

RECORDED
09/17/2004 11:03:46
RECORDER
PATRICIA J CRICK
ALLEN COUNTY, IN

Doc. No. 204068364
Receipt No. 31107

DCFD	3.00
MISC	32.00
MISC	1.00
Total	36.00

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

AFFIDAVIT REGARDING AMENDMENT OF
RESTRICTIVE COVENANTS OF
WOODHURST ADDITION SECTION B

94-4329

Charles J. Heiny, Ellen C. Bero, and Michael A. Franke, each being first duly sworn upon their oath, depose and say that:

1. Charles J. Heiny is the current president of the Woodhurst Community Association, Inc., an Indiana not-for-profit corporation.

2. Michael A. Franke is the current vice president of the Woodhurst Community Association, Inc., an Indiana not-for-profit corporation.

3. Ellen C. Bero is the current secretary-treasurer of the Woodhurst Community Association, Inc., an Indiana not-for-profit corporation.

4. Woodhurst Addition, Section "B," an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "Woodhurst Section 'B' Declaration") recorded at Book 21, Pages 1-2, in the records of the Recorder of Allen County, Indiana, on June 9, 1954, and the lots in Woodhurst Addition, Section "B," were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of Woodhurst Section "B" Declaration.

5. The Woodhurst Section "B" Declaration provides in relevant part that at any time by the agreement of at least sixty-five percent (65%) of the then owners of lots (as the word "Lot" is defined in paragraph 1 of the Woodhurst Section "B" Declaration) in Woodhurst Addition Section "B", any or all of the protective (restrictive) covenants set forth in the Woodhurst Section "B" Declaration may be changed or abolished.

AUDITOR'S OFFICE
Duly entered for taxation. Subject
to final acceptance for transfer.

SEP 29 2004

Elizabeth A. Glavin
AUDITOR OF ALLEN COUNTY

64-32250
ALLEN COUNTY AUDITOR'S NUMBER

36

6. At least sixty-five percent (65%) of the current owners of lots (as the word "Lot" is defined in paragraph 1 of the Woodhurst Section "B" Declaration) in Woodhurst Addition Section "B" have agreed in writing to amend and supplement the Woodhurst Section "B" Declaration in the manner set forth on Exhibit A attached hereto, incorporated herein, and made a part hereof. All of the requirements for amendment of the Woodhurst Section "B" Declaration have been met.

7. The Woodhurst Section "B" Declaration is accordingly amended and supplemented in the manner set forth at Exhibit A attached hereto, incorporated herein, and made a part hereof.

Dated: September 10, 2004

Cross Reference:
Plat Book 21, pages 1-2

Charles J. Heiny
Charles J. Heiny

Ellen C. Bero
Ellen C. Bero

Michael A. Franke
Michael A. Franke

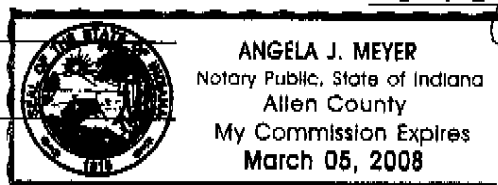
STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Subscribed and sworn to this 10 day of September, 2004.

My Commission Expires:

Angela J. Meyer
(Notary Public)

Resident of:



This instrument prepared by Charles J. Heiny, Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802, Telephone: (260) 426-0444, Courthouse Box #62.

EXHIBIT A

AMENDMENT OF PROTECTIVE (RESTRICTIVE) COVENANTS
(Woodhurst Addition - Section "B")

This Amendment of Protective (Restrictive) Covenants ("Amendment") is made effective (the "Effective Date") as of the date of the first recording of this Amendment in the records of the Recorder of Allen County, Indiana.

PRELIMINARY STATEMENT:

1. Woodhurst Addition, Section "A," an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "Woodhurst Section 'A' Declaration") recorded at Book 19, Pages 98-99, in the records of the Recorder of Allen County, Indiana, on March 3, 1952, and the lots in Woodhurst Addition, Section "A," were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of the Woodhurst Section "A" Declaration.

