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Virginia A. Brackenridge
ALLEN COUNTY RECORDER

# DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS, AND APPROVALS APPENDED TO AS PART OF THE DEDICATION AND PLAT OF CHESTNUT HILLS, SECTION II, A SUBDIVISION OF ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA

CHESTNUT GROUP, INC., an Indiana Corporation, hereby declares that it is the Owner and Developer of real estate which includes Chestnut Hills, Section II, and does hereby layoff, plat and subdivide said real estate in accordance with the information shown on the final plat, being the certified plat appended hereto and incorporated herein. A part of the Subdivision shall be known and designated as Chestnut Hills, Section II, a Subdivision in Aboite Township, Allen County, Indiana.

The Lots shall be subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in Chestnut Hills, Section II, without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners present and future of any and all land in the Subdivision, and they shall run with and bind the land and shall inure to the benefit of and be enforceable by the owners of land included therein, their respective legal representatives, successors, grantees and assigns.

The Lots are numbered from 73 to 91, 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 hereby expressly dedicated to public use for their usual and intended purposes.

## PREFACE

Chestnut Hills, Section II, is a portion of a tract of real estate which has been and will be ultimately subdivided into approximately four hundred (400) residential Lots, all to be included in and known as Chestnut Hills, separately designated by sequentially numbered sections and/or Villa sections. After the recordation of the plat of Chestnut Hills, Section II, there will be filed Articles of Incorporation of The Lakes at Chestnut Hills Villas Association, Inc., it being the platter's intention that each owner of a Lot in Chestnut Hills, Section II, shall become a member of said Villaminium Association, as well as members of the Community Association known as Chestnut Hills Community Association, Inc., and shall be bound by the Articles of Incorporation and By-Laws of each of those corporations.

It shall be the obligation of the Chestnut Hills Community Association, Inc., to make provision for the maintenance of the common areas designated on the face of the Plat, and the common areas in all sections of Chestnut Hills, including the Villa sections.

This Preface and its statement shall be deemed a covenant of equal force and effect as all others herein set forth.

## ARTICLE I

## Definitions

The terms hereinafter set forth shall have the following meanings:

Section 1. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain approvals in connection with improvements and developments. The Committee shall be composed of two (2) members initially appointed by the Developer. Any vacancies from time to time shall be filled pursuant to the terms of these Restrictions or the By-Laws of the Villaminium Association.

Section 2. "Association" shall mean and refer to Chestnut Hills Community Association, Inc., its successors and assigns.

Section 3. "By-Laws" shall mean the By-Laws initially adopted by The Lakes at Chestnut Hills Villas Association, Inc., and all amendments and additions thereto.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners in the Subdivision, as shown on the respective plat of said Subdivision, and as may be added in accordance with Article II, Section III of these Restrictions.

Section 5. "Developer" shall mean Chestnut Group, Inc., an Indiana Corporation, its assigns, successors or successors in interest, and any person, firm or corporation designated by it or its said successor or successor in interest.

Section 6. "Dwelling Unit" shall mean and refer to the structure used as a residential living unit located upon a Lot, including the garage and any appurtenances.

Section 7. "Lot" shall mean any of said Lots in Chestnut Hills, Section II, as platted or any tract of land as conveyed originally or by subsequent Owners, which may consist of one or more Lots or parts of one or more Lots, upon which a dwelling may be erected in accordance with the restrictions hereinafter set forth. PROVIDED, HOWEVER, no tract of land consisting of part of any one Lot or parts of more than one Lot shall be considered a "Lot" unless said tract of land has a minimum of fifty (50), feet width at the established building line as shown on the plat.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the plat, including

contract sellers, excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Restrictions " shall mean and refer to the Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals appended to as part of the Dedication and Plat of Chestnut Hills, Section II.

Section 10. "Subdivision" shall mean Chestnut Hills and all of its various sections and Villa sections, a Subdivision located in Aboite Township, Allen County, Indiana.

Section 11. "Chestnut Hills" shall mean and refer collectively to each section of the Chestnut Hills development, including all Villa Sections, as it may be changed from time to time.

Section 12. "Villaminium Association" shall mean and refer to The Lakes at Chestnut Hills Villas Association, Inc., its successors and assigns.

## ARTICLE II

## Property Rights

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against said Owner's Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction by said Owner, or the Owner's family, tenants, contract purchasers or invitees of its published rules and regulations after hearing by the Board of Directors of the Association;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members of the Association agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, said Owner's right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Additions to Common Area. The Developer reserves the right so long as Class B members of the Association exist, to convey and transfer to the Association such additional real and/or personal property as the Developer within its sole discretion deems appropriate, and the Association shall accept such transfer and shall hold such property as a part of the Common Area of the Subdivision.

## ARTICLE III

## Architectural Control

No building, improvement, construction, excavation, fence, wall, swimming pool or spa, exterior lighting, swing set, play equipment, statues, lawn ornaments or other non-living landscaping ornamentation device, or other structure shall be commenced, erected, altered or maintained upon any Lot, nor shall any exterior addition to or change or alteration of any Dwelling Unit be made until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to (1) harmony of external design and location in relation to surrounding structures and topography, and (2) the standards and guidelines established by the Architectural Control Committee from time to time. All approvals shall be requested by submission to the Architectural Control Committee of plans and specifications in duplicate, showing the following:

(a) The Dwelling Unit, and other improvements, access drives, and other improved areas, and the locations thereof on the site;

(b) All mail boxes and exterior ornamentation;

(c) Plans for all floors and elevations, including projections and wing walls;

(d) Exterior lighting plans;

(e) Walls, fencing, and screening;

(f) Patios, decks, pools, and porches.

