their Lot or Lots and the Common Areas within the Subdivision. Each Lot Owner or Owners agree to sign a waiver by taking title to their Lot or Lots agree to sign a waiver of right to annexation by the City of Auburn at the time of their application for a utility tap permit.

IN WITNESS WHEREOF, Southwest Development of Jackson Township, LLC, an Indiana limited liability company, by its duly authorized Manager, Gregory C. Walbridge, has signed this document on _____, 200__.

**SOUTHWEST DEVELOPMENT OF JACKSON
TOWNSHIP, LLC**

BY: _____
Gregory C. Walbridge, Member

STATE OF INDIANA)
) SS:
COUNTY OF DEKALB)

Before me, a Notary Public in and for said County and State, this _____ day of _____, 200__, personally appeared Gregory C. Walbridge, known to be the duly authorized Manager of Southwest Development of Jackson Township, LLC, and acknowledged the execution of the above and foregoing document as his voluntary act and deed and on behalf of said company for the purposes and uses set forth in this document.

_____, Notary Public
Residing In _____ County, Indiana

My Commission Expires: _____

THIS INSTRUMENT PREPARED BY: Donald J. Stuckey, Attorney At Law.

Mail to: _____

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