2. Woodhurst Addition, Section "B," an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "Woodhurst Section 'B' Declaration") recorded at Book 21, Pages 1-2, in the records of the Recorder of Allen County, Indiana, on June 9, 1954, and the lots in Woodhurst Addition, Section "B," were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of Woodhurst Section "B" Declaration.

3. Woodhurst Addition, Section "C," an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "Woodhurst Section 'C' Declaration") recorded at Book 25, Pages 8-9, in the records of the Recorder of Allen County, Indiana, on April 10, 1959, and the lots in Woodhurst Addition, Section "C," were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of Woodhurst Section "C" Declaration.

4. Woodhurst Addition, Section "D," an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "Woodhurst Section 'D' Declaration") recorded at Book 28, Pages 95-96, in the records of the Recorder of Allen County, Indiana, on October 16, 1964, and the lots in Woodhurst Addition, Section "D," were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of the Woodhurst Section "D" Declaration.

5. Woodhurst Addition, Section "E," an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "Woodhurst Section 'E' Declaration") recorded at Book 29, Pages 110-111, in the records of the Recorder of Allen County, Indiana, on June 21, 1964, and the lots in Woodhurst Addition, Section "E," were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of the Woodhurst Section "E" Declaration.

6. South Wood Park Addition, Section "G", an addition to the City of Fort Wayne, Allen County, Indiana, was created pursuant to that certain plat (the "South Wood Park Section 'G' Declaration") recorded at Book 14, Page 16 (and/or at Miscellaneous Record 83, Page 466), in the records of the Recorder of Allen County, Indiana, on May 18, 1931, and the lots in South Wood Park Section "G" were made subject to the easements and protective (restrictive) covenants appended to, made a part of, and/or incorporated as a part of the South Wood Park Section "G" Declaration.

7. By Order (the "Court Order") entered on November 5, 1952, in the Circuit Court of Allen County, Indiana, the Honorable William H. Schannen presiding:

- (a) Lots 124 through 139 of South Wood Park Addition, Section "G," were: (i) made subject to the easements and protective (restrictive) covenants applicable to Woodhurst Addition, Section "A" as amended from time to time, and (ii) were determined to not be subject to the restrictions, conditions, and limitations of the South Wood Park Section "G" Declaration, and
- (b) Lots 46 through 123 of South Wood Park Addition, Section "G," were: (i) made subject to the easements and protective (restrictive) covenants set forth in the Court Order, as such protective (restrictive) covenants may be amended from time to time in accordance with the Court Order, and (ii) determined to not be subject to the restrictions, conditions, and limitations of the South Wood Park Section "G" Declaration.

8. The Woodhurst Section "B" Plat provides in relevant part that at any time by the agreement of at least sixty-five percent (65%) of the then owners of lots (as the word "Lot" is defined in paragraph 1 of the Woodhurst Section "B" Declaration), any or all of the protective (restrictive) covenants set forth in the Woodhurst Section "B" Declaration may be changed or abolished.

9. The undersigned, who is an owner of a lot (as the word "lot" is defined in paragraph 1 of the Woodhurst Section "B" Plat) in Woodhurst Addition, Section "B," hereby agrees to amend and supplement the Woodhurst Addition Section "B" Declaration in the manner set forth herein.

AGREEMENT:

1. The preliminary statements set forth above and the Exhibits hereto are incorporated into and made a part of this Amendment. Capitalized terms not defined in this Amendment shall have the meaning assigned to such terms in Exhibit 1 hereto. The Woodhurst Section "B" Declaration should be and hereby is amended and supplemented to include the terms of this Amendment.