Neither the Developer, the Architectural Control Committee, the Association, the Villa Association, nor any member, officer or director thereof, nor any of their respective heirs, personal representatives, successors or assigns, shall be liable to anyone by reason of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval or disapproval or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee, the Association, the Villa Association or the Developer to recover any damages or to require the Committee or the Developer to take or refrain from taking, any action whatever in regard to such plans or in regard to any building or structure erected in accordance therewith. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building of structure therein described, and no adjacent Lot Owner may claim any reliance upon the submission and/or approval of any such plans or the buildings or structures described therein.

The original Architectural Control Committee shall consist of two (2) members: Roger L. Delagrange and Annette Melnick. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of either member of the Committee, the remaining member shall have full authority to designate a successor. In the event said Board, or the Architectural Control Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed satisfied.

## ARTICLE IV

## Chestnut Hills Community Association, Inc.

Section 1. Organization. There has been organized in connection with the development of Chestnut Hills, and its various sections, an incorporated not-for-profit association known as Chestnut Hills Community Association, Inc., (the "Association").

Section 2. Membership and Voting Rights. Every Owner of a Lot shall be a member of the Association, together with all other lot owners in the Subdivision. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3. Classes of Membership. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, together with all other lot owners in the Subdivision exclusive of the Developer. Owners shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member(s) shall be the Developer, and shall be entitled to three (3) votes for each Lot owned in Chestnut Hills Villas and for each lot owned in the Subdivision. 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 title to all lots in all sections of the Subdivision has been conveyed, or

(b) on December 31, 2005.

Section 4. Membership Transfer. Membership in the Association will transfer from the Developer or its successor in interest to the Owner upon delivery of the Deed to Owner's Lot.

Section 5. Continuing Memberships. The Owner of any Lot shall continue to be a member of the Association so long as such Owner continues to be the Owner of a Lot for the purpose herein mentioned. Membership shall pass with the transfer of title to the Lot.

Section 6. Transfer of Membership Rights and Privileges in the Association. Each Owner, and in lieu thereof, (and with the written consent of such Owner to the Association) each lessee of a Lot shall be a member of the Association and have the right to the Owner's vote and privileges. Membership, where assigned to a lessee, will pass with the lease, except if the Owner withdraws his consent in writing to the Association. The Owner may withdraw his membership assignment to any lessee in his discretion by issuing a sixty (60) day notice in writing to the Association. No assignment of membership shall relieve an Owner of the Lot from the obligation to pay any assessment authorized by these Restrictions.

Section 7. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, excepting Developer, by acceptance of a deed therefor, 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; (2) special assessments; (3) Club assessment (if applicable); and (4) Tax Recoupment Assessment. Such assessments shall be established and collected as hereinafter provided. The annual, special, Club and Tax Recoupment assessments , together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at

the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 8. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, and welfare of the owners in all sections of Chestnut Hills, including, but not limited to, the improvement and maintenance of the Common Area, maintenance of street lighting, maintenance of the sprinkling system situated on the Common Area, and removal of snow from the streets.

Section 9. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Sixty and No/100--Dollars ($160.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may not be increased each year more than eight percent (8%) above the maximum annual assessment for the prior year, without the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

(b) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum without the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

Section 10. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, (1) the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; (2) any budget shortfall; or (3) emergency need of the Association, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of members of the Association.

Section 11. Notice and Quorum for Any Action Authorized Under Section 9 and 10. Any action authorized under Sections 9 and 10 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of each class of members, members who were not present in person or by proxy may give their assent in writing, providing the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 12. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis as the Board of Directors may determine from time to time.

Section 13. Date of Commencement of Annual or Club Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots (excepting Lots owned by the Developer) on the date of the close of escrow on the sale of the Lot after the original recording of these Restrictions with the Recorder of Allen County. The Club Assessment, as hereafter defined, shall be assessed initially after an Occupancy Permit has been secured and the unit has not been declared a model or a spec unit by the builder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 14. Club Membership, Operating Fund Assessment. The Developer plans to construct a bathhouse, swimming pool and tennis courts within Chestnut Hills, which facilities will be owned and operated by the Association, and which will be available for use by members of the Association. Upon the substantial completion of the bathhouse, swimming pool and tennis courts as determined by the Board of Directors of the Association, a Club Operating Fund will commence:

A. All Villaminium Lot Owners in Chestnut Hills Villas (all sections) shall be entitled, at their option, to membership and usage of the bathhouse, swimming pool, and tennis courts, and shall pay as a part of such membership the same Club Assessment as the Single-Family Lot Owner Members. Such Club Assessment shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of the Owner of such Lot, and may be collected in accordance with the provisions of this Article.