2. Owner-Occupancy/Leasing. In order to preserve high standards of maintenance and care, attain a low turnover of occupants, and realize other benefits that accrue from owner-occupancy, it is agreed that no Home shall be a Nonowner-Occupied Home unless the Woodhurst Association, in its discretion, approves a Home to be a Nonowner-Occupied Home. A Nonowner-Occupied Home shall mean:

- a. A Home that is rented or leased by the Owner where during the rental period the Owner of the Home or the Owner's spouse or one or more of the Owner's parents or one or more of the Owner's children is not a full-time occupant of the Home, or in the case of a Home owned by a trust, where a beneficiary of such trust is not a full-time occupant of the Home during the rental period, or in the case of a Home owned by a corporation or a limited liability company or other entity, where a person who holds at least sixty-five percent (65%) of the ownership and voting power of such entity is not a full-time occupant of the Home during the rental period; and/or
- b. A Home that is being sold on a "Disguised Lease Land Contract." A Disguised Lease Land Contract shall mean a land contract where (a) the Owner has not received in cash at least twenty-five percent (25%) of the price at which the Home has been contracted for sale at the time the land contract is entered into with the land contract buyer; and/or (b) the land contract was not recorded within one hundred eighty (180) days after the date the land contract was entered into between the Owner and the land contract buyer.

In determining whether to approve a Home to be a Nonowner-Occupied Home, the matters the Woodhurst Association may consider, in its discretion, shall include, but not be limited to, the following: (a) the total number of Nonowner-Occupied Homes at the time of consideration of the request; (b) the observations and opinions of the Woodhurst Association concerning whether Homes in and/or outside the Woodhurst Addition are maintained and kept up substantially the same as owner-occupied Homes when they are rented or leased or sold under a Disguised Lease Land Contract; and (c) any other factors or circumstances which the Woodhurst Association believes appropriate for consideration, in its discretion; provided, however, that the Woodhurst Association shall not at any time consider the age, race, religion, sex, sexual orientation, or national origin of the Owner that has made the request, of the person(s) to whom the Home is proposed to be rented or leased or sold under a Disguised Lease Land Contract, or of any other person.

In the event an Owner of a Home requests a Home to be approved and designated as a Nonowner-Occupied Home, a written request (an "Approval Request") must be made to the Woodhurst Association. The Approval Request shall in detail state the reasons and basis the applicant desires to rent or lease (or to sell under a Disguised Lease Land Contract) the Home, the name and address of the proposed tenant/occupant and all other persons that will occupy the Home, and such other information as the Woodhurst Association may request. Except as limited herein, the Woodhurst Association shall have the right in its sole discretion to approve or disapprove any Approval Request that a Home be authorized to be a Nonowner-Occupied Home. The Woodhurst Association shall not be deemed to have approved a Home to be a Nonowner-Occupied Home unless at least seventy-five percent (75%) of the then members of the board

of directors of the Woodhurst Association sign a written resolution of the Woodhurst Association approving same. No failure on the part of the Woodhurst Association to take or fail to consider any Approval Request for a Home to be Nonowner-Occupied Home, or any failure of the Woodhurst Association to be active, or to have directors or officers shall provide any basis or grounds for contending that a Home may be leased or rented or sold under a Disguised Lease Land Contract. Notwithstanding anything in the Woodhurst Section "B" Declaration to the contrary, the Woodhurst Association shall not have authority to approve a Home to be a Nonowner-Occupied Home for more than eighteen (18) consecutive months. In the event the Woodhurst Association approves an Approval Request for a Home to be a Nonowner-Occupied Home, any such approval shall be for the benefit of only the person, trust, or entity that holds fee simple title to the Home at the time the Owner of such Home delivers an Approval Request to the Woodhurst Association, and any such approval shall not run with the land and shall not accrue to the benefit of any person, trust, entity, successor or assign that subsequently acquires fee simple title or other interest in the Home. No sign, billboard, or other advertisement of any kind shall be erected or posted or permitted within the Woodhurst Addition advertising or promoting the rental or lease of a lot or dwelling house; provided, however, that one sign having not more than four (4) square feet of surface advertising or promoting an Excluded Parcel (as defined in the next paragraph) may be erected and maintained. Notwithstanding anything herein to the contrary, if an Owner of a Home prior to July 1, 2004 had entered into a written agreement for the lease or rental of his/her Home, then such rental or lease shall be permitted for the duration of such written lease but in no event for more than thirty-six (36) months after July 1, 2004, unless the Home is approved by the Woodhurst Association as a Nonowner Occupied Home. Similarly, no land contract entered into prior to the Effective Date shall at any time be deemed a Disguised Lease Land Contract.

The provisions and restrictions set forth at this Section 2 of this Amendment (which, in general, impose restrictions and prohibitions on the renting and leasing and the sale under a Disguised Lease Land Contract of Homes shall not apply to the following real estate (collectively, the following are sometimes referred to as the "Excluded Parcels"): (a) the portions of blocks "A" and "B" and Lot 225 of the Woodhurst Addition, Section "E" to the extent the same are now part of what is today commonly referred to as the Courts of Woodhurst Condominiums, and (b) Lot 180 in Woodhurst Addition, Section "D" (which Lot 180 in Woodhurst, Section "D" is the property that is commonly known as 1010 Century Court located at the northwest corner of Old Mill Road and Century Court). The improvements on Lot 180 were originally constructed years ago as a duplex and, as of this date, Lot 180 remains a duplex. Except for the Excluded Parcels, all the dwelling, structures, or other improvements located in the Woodhurst Addition constructed on a Lot shall be used for single-family residential purposes and not for multi-family or other use.

3. Community Association and Assessment. The Woodhurst Section "B" Declaration provided for an annual assessment/maintenance fee. In furtherance of the same, it is agreed that an annual operating/maintenance fee assessment ("Assessment") shall be imposed upon and assessed against each Lot (and which shall be a personal obligation of the Owner of each and every Lot) in Woodhurst Addition, Section "B" in an amount initially set at \$200.00 per Lot, which amount shall be paid by the Owner of each Lot to the Woodhurst Association and shall be subject to adjustment as set forth herein. The Woodhurst Association shall have the right and power to allow a discount annually off the then annual Assessment to the extent the assessment is paid before such early payment date as the Woodhurst Association may establish from time to time. The Assessment shall be used for such uses and purposes as the Woodhurst Association shall determine, such as, by way of example only, removal of the snow from the sidewalks located in the Woodhurst Addition and the hiring of security patrol and other security services in the Woodhurst Addition. Notwithstanding the other provisions of this Section 3, the Woodhurst Association shall have the right to adjust down or up the amount of the Assessment, but only to the extent the same shall be necessary in the judgment of the Woodhurst Association to permit the Woodhurst Association to (a) continue to provide for the removal of snow from the sidewalks located in the Woodhurst Addition, (b)

continue to provide (retain) security services in the Woodhurst Addition, and (c) continue the other programs and services the Woodhurst Addition provided at the Effective Date (the same to include, by way of example, an annual dirt day, an annual meeting of the Owners, and an annual garage sale), all in a manner and level consistent (as determined by the Woodhurst Association in its judgment) with those provided at the Effective Date. The amount of the Assessment may also be further adjusted based on changes in the Consumer Price Index (U.S. City Average, All Urban Consumers) between the said index published most recently prior to the Effective Date and the said index published most recently prior to the date of the then Assessment. It is agreed that the Woodhurst Association is the successor sponsor to Woodhurst Addition, Inc., an Indiana corporation at one time organized by, among others, John R. Worthman. The Woodhurst Association shall hold a lien on each Lot for the payment of the Assessment made from time to time. The lien on each Lot for the Assessment provided for herein shall be subordinate to the lien of any first mortgage but shall otherwise be superior to all other liens and shall be enforceable in the same manner as mechanic's liens in the State of Indiana together with attorney fees and interest at the rate applicable from time to time to unpaid judgments in the State of Indiana.