B. All Single-Family Lot Owners within Chestnut Hills, except those owned by the Developer and those Villaminium Lot owners who chose not to be a member pursuant to (A) above, shall be charged a Club Assessment (in addition to the Annual Assessments and Special Assessments provided in Sections 9 and 10, respectively), with respect to the operation and maintenance of said facilities. This Club Assessment will be assessed against each lot owner irrespective of whether a Dwelling Unit is located thereon. Such Club Assessment shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of the owner of such lot, and may be collected in accordance with the provisions of this Article.

respect to the operation and maintenance of said facilities. This Club Assessment will be assessed against each lot owner irrespective of whether a Dwelling Unit is located thereon. Such Club Assessment shall bear interest, shall become a lien upon the Lot against which it is assessed, shall become the personal obligation of the owner of such lot, and may be collected in accordance with the provisions of this Article.

Except for the first Club Assessment, the due date shall be established by the Board of Directors of the Association. All Club Assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such Club Assessments. All members shall be subject to all rules and regulations governing Membership and use as may be established by the Association from time to time.

The amount of the annual Club Assessment shall be established as follows:

(i) Commencing prior to the substantial completion of the bathhouse, swimming pool and tennis courts, the Board of Directors of the Association shall establish a budget for the fiscal year and shall determine therefrom the annual Club Assessment for each lot required to meet said budget. Such budget and Club Assessment for each fiscal year shall be established by the Board of Directors. The Board of Director shall mail to all Association members a copy of a proposed budget and notice of the proposed Club Assessment.

(ii) In determining the amount of the Club Assessment for each Lot, the Board of Directors shall take into consideration the financial obligation of the Chestnut Hills Golf Club, and those individuals and organizations identified in Section 14 above who may have access to the bathhouse, tennis courts and swimming pool facilities with respect to the operation and maintenance of said facilities.

(iii) Said Club Operating Fund shall be used exclusively for the purpose of operating and maintaining said bathhouse, tennis courts and swimming pool as well as all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes , insurance, and all other things necessary or desirable in the opinion of the Board of Directors of the Association.

Section 15. Tax Recoupment Assessments. In addition to all other assessments provided for in this Article, the Association may levy in any assessment year, an assessment ("Tax Recoupment Assessment " ) applicable to that year only for the purpose of defraying, in whole or in part, any cost or expense incurred by the Association in the

form of a tax, and/or penalty and/or interest on a tax imposed upon, assumed by or assessed against the Association or its properties, and arising out of or in any way related to the acceptance of title to, the ownership of and/or operation or maintenance of any plant or equipment (including utility lines, lift stations and other property) for the transmission, delivery or furnishing of water, or for the collection, transmission and disposal of liquid and solid waste, and sewage, and/or the ownership of any real estate or easements or other rights with respect to real estate owned and/or possessed in connection with such plant or equipment.

Section 16 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment (Annual, Special, Club or Tax Recoupment) not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. In any successful action, the Association shall be entitled to recover all of its costs and expenses, including attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, the Club facilities, or abandonment of the Owner's Lot.

Section 17. Subordination of the Lien to Mortgages. The lien of the assessments 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 proceedings in lieu thereof, shall extinguish the lien for 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.

## ARTICLE V

## THE LAKES AT CHESTNUT HILLS VILLAS ASSOCIATION, INC.

Section 1. Organization. There has been organized in connection with the development of Chestnut Hills, Section II, an incorporated not-for-profit association known as The Lakes at Chestnut Hills Villas Association, Inc., (the "Villaminium Association").

Section 2. Membership and Voting Rights. Every owner of a lot in Chestnut Hills, Section II, shall be a member of the Villaminium Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3. Classes of Membership. The Villaminium Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, together with all other lot owners in other villa sections of the Subdivision, exclusive of the Developer. Owners shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member(s) shall be the Developer and shall be entitled to three (3) votes for each Lot owned and for each lot owned in other Villa sections of the Subdivision. 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 title to all lots in all Villa sections has been conveyed; or

(b) on December 31, 2005.

Section 4. Assessments Payable to The Lakes at Chestnut Hills Villas Association, Inc. Each Owner of any Lot, excepting the Developer, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Villaminium Association:

(a) annual maintenance assessment; and

(b) special assessment.

Such assessments shall be in addition to the annual assessments, special assessments and other assessments payable to the Association. The annual maintenance and special assessments for the Villaminium Association, together with interest, costs, and reasonable attorney's fees shall be a charge upon and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 5. Purpose of Annual Maintenance Assessment. The annual maintenance assessment shall be used exclusively to fund the Villaminium Association's obligations set forth herein.

Section 6. Initial Annual Maintenance Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to the Owner, the initial annual maintenance assessment shall be One Thousand Four Hundred Forty and No/100--Dollars ($1,440.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment

may not be increased each year more than eight percent (8%) above the maximum annual assessment for the prior year, without the vote or written assent of fifty-one percent (51%) of each class of members of the Villaminium Association.

(b) The Board of Directors of the Villaminium Association may fix the annual assessment at an amount not in excess of the maximum without the vote or written assent of fifty-one percent (51%) of each class of members of the Villaminium Association.

Section 7. Calculation of Annual Maintenance Assessment. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the amount of the annual maintenance assessments shall be determined as follows:

(a) The Board of Directors of the Villaminium Association shall establish a budget for each calendar year and shall determine the annual maintenance assessment and method of payment required to meet such budget. Such budget and assessment for each such calendar year shall be established by the Board of Directors of the Villaminium Association. The Board of Directors shall mail to all Villaminium Association members a copy of said budget and notice of the ensuing year's assessment.