It is agreed that each Owner of a Lot in the Woodhurst Addition shall, automatically upon becoming an Owner, be and become a member of the Woodhurst Association and shall remain a member until such time as the ownership of a Lot ceases, it being agreed that membership shall terminate when such Owner ceases to be an Owner, and membership will be transferred to the new Owner of the Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall have one (1) vote with respect to each matter submitted to a vote of the members of the Woodhurst Association. When more than one person constitutes the Owner of a particular Lot, all such Persons shall be members of the Association, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any one Lot. Each vote cast with respect to a Lot shall be presumptively valid, but if such vote is questioned by anyone holding an ownership interest in such Lot, and if all such members holding an ownership interest in the Lot are not in agreement as to the validity of the vote for such Lot which is questioned, then such vote shall not be counted; provided, however, that Owners may only vote on matters submitted to a vote of the members of the Woodhurst Addition if the Owner is in good standing with the Woodhurst Association. Good standing with the Woodhurst Association shall mean the Owner is not more than thirty (30) days delinquent in the payment of any Assessment due and owing to the Woodhurst Association.

To the extent (a) an Owner of a Lot in South Wood Park Addition, Section "G," that is located south of Pettit Avenue and has frontage on Old Mill Road, Indiana Avenue, or Tacoma Avenue (i.e., lot numbers 46 through 123 of the South Wood Park Addition, Section "G,") (the same sometimes being referred to as the "South Wood/Woodhurst Lots") signs this Amendment or an acceptance agreement acceptable to the Woodhurst Association confirming the desire of the Owner of such a South Wood/Woodhurst Lot to become a part of the Woodhurst Addition and to be bound by and subject to some or all of the protective (restrictive) covenants and assessment provisions applicable from time to time to the Woodhurst Addition, Section "A," or (b) the restrictive (protective) covenant then of record and applicable to the South Wood/Woodhurst Lots shall subject the South Wood/Woodhurst Lots to some or all of the protective (restrictive) covenants, assessment, and other provisions of the Woodhurst Addition, Section "A," as amended herein and as otherwise amended from time to time, and provided the same is acceptable to the Woodhurst Association in its discretion, or (c) by court order one or more of the South Wood/Woodhurst Lots is subject to some or all of the Woodhurst Section "A" Declaration as amended from time to time, and provided the same is acceptable to the Woodhurst Association in its discretion, then (i) the Owner of each such South Wood Park/Woodhurst Lot shall become a member and shall remain a member of the Woodhurst Addition the same as if such Lot were part of the Woodhurst Addition, Section "A" until such time as the Owner of the Lot ceases to be an Owner, at which time the membership shall cease and will

automatically transfer to the new Owner of the Lot which new Owner shall automatically become a member in the Woodhurst Association; (ii) each such lot shall be deemed a part of the Woodhurst Addition as that term is used herein for all purposes; and (iii) each such lot shall be bound by and subject to the Woodhurst Section "A" Declaration, as amended by this Amendment and as further amended from time to time, including, but not limited to, the prohibitions on leasing, protective (restrictive) covenants, assessments, and other agreements and restrictions established by the Woodhurst Section "A" Declaration as in effect from time to time. Once an Owner of such a South Wood/Woodhurst Lot signs this Amendment or an agreement acceptable to the Woodhurst Association agreeing to be bound by and subject to some or all of the Woodhurst Declaration, such election shall be irrevocable and shall be binding on and run with the land (i.e., that Lot) and shall be binding on the successors and assigns of the Owner of the Lot executing the same and such election shall accrue to the benefit of the Woodhurst Association and each Owner of a Lot in the Woodhurst Association.

The Woodhurst Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the real estate that is part of the Woodhurst Addition and the improvements located thereon, which rules and regulations shall not be in derogation of the rights and duties established by the Woodhurst Declaration, as amended by this Amendment and any further adopted amendments. The Woodhurst Association, through its Board of Directors, shall have the right to enforce applicable federal, state and local laws, ordinances and regulations and to permit the City of Fort Wayne, Indiana, and/or Allen County, or any other governmental agency having jurisdiction, to enforce such parties' rules and ordinances pertaining to the real estate that is a part of the Woodhurst Addition and the streets, sidewalks, and other public areas within the Woodhurst Addition.