(b) The amount of the annual maintenance assessment set forth by the Board of Directors of the Villaminium Association for any such calendar year may be changed pursuant to the By-Laws of the "Villaminium Association".

Section 8. Special Assessment for Capital Improvements and Extraordinary Items. In addition to the annual maintenance assessment authorized above, the Board of Directors of the Villaminium 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 necessary maintenance of an extraordinary nature, or the cost of new construction or replacement of items of a capital nature, or to cover a budget shortage provided that any such assessment shall have the vote or written assent of sixty-seven percent (67%) of both classes of members. Any action authorized by this Article V, Section 8, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such a meeting, but such vote is less than the prerequisite sixty-seven percent (67%) 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 the appropriate officers of the Villaminium Association not later than thirty (30) days from the date of such meeting.

Section 9. Uniform Rate of Assessment. Both annual maintenance assessments and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or yearly basis.

Section 10. Date of Commencement of Annual Maintenance Assessment: Due Dates. The annual maintenance assessments provided for herein shall commence as to each Lot on the first of the following dates:

(a) The date of issuance of a certificate of occupancy for a completed dwelling on said Lot; or

(b) The date of payment of the final construction draw with respect to a dwelling constructed on said Lot, disregarding any monies retained in escrow from such final draw.

The first annual maintenance assessment shall be adjusted according to the number of days remaining in the year. The due dates of the annual maintenance assessment shall be established by the Board of Directors of the Villaminium Association. The Villaminium Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Villaminium Association setting forth whether the assessments on a specified Lot have been paid as of a particular date.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Corporation. Any annual maintenance assessment or special assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Villaminium Association may bring an action at law against the Owner previously obligated to pay the same, or foreclose the lien against the Lot. In any successful action, the Villaminium Association shall be entitled to recover all of its costs and expenses, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of the Owner's Lot.

Section 12. Subordination of the Lien to Mortgages. The lien of the annual maintenance assessment or special assessment provided for herein shall be subordinate to the lien of any first mortgages. 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 proceedings in lieu thereof, shall extinguish the lien of such assessment as to payments which become 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.

## ARTICLE VI

### Maintenance of Building Exteriors

Section 1. Building Exteriors, Landscaping and General Maintenance. The Villaminium Association will maintain the roof and exterior portion of each Dwelling Unit in good condition and repair, including painting, staining, repair and replacement of wood siding as necessary, removal of snow from driveways and sidewalks, and maintain the lawn and landscaping on each Lot. The Villaminium Association will maintain the lawn sprinkling system situated on the Lots. The frequency and manner of performance of such maintenance shall be determined solely by the Board of Directors of the Villaminium Association. The Villaminium Association shall not be responsible for the repair or maintenance of decks and screened-in porches, any concrete on a Lot, or yard lights and other exterior lights, including replacement of bulbs, nor for window washing and glass replacement. The Board of Directors of the Villaminium Association may, at its option by appropriate resolution, transfer to each Lot Owner the maintenance responsibility for that portion of the lawn and/or landscaping on each Lot which was not initially installed or planted by the Developer. Each Lot Owner shall be permitted to perform or cause to be performed at the Owner's sole expense, maintenance or repairs on the exterior of any dwelling on his Lot which would otherwise fall within the maintenance responsibility of the Villaminium Association hereunder, subject to prior written approval from the Architectural Control Committee.

Section 2. Other Maintenance. Except to the extent of the Villaminium Association's responsibility for maintenance and repair as above provided, each Owner shall at his sole cost and expense maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair, including those items specifically excluded from the Villaminium Association's responsibilities and any other maintenance and repair responsibilities not expressly included among such responsibilities, as set forth above. In the event any Owner shall fail to maintain and repair his Lot and the improvements thereon as required hereunder, the Villaminium Association, in addition to all other remedies available to it hereunder or by law and without waiving any of said alternative remedies, shall have the right, through its agents and employees to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the dwelling units and any other improvements erected thereon; and each Owner (by acceptance of a Deed for his Lot) hereby covenants and agrees to repay to the Villaminium Association the cost thereof immediately upon demand. Such costs incurred and demanded by the Villaminium Association, together with interest, costs and reasonable attorney's fees, shall have the same status as both a continuing lien on the Lot and improvements and the personal obligation of the Owner as an assessment and the Association shall have the same remedies as made under Article V, Section 11 hereof, and the failure of any such Owner to pay the same shall carry with it the same consequences as a failure to pay such an assessment when due.

Section 3. Maintenance Easements. The Villaminium Association and the Owner of any Lot whose dwelling is constructed up to or within nine (9) feet of an interior Lot line shall have an access easement over a portion of the adjacent Lot which shall be five (5) feet in width measured from said Lot line, for the entire length of said Lot line separating the two Lots, for purposes of maintaining, replacing, and repairing the exterior of the dwellings so located. This access easement shall extend to the agents, employees, and independent contractors of either the Villaminium Association, the Owner, or both. Any damage to an adjacent Lot or landscaping on an adjacent Lot shall be repaired at the expense of the Villaminium Association, the Owner, or their respective agents, employees or independent contractors utilizing this easement.

Each Owner shall also have a permanent easement permitting roof structure which overhang and encroach upon the adjoining servient Lot, provided that construction of such roof structure is permitted and approved as elsewhere herein provided.

Section 4. Utility Easements. Easements are hereby expressly reserved and dedicated with dimension, boundaries, and locations as designated on the plat for the installation and maintenance of public utilities (including, but not limited to water, gas, telephone, electricity, sanitary sewer, cable television, storm drainage facilities, and any other utilities of a public or quasi-public nature).

Any utility company and Developer, their successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structure except improvements installed by Developer, or an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvement installed by Developer or other authorized utility.

The utility operating the sewer lines and sewage disposal facilities of said section shall have jurisdiction over the installation of all sewer connections and the same shall be installed to property lines of each Lot by the Developer or its successor in interest.

## ARTICLE VII

## General Provisions

Section 1. Residential Purposes. No Lot shall be used except for residential purposes. No dwelling shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single-family dwelling not to exceed two and one-half (2 1/2) stories in height. Each dwelling shall include an attached two-car garage and basements may be constructed as a part of the dwelling .

Section 2. Home Occupations. No Lot shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows may be permitted: any use conducted entirely within the Dwelling Unit and participated in solely by a member of the immediate family residing in said Dwelling Unit, which use is clearly incidental and secondary to the use of the Dwelling Unit for dwelling purposes and does not change the character thereof and in connection with which there is: (a) no sign or display that indicates from the exterior that the Dwelling Unit is being utilized in whole or in part for any purpose other than that of a Dwelling Unit; (b) no commodity is sold upon the Lot; (c) no person is employed in such home occupation other than a member of the immediate family residing in the Dwelling Unit; and (d) no mechanical or electrical equipment is used; provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, licensed child care center or other licensed or regulated babysitting service, animal hospital, or any form of animal care or treatment such as dog trimming be construed as a home occupation.

Section 3. Building Sizes. No Dwelling Unit shall be built on any Lot having the living area of the main structure, exclusive of one-story open porches, breezeways or garages of less than 1,350 square feet for a one-story dwelling, nor less than 1,000 square feet on the first floor for a dwelling of more than one story.

Section 4. Garages. All Dwelling Units must have a two-car attached garage.

Section 5. Building Setback. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear property line than the minimum building setback lines shown on the recorded plat. In any event, no Dwelling Unit shall be located nearer than a distance of five (5) feet to a side Lot line, and no nearer than a distance of fifteen (15) feet to a rear property line.

Section 6. Minimum Lot Size. No Dwelling Unit shall be erected or placed on any Lot having a width of less than fifty (50) feet at the minimum building setback line, nor shall any Dwelling Unit be erected or placed on any Lot having an area of less than 7,000 square feet.

Section 7. Utility and Drainage Easements. Easement for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No Owner of any Lot shall erect 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 herein shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. All easements for public and municipal utilities and sewers as dedicated on the face of the plat shall be kept free of all permanent structures and any structure, shrubbery, trees, or other installation

the principal beam of which shines upon portions of a Lot other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of a Lot by the occupants thereof, and no speakers, horns, whistles, bells or other sound devices, shall be located, used or placed on a Lot which are audible, except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof.

Section 12. Temporary Structures and Storage. No structure of a temporary character, trailer, boat trailer, truck, commercial vehicle, recreational vehicle (RV) , camper shell, all terrain vehicle (ATV), camper or camping trailer, detached basement, tent, shack, detached garage, barn or other outbuilding shall be either used or located on any Lot, or adjacent to any Lot, public street or right-of-way with the Subdivision at anytime, or used as a residence either temporarily or permanently.

Section 13. Signs. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet, advertising such Lot for sale, or signs used by a builder to advertise such Lot during the construction and sales period.

Section 14. Radio and Television Antennas. No radio or television antenna shall be attached to any Dwelling Unit. No free standing radio or television antenna shall be permitted on any Lot. No television receiving disk or dish that exceeds two (2) feet in diameter shall be permitted on any Lot or on any Dwelling Unit. No solar panels attached or detached shall be permitted.

Section 15. Drilling, Refining, Quarrying and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for the use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. 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 kept, bred or maintained for any commercial purposes.

Section 17. Building Materials. All Dwelling Units and other permitted structures shall be constructed in a substantial and good workmanlike manner and of new materials. The front exterior of each residence shall be constructed of all natural materials. No roll siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any Dwelling Unit or other permitted structure on any Lots of said Subdivision and no roll roofing of any description or character shall be used on the roof of any Dwelling Unit or other permitted structure on any of said Lots.

Section 18. Driveways. All driveways from the street to the garage shall be poured concrete or masonry and not less than sixteen (16) feet in width.

thereon, whether temporary or permanent, shall be subject to the paramount right of the entities for which such easements are intended to benefit, to install, repair, maintain or replace their utility or sewage facilities. The removal of any such obstructions by utilities or sewage treatment works shall in no way obligate them in damages or to restore the obstruction to its original form. Electrical service entrance facilities installed for any house or other structure connecting the same to the electrical distribution system of any electric public utility shall be provided by the Owners of all Lots and shall carry not less than three (3) wires and have a capacity of not less than 200 amperes.

Section 8. Surface Drainage. Surface Drainage Easements and Common Areas used for drainage purposes as shown on the plat are intended for either periodic or occasional use as conductors for the flow of surface water runoff to a suitable outlet, and the land surface shall be constructed and maintained so as to achieve this intention. Such easement shall be maintained in an unobstructed condition and the County Surveyor or a proper public authority having jurisdiction over storm drainage shall have the right to determine if any obstruction exists and to repair and maintain, or to require such repair and maintenance as shall be reasonably necessary to keep the conductors unobstructed.