The business and affairs of the Woodhurst Association shall be governed and managed by a board of directors and the officers of the Woodhurst Association appointed from time to time by the Board of Directors. Where this Amendment requires or contemplates any decision making, action, consent, or possible approval on the part of the Woodhurst Association, the same shall be determined and made, if at all, by the then board of directors of the Woodhurst Association. No persons shall be eligible to serve as a member of the Board of Directors or as an officer of the Woodhurst Association until the person or his or her spouse is an Owner of a Lot. Where an Owner of a Lot consists of more than one person, or is a partnership, corporation, trust, or other legal entity, then one of the Persons constituting the multiple Owner or a partner, officer, manager, or trustee, shall be eligible to serve on the Board of Directors, except that no single Lot or Home may be represented on the Board of Directors by more than one person at any time. The Woodhurst Association shall endeavor to have not less than twelve (12) directors and no more than eighteen (18) directors. One-third (1/3) of the members of the Board of Directors shall be elected by the members of the Woodhurst Association each year to each serve a term of three (3) consecutive years. Any vacancy or vacancies occurring on the Board of Directors shall be filled by a vote of a majority of the remaining members of the Board of Directors. A director so filling a vacancy shall serve until the next annual meeting of the members and until a successor is duly elected and qualified. The Board of Directors of the Woodhurst Association shall be the governing body of the Woodhurst Association representing all of the Owners and being responsible for the functions, duties, and decisions of the Association, and in furtherance thereof, the Board of Directors shall have the power to appoint a president, secretary, treasurer, and other officers and such other powers as it deems necessary to accomplish and perform its functions and duties.

4. Miscellaneous.

(a) The Woodhurst Section "B" Declaration shall remain in full force and effect, except as amended and modified by this Amendment. This Amendment shall control over any inconsistent or different provisions in the Woodhurst Section "B" Declaration prior to this Amendment.

(b) All notices or requests made under or pursuant to the terms of the Woodhurst Declaration (including this Amendment) shall be in writing and shall be deemed to have been given when personally delivered in writing or deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed and delivered to the then registered agent of the Woodhurst Association.

(c) The Woodhurst Section "B" Declaration as amended herein and the restrictions, covenants, agreements, and other terms thereof as amended herein shall run with and be binding on each Lot commencing on the Effective Date, and expiring June 30, 2046, at which time they shall be automatically extended for successive periods of ten (10) years each, unless by written agreement signed by 65% of the then Owners of the Lots in the Woodhurst Addition it is agreed to change the Woodhurst Declaration in whole or in part, or to terminate the same.

(d) The Woodhurst Association and any Owner of a Lot in the Woodhurst Addition shall each have the right to enforce, by any proceeding at law or in equity or both, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Woodhurst Declaration as in effect from time to time. Failure by the Woodhurst Association, or by any Owner to enforce any covenant or restriction or other provision of the Woodhurst Declaration as in effect from time to time shall in no event be deemed a waiver of the right to do so thereafter. Should any one or more of the provisions of the Woodhurst Declaration be adjudged by a court or otherwise determined to be deemed invalid or unenforceable, such invalidation or other determination shall in no way affect any other provision of the Woodhurst Declaration, all of which other provisions shall remain in full force and effect. The Woodhurst Association shall not be liable for damages of any kind to any person for failing to enforce or carry out the provisions of the Woodhurst Association. The Woodhurst Association shall be entitled to recover the costs and reasonable attorney fees incurred in connection with the enforcement of part or all the Woodhurst Declaration and/or the rules and regulations of the Woodhurst Association and/or any failure of one or more assessments made from time to time to be paid when and as due from any person or entity who violates or threatens to violate some or all of the same.

(e) It is acknowledged that at the date of the adoption of this Amendment, the Woodhurst Association has been duly organized and is validly existing as a not-for-profit corporation under the laws of the State of Indiana. The duly elected directors and officers of the Woodhurst Association at this time are as set forth at Exhibit 2 and the acts of the Woodhurst Association and its officers and directors prior to this date are hereby ratified, confirmed and approved.

(f) The directors and officers of the Woodhurst Association shall not be liable to an Owner or any other persons or entities for any error or mistake of judgment exercised in carrying out their duties and responsibilities as directors and officers, except for their own individual willful or wanton misconduct, bad faith or gross negligence; nor shall any such directors and officers have any liability for any negligent performance of their duties from which they are granted immunity under IND. CODE § 34-30-4-2. The Woodhurst Association shall indemnify and hold harmless and defend each of its past, present, and future directors and officers against any and all liability to any person, firm or corporation arising out of contracts made by the board of directors on behalf of the Woodhurst Association, unless any such contract shall have been made in bad faith. It is intended that the directors and officers shall have no personal liability with respect to any contract made by them on behalf of the Association. The Woodhurst Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a director or officer of the Woodhurst Association, against the reasonable expenses, including reasonable attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided

herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director or officer is liable for willful or wanton misconduct or gross negligence in the performance of his duties. The Woodhurst Association shall also reimburse to any such director or officer the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the disinterested directors or found by a majority of Owners that such director or officer was not guilty of willful or wanton misconduct or gross negligence. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a director or officer, no director or officer shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such director or officer relied on the books and records of the Woodhurst Association or statements or advice made by or prepared by its agent (if any) or any other officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director or officer be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the board of directors.

(g) The Woodhurst Declaration (including as modified by this Amendment) may be modified, altered, amended or rescinded in whole or in part by an instrument that is signed by not less than 65% of the Owners of Lots in the Woodhurst Addition and then recorded in the records of the Recorder of Allen County, Indiana. Any such written modification or amendment or rescission that is so executed and recorded shall not be effective prior to the same being recorded. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same Amendment and shall become effective as to Woodhurst Addition, Section "B" when one or more counterparts have been signed by at least sixty-five percent (65%) of the Owners of lots (as defined in paragraph 1 of the Woodhurst Section "B" Declaration) in Woodhurst Addition Section "B" and such document or a notice or certificate that addresses the adoption of this Amendment is recorded in the records of the Recorder of Allen County, Indiana, it being understood that all parties need not sign the same counterpart.

[Signature page on next page]

By signing below, the Owner set forth below is confirming agreement to this Amendment.

Owner:

Date signed: _____

Date signed: _____

Property Address: Fort Wayne, Indiana 46807

This instrument prepared by **Charles J. Heiny**, Attorney at Law, Haller & Colvin, P.C., 444 East Main Street, Fort Wayne, Indiana 46802, Telephone: (260) 426-0444.

Exhibit 1

The following definitions are incorporated by reference into the Amendment.

1. "Approval Request" shall have the meaning set forth at Section 2 of the Amendment.
2. "Assessment" shall have the meaning set forth at Section 3 of the Amendment.
3. "Court Order" shall have the meaning set forth at Preliminary Statement (Recital) Number 7.
4. "Disguised Lease Land Contract" shall have the meaning set forth at Section 2(b) of the Amendment.
5. "Excluded Parcels" shall have the meaning set forth at Section 2 of the Amendment.
6. "Home" shall mean and refer to the single-family residential structure and related improvements constructed and located upon a Lot, including the garage and any appurtenances.
7. "Lot" shall mean and refer to each portion of real estate located in the Woodhurst Addition which has been developed and improved for use as a residence, it being agreed that the same shall mean only each of the residences listed on Exhibit 3 to this Amendment, the vacant tract/property that is known as 5650 Old Mill Road, and each of the South Wood/Woodhurst Lots to the extent such a lot has a residence constructed on the same, but only to the extent said lot in accordance with Section 3 of this Amendment is deemed to be a part of the Woodhurst Addition.
8. "Nonowner Occupied Home" shall have the meaning set forth at Section 2 of the Amendment.
9. "Owner" shall mean and refer to the record titleholder, whether one or more persons or entities, of a fee simple title to any Lot. Owner shall not include any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to an action for foreclosure or any proceeding in lieu of foreclosure.
10. "Woodhurst Addition" shall mean and refer to the name by which the real estate which is the subject of the Woodhurst Section "A" Declaration, the Woodhurst Section "B" Declaration, the Woodhurst Section "C" Declaration, the Woodhurst Section "D" Declaration, the Woodhurst Section "E" Declaration, and any and all of the Woodhurst/South Wood Park Lots to the extent such a lot in accordance with Section 3 of this Amendment is deemed to be a part of the Woodhurst Addition.
11. "Woodhurst Association" shall mean and refer to the Woodhurst Community Association, Inc., an Indiana not-for-profit corporation, its successors or assigns. It is agreed and resolved that the board of directors of the Woodhurst Association by majority vote thereof shall have the power from time to time to amend, restate or replace its by-laws and, further, within six (6) months of the Effective Date, the power to amend and restate its articles of incorporation, to the extent the board deems necessary or appropriate to carry out the purpose and intent of this Amendment and the Woodhurst Declaration.
12. "Woodhurst Declaration" shall mean the Woodhurst Section "B" Declaration as modified by this Amendment and any future amendments or changes thereto.