Section 9. Maintenance of Lots and Dwelling Units. No Lot and no Dwelling Unit shall be permitted to become overgrown, unsightly or to fall into disrepair. All Dwelling Units shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Architectural Control Committee. Each Owner, for himself and his successors and assigns, hereby grants to the Villaminium Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Architectural Control Committee to carry out the intent of this provision and they further agree to reimburse the Villaminium Association for any expenses actually incurred in carrying out the foregoing. The Villaminium Association may assess and collect such reimbursement in the same manner as it assesses and collects yearly assessments pursuant to Article V, above, and such amounts shall become a lien upon the Lot and be subject to the same collection rights and remedies granted to the Villaminium Association in Article V.

Section 10. Landscaping. All shrubs, trees, grass and plantings of every kind shall be kept well maintained, properly cultivated and free of trash and other unsightly material. No screen planting shall be placed on the rear of any Lots with golf course frontage nor in any other location which has the effect of blocking or restricting any other Lot Owner's view of the golf course. Landscaping shall be installed no later than one hundred eighty (180) days following occupancy of or completion of the Dwelling Unit, whichever occurs first.

Section 11. Nuisances. No noxious or offensive activity may be carried upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Without limiting any of the foregoing, no exterior lights,

Section 19. Individual Water and Sewage Systems. No individual water supply system or individual sewage disposal system shall be installed, maintained or used on any Lots in this Subdivision.

Section 20. Geothermal Systems.

20.1. An Owner whose Lot is immediately adjacent to Common Area containing a retention or detention pond shall have the right to install and maintain the following described types of geothermal heating and cooling systems ("Systems") to service the Dwelling Unit located on the Lot, and the right to use the Association property described below.

20.1.1. A System with a closed loop heat exchanger designed to use retention or detention ponds located in Common Areas adjacent to such Lot.

20.1.2. A System which uses and discharges well water from the System into retention or detention ponds located in Common Areas adjacent to such Lot.

20.2. Any Systems so installed must:

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

20.2.2. Satisfy reasonable requirements of the Allen County Surveyor or other applicable governmental agency regarding surface water drainage and erosion control; and obtain written approval from The Association.

20.2.3. Be installed according to approved guidelines of, and by technicians certified by, the International Ground Source Heat Pump Association.

20.3. Any Owner using Common Area owned by the Association for the purpose described in Section 20.1 agrees to be responsible for and shall idemnify and hold the Association harmless from and against all claims, losses, damages, and judgments (including reasonable attorney fees and litigation expenses) caused by, or resulting from, the Owner's use of Association property in connection with the Systems.

Section 21. Use of Public Easements. In addition to the utility easements herein designated, easements in the streets, as shown on this plat, are hereby reserved and granted to the Developer, the Association and any public or quasi-public utility company engaged in supplying one or more of the utility services contemplated in Sections 7 and 8 or this Section 21 of Article VI, and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove all and every type of gas main, water main and sewer main (sanitary and/or storm) with all necessary

appliances, subject, nevertheless, to all reasonable requirements of any governmental body having jurisdiction thereof as to maintenance and repair of said streets.

Section 22. Sanitary Sewer Restrictions. No rain and storm water runoff or such things as roof water, street pavement and surface water, caused by natural precipitation, shall at any time be discharged into or permitted to flow into the Sanitary Sewage System, 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 above-mentioned Storm Water and Surface Water Runoff Sewer System.

Section 23. Improvements. Before any Dwelling Unit on any Lot in this Subdivision shall be used and occupied as a dwelling or otherwise, the Developer or any subsequent Owner of such Lot shall install improvements serving such Lot as provided in the plans and specifications for such improvement s filed with the appropriate governmental authorities, together with any amendments or additions thereto which said governmental authorities may authorize or require. This covenant shall run with the land and be enforceable by any governmental authority having jurisdiction over the Subdivision, by the Association, or by any aggrieved Lot Owner in this Subdivision.

Section 24. Permits and Certificates. Before any Dwelling Unit located on any Lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator an Improvement Location Permit and a Certificate of Occupancy as required by the Allen County Zoning Ordinance.

Section 25. Pools and Hot Tubs. No above ground pool, regardless of size, shall be placed or maintained on any Lot. No in ground swimming pool or hot tub or spa may be placed or maintained on any Lot without the prior written approval of the Architectural Control Committee in accordance with Article III.

Section 26. Swing Sets and Play Equipment. No swing sets or play equipment will be permitted on any Lot without prior written approval from the Architectural Control Committee in accordance with Article III.

Section 27. Fencing. All proposed fencing must be submitted to and approved by the Architectural Control Committee in writing in accordance with Article III.

Section 28. Storage Areas. Garbage and refuse shall be placed in containers, which shall be concealed and contained within the Dwelling Unit. Firewood must be placed adjacent to the Dwelling Unit behind a visual barrier screening this area so that it is not visible from neighboring streets or the golf course. The visual barrier screening and the area to be used must be approved by the Architectural Control Committee.

Section 29. Mailboxes. The type, location, and installation of mailboxes will be approved by the Developer.