Exhibit 2

DIRECTORS

<u>NAME</u>	<u>DIRECTOR TERM EXPIRES</u>
Marilyn Hart	12/31/2005
Frances Shine	12/31/2006
Nancy Boylan	12/31/2004
Arthur Keck	12/31/2006
John Shank	12/31/2005
Helen Taylor	12/31/2006
Dean Zimmerman	12/31/2005
Margaret Eberly	12/31/2004
Robert Michael	12/31/2004
Joyce Eberly	12/31/2004
Robert Dietrich	12/31/2005
Charles Heiny	12/31/2005
Doris Fogel	12/31/2006
Michael Franke	12/31/2004
David Masanz	12/31/2004
Ellen Bero	12/31/2004

OFFICERS

<u>NAME</u>	<u>POSITION</u>
Charlie Heiny	President
Mike Franke	Vice-President
Ellen Bero	Secretary/Treasurer

Exhibit 3

<u>Street Name</u>	<u>Address/Numbers</u>
Century Court	1010, 5304, 5310, 5316, 5322, 5334, 5340
Fairfield Avenue	5012, 5116, 5126
Indiana Avenue	5105, 5106, 5112, 5115, 5120, 5125, 5126, 5205, 5206, 5211, 5212, 5219, 5220, 5227, 5228, 5305, 5306, 5311, 5312, 5320, 5330, 5400, 5405, 5415, 5416, 5425, 5426, 5505, 5506, 5515, 5516, 5525, 5526, 5605, 5606, 5615, 5616, 5625, 5626, 5636
Old Farm Circle	710, 717, 727, 811, 820, 821, 831, 909
Old Mill Road	5105, 5111, 5119, 5125, 5205, 5211, 5219, 5225, 5231, 5305, 5311, 5320, 5321, 5326, 5331, 5334, 5340, 5341, 5400, 5405, 5415, 5505, 5506, 5515, 5605, 5615, 5616, 5650, 5700, 5705, 5715, 5725, 5735, 5800
Roxbury Court	505, 516, 601, 608, 616
South Wayne Avenue	4910, 4911, 4915, 4916, 4919, 4924, 4925, 4928, 4934, 4935, 4942, 4943, 5000, 5010, 5016, 5115, 5120, 5121, 5128, 5129, 5135, 5136, 5205, 5211, 5219, 5220, 5305, 5306, 5315, 5316, 5405, 5416, 5426, 5501, 5506, 5516, 5526
Tacoma Avenue	4901, 4909, 4915, 4921, 4929, 4933, 4939, 5005, 5011, 5015, 5025, 5045, 5110, 5124
West Fairfax Avenue	505, 515, 605, 606, 711, 712, 725, 728, 731, 734, 743, 744, 749, 750, 816
West Pettit Avenue	525, 601, 609, 611, 613, 707
Woodhurst Boulevard	4910, 4920, 4930, 4938, 4940, 5004, 5010, 5015, 5020, 5025, 5030, 5035, 5105, 5110, 5115, 5125, 5131, 5135, 5145, 5202, 5205, 5206, 5214, 5219, 5220, 5306, 5314, 5406, 5415, 5416, 5425, 5426, 5435, 5436, 5505, 5506, 5515, 5516, 5605, 5606, 5615, 5616, 5625, 5626, 5636, 5665
Worthman Court	5105, 5115, 5118, 5125, 5128