Section 30. Time for Building Completion and Restoration. Every Dwelling Unit on any Lot shall be completed within twelve (12) months after the beginning of such construction. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

Section 31. Single Owner Contiguous Lots. Whenever two (2) or more contiguous Lots shall be owned by the same person, and such Owner shall desire to use two (2) or more of said Lots as a site for a single Dwelling Unit, said Owner shall apply in writing to the Architectural Control Committee or Board of Directors of the Association for permission to so use said Lots. If permission for such a use shall be granted, the Lots constituting the site for such single Dwelling Unit shall be treated as a single Lot for the purpose of applying these Restrictions to said Lots, so long as the Lots remain improved with one single Dwelling Unit. Notwithstanding the foregoing, each of the Lots constituting the site for such single Dwelling Unit shall remain as individual Lots for purposes of all assessments permitted by the terms of these Restrictions. As such, the Owner will be assessed for each Lot used as a site for a single Dwelling Unit.

Section 32. Enforceability. The Association, the Villaminium Association, any Owner and the Developer shall each have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Restrictions. Failure by the Association, the Villaminium Association or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, and shall not operate to deprive an Owner from enforcing said covenant or restriction.

Section 33. Right of Entry. The Developer, the Architectural Control Committee, the Villaminium Association, and the Association, acting through their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect the Lot and Dwelling Unit, whether prior to, during, or after the completion of, any construction, for purpose of determining whether or not the provisions of these restrictions are being complied with and exercising all rights and powers conferred upon the Developer, the Architectural Control Committee, the Villaminium Association and the Association with respect to the enforcement or correction or remedy of any failure of the Owner to observe these restrictions, and the Developer, the Architectural Control committee, the Villaminium Association and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Dwelling Unit may not be entered hereunder unless written notice of such proposed entry shall have been given to the Owner at least five (5) days prior to such entry.

Section 34. Partial Invalidation. Invalidation of any one of these Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 35. Covenants, Restrictions and Extensions. The covenants and restrictions herein contained shall run with the land, and be effective for a term of twenty (20) years from the date these Restrictions are recorded, after which time they shall automatically be extended for successive periods of ten (10) years; provided these Restrictions may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and provided further, the Developer, its successors or assigns shall, with the approval of the Allen County Plan Commission, have the exclusive right for a period of two (2) years from the date of recording of these Restrictions to amend any of the Covenants and Restrictions.

Section 36. Subdivision of Lots. No Lot or combination of Lots may be further subdivided unless seventy-five percent (75%) of the Lot Owners have approved by signing an instrument of approval and until said approval has been obtained from the Allen County Plan Commission.

Section 37. Exterior Building Surfaces. All exterior building surfaces, materials and colors shall be harmonious and compatible with colors of the natural surrounding and other Dwelling Units. The Architectural Control Committee shall have the right to approve or disapprove materials and colors so controlled.

Section 38. Dwelling Unit Exterior. All windows, porches, balconies and exteriors of all Dwelling Units shall at all times be maintained in a neat and orderly manner. No clotheslines or other outside drying or airing facilities shall be permitted.

Section 39. Yard Lights. A dusk to dawn light (or gas light) of type and location approved by the Architectural Control Committee shall be installed by the builder or Lot Owner on each Lot in front of the front building line and shall at all times be maintained and operational.

Section 40. Fires. No outdoor fires for the purpose of burning leaves, grass or other forms of trash shall be permitted to burn upon any street roadway or Lot in this Subdivision. No outside incinerators shall be kept or allowed on any Lot.

Section 41. Access to Golf Course. Access to the grounds of the Chestnut Hills Golf Club shall only be permitted at such locations as shall be agreed to and designated by the Chestnut Hills Golf Club and the Developer.

Section 42. Easement Across Lots Adjacent to Golf Course. Until such time as a Dwelling Unit is constructed on a Lot which borders a fairway area of the Chestnut Hills

Golf Club, the operator of Chestnut Hills Golf Club shall have a license to permit and authorize their agents and registered golf course players and their caddies to enter upon a Lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass.

Section 43. Interference with Play on Golf Course. Owners of Lots bordering on fairways of the Chestnut Hills Golf Club shall be obligated to refrain from any actions which would detract from the playing qualities of the course.

Section 44. Cost and Attorney's Fees. In the event the Association, Developer, or the Villaminium Association is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, assessment or charge now or subsequently imposed by the provisions of these Covenants, they 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 45. Annexation. Additional properties may be annexed by Developer and made subject to this Declaration. Said additional properties may be developed for condominiums, villas and single family residences. Said annexation may be perfected without the consent of the Owners.

Section 46. Flood Protection Grade. In order to minimize potential damages from surface water, flood protection grades (FPG) are established as set forth on the attached plat as follows:

| LOT # | MINIMUM FLOOD PROTECTION GRADES |
|---|---|
| 75-84 | 838.5 feet |
| 85-90 | 833.5 feet |

All Dwelling Units to be constructed on the Lots designated herein shall be constructed at or above the minimum flood protection grades; such grades shall be the minimum elevation of a first floor or the minimum sill elevation of any opening below the first floor as shown on the recorded plat of this Subdivision.

Section 47. Sidewalks. Plans and specifications for this subdivision on file with the Allen County Plan Commission require the installation of four (4) foot wide concrete sidewalks, within the street rights-of-way in front of the following numbered Lots inclusive:

| LOT # | SIDEWALK |
|---|---|
| 73 | South side |

74-81 Front
83-84 Front

Installation of said sidewalks shall be the obligation of the Owner of any such Lot, exclusive of the Developer, shall be completed in accordance with said plans and specification and prior to the issuance of a Certificate of Occupancy for any such Lot and the cost of said installation shall be a lien against any such Lot enforceable by the Allen County Plan Commission or its successor agency. Should such Certificates of Occupancy be issued to the Developer, said individual or corporation shall be considered an Owner for the purposes of the enforcement of this covenant.

IN WITNESS WHEREOF, Chestnut Group, Inc., a Corporation organized and existing under the laws of the State of Indiana, Owner of the real estate described in said Plat, has hereunto set its hand and seal, by its duly authorized officer, this day of June 9, 1995.

CHESTNUT GROUP, INC.,
an Indiana Corporation,

By: _____
Roger Delagrange, President

STATE OF INDIANA )
) §§:
COUNTY OF ALLEN )

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, personally appeared Roger Delagrange, known by me to be the duly authorized and acting President of Chestnut Group, Inc., an Indiana Corporation, and acknowledged the voluntary execution of the above and foregoing instrument on behalf of said Corporation for the purposes and uses therein set forth,
this 9th day of June, 1995.

_____
Deborah A. Webb, Notary Public
A resident of Allen County, Indiana

My Commission Expires:

February 5, 1999

This instrument prepared by:
Dennis D. Sutton, Attorney-at-Law
Attorney I.D. Number: 764-02

# FIRST AMENDMENT
## TO THE DEDICATION AND DECLARATION OF PROTECTIVE RESTRICTIONS, COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED TO AS PART OF THE DEDICATION AND PLAT OF CHESTNUT HILLS, SECTION II A SUBDIVISION OF ABOITE TOWNSHIP, ALLEN COUNTY, INDIANA

Pursuant to the provisions of Article VII, Section 35 of the Dedication and Declaration of Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to as Part of the Dedication and Plat of Chestnut Hills, Section II, as recorded in Plat Cabinet C, page 71, Document Number 95-043683 in the Office of the Recorder of Allen County, Indiana, the undersigned Chestnut Group, Inc. does hereby make and effect the following change, alteration and modification in and to said Protective Restrictions, Covenants, Limitations, Easements and Approvals for Chestnut Hills, Section II for the purposes of properly locating the improvements on Lot 86.

Article VII, Section 5 shall be amended to read as follows:

Section 5. Building Setback. No Dwelling Unit or any improvements or structures shall be located on any Lot nearer to the front Lot line or nearer to the side street line or the rear Lot line than the minimum building setback lines shown on the recorded plat except as hereinafter provided. In any event, no Dwelling Unit shall be located nearer than a distance of fifteen (15) feet to a rear Lot line, and no Dwelling Unit shall be located nearer than a distance of five (5) feet to a side Lot line except: (i) the Dwelling Unit on Lot 86 may be located no nearer than two (2) feet to its east side Lot line (provided that the Developer conveys the western three (3) feet of Lot 87 to the Owner of Lot 86); and (ii) no Dwelling Unit shall be located nearer than a distance of eight (8) feet to the west side Lot line on Lot 87.

The developer, Chestnut Group, Inc. warrants and represents to the Department of Planning Services that it currently holds title to Lots 86 and 87.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this 27th day of March, 1996.

CHESTNUT GROUP, INC.

By: _____
Roger Delandrange, President

RECORDED
04/25/1996 12:07:12
RECORDER
VIRGINIA L. YOUNG
ALLEN COUNTY, IN

Doc. No. 960022091
Receipt No. 5634
Date 04/25/1996 12:07:10

| | |
|---|---|
| DCFD | 3.00 |
| MISC | 8.00 |
| MISC | 1.00 |
| Total | 12.00 |

DULY ENTERED FOR TAXATION
APR 25 1996
AUDITOR OF ALLEN COUNTY

96 2164
AUDITOR'S NUMBER

Chestnut Group
6008 Branst Chase Cove

STATE OF INDIANA )
) SS:
COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public in and for said County and State, this 27th day of March, 1996, personally appeared Roger Delagrange, President of *Chestnut Group, Inc., to me known to be such officer of said corporation,* and acknowledged the execution of the foregoing First Amendment to the Dedication and Declaration of Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended to as Part of the Dedication and Plat of Chestnut Hills, Section II for and on behalf of said corporation and by its authority.

WITNESS my hand and notarial seal.

My Commission expires:
February 5, 1999

Deborah A. Webb, Notary Public
Residing in Allen County

This is to certify that the foregoing document has been reviewed by the Allen County Plan Commission. As presented, the content of the restrictions contained in said document conforms to the requirements of the Allen County Zoning and Subdivision Control Ordinances and the document is now eligible for recording. This certificate does not extend to the form or validity of the document.

Dated this 9 day of April, 1996.

ALLEN COUNTY PLAN COMMISSION

BY: _____
Dennis A. Gordon, AICP
Executive Director

**Prepared by: Dennis D. Sutton, Attorney at Law, BURT, BLEE, DIXON & SUTTON, 1000 Standard Federal Plaza, 200 E. Main St., Fort Wayne, IN 46802 (219) 426-1300.**