

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

CONDITIONS, RESERVATIONS, RESTRICTIONS
AND PROTECTIVE COVENANTS (COVENANTS) AFFECTING
TITLE TO ALL LOTS IN HAVENWOOD MEADOWS SUBDIVISION
SEC. 2-A, A SUBDIVISION LOCATED
IN VANDERBURGH COUNTY, INDIANA, ACCORDING
TO THE RECORDED PLAT THEREOF

The undersigned, Paul A. Elpers, Kenneth J. Elpers, Carl A. Elpers and Gerald B. Elpers, constituting all of the members of the Board of Directors of ELPERS DEVELOPMENT, INC., an Indiana corporation (hereinafter Developer), do hereby establish the covenants hereinafter set forth. Elpers Development, Inc. is the owner of all lots and lands comprising the recorded subdivision known and designated as Havenwood Meadows Subdivision, Sec. 2-A, as per plat thereof, recorded in Plat Book R at page 126 in the Office of the Recorder of Vanderburgh County, Indiana (hereinafter the "Subdivision,") and does hereby make and adopt the following covenants, conditions, restrictions and reservations for the use and occupancy of the lots and lands comprising such Subdivision (hereinafter Restrictions), which covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all owners of the lots and lands in such Havenwood Meadows Subdivision Sec. 2-A, more particularly described as follows, to-wit:

The legal description for Havenwood Meadows Subdivision, Sec. 2-A is shown on Exhibit "A," which is attached hereto and is incorporated herein by reference.

The Developer is developing a master subdivision known as Havenwood Meadows Subdivision to be phased in as various sections are platted and developed by Developer or its successors or assigns. As such future sections are platted, it is the intention of the Developer to impose upon such sections, certain reasonably uniform conditions, reservations, restrictions and protective covenants. The Restrictions shall not necessarily identically apply to other sections of Havenwood Meadows Subdivision as such are subsequently platted and developed, and Developer hereby expressly reserves the right to revise, correct, amend, delete or add to these Restrictions for such other future sections of Havenwood Meadows Subdivision as the Developer may deem necessary in its sole discretion.

The term "Havenwood Meadows Subdivision" as used in these Restrictions shall include: (1) Havenwood Meadows Subdivision, Phase One, which is recorded in Plat Book R at Page 58 in the Office of the Recorder of Vanderburgh County, Indiana; (2) Havenwood Meadows Subdivision, Sec. 2-A, which is recorded in Plat Book R at Page 126 in the Office of the Recorder of Vanderburgh County, Indiana; and (3) any other real estate which the Developer may subsequently decide to plat and develop as future Phases of Havenwood Meadows Subdivision, at Developer's sole option and discretion, including Havenwood Meadows Subdivision Sec. 2-B and Havenwood Meadows Subdivision Sec. 3. The term, "Havenwood Meadows Subdivision Phase 2-A" as used in these Restrictions shall include: any other real estate which the Developer may subsequently decide to plat and develop and include within the definition of "Havenwood Meadows Subdivision Sec. 2-A" at the Developer's sole option and discretion.

1. **RESIDENTIAL LOTS.** All lots in the Subdivision (hereinafter collectively referred to as "Lots" and individually as a "Lot") shall be known and described and used only for single family residential purposes. No use of any Lot or building in the Subdivision shall be in violation of the Vanderburgh County Zoning Code.

2. **TYPE OF PERMITTED STRUCTURE.** No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family dwelling, not to exceed two and one-half (2½) stories in height, exclusive of basements or walk-out basements, and a private attached garage for not less than two (2) cars nor more than three (3) cars. In addition, a detached accessory building, excluding a yard barn or shed, may be erected on a Lot, providing it is approved in advance by the Subdivision Review Committee as being in conformity and harmony with the main structure. No detached accessory building shall be used for living purposes. All television and radio antennas and satellite dishes, swing sets and play areas shall be placed in rear yards and where possible shall be obscured from view from adjoining property and streets by using shrubs and approved fencing. If any of the above cannot be concealed, Subdivision Review Committee approval will be required before installation.

3. **ARCHITECTURAL CONTROL.** No structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure have been approved by the Subdivision Review Committee, which shall be appointed by the Board of Elpers Development, Inc., as to quality of workmanship and material, harmony of external design with existing structures, suitability to the general appearance of the Subdivision, and as to locations with respect to topography and finish grade elevation. It shall be the sole responsibility of the Lot owner to obtain such approval of the Subdivision Review Committee prior to the commencement of any structure being erected, placed or altered on any Lot. Approval of said structure shall be within the reasonable discretion of the Subdivision Review Committee. Once a plan has been approved, there shall be no modifications or

changes whatsoever to said plans without the prior written consent of the Subdivision Review Committee and it shall be the sole responsibility of the Lot owner to obtain such consent. After all sections have been platted and recorded, including any future expansions of Havenwood Meadows Subdivision, and the Developer no longer owns any Lots in Havenwood Meadows Subdivision, then the powers and duties of the Subdivision Review Committee shall automatically be transferred to and vested in Havenwood Meadows Subdivision Homeowner's Association, Inc. (hereinafter Association) and thereafter be fulfilled by the Association and a reference to the Subdivision Review Committee under these covenants shall then refer to the Association.

4. **CONSTRUCTION OF BUILDINGS.** The following sets forth the minimum finished living area, exclusive of basements, porches and attached garages, and certain other requirements for various types of houses for Lots in the Subdivision:

- A. One story dwelling shall have a minimum finished living area of 1,800 square feet. Two story dwellings shall have a minimum finished living area of 2,000 square feet, with a minimum finished living area of 1,200 square feet on the first floor. One and one-half (1½) story dwellings shall have either a minimum of 1,500 square feet on the main level or a total of at least 2,000 square feet, with a minimum finished living area of 1,500 square feet on the first floor. All dwellings shall be constructed of brick, stone, or stucco veneer around the entire perimeter of the home, to a height not less than the top of the windows and doors on the first level of the home. The balance of the veneer of the home can be done in wood, vinyl, aluminum siding or stucco. All homes require stick built construction, to be built on site, of either wood or metal components, or a combination of the two. No modular or Pre-Fab construction is to be permitted in the Subdivision.
- B. All storm water drainage tiles must be run from the home to street or drainage easements at back of Lots, and not to side yards. All storm water drainage from each individual Lot must be sent to the street and/or rear yard drainage easements. Swales between Lots must be maintained by homeowners to keep water from entering homes.
- C. All fireplace flues, whether they be masonry or metal are to be wrapped with an approved exterior veneer, such as brick, wood, aluminum, stucco or vinyl siding. The flue liners are to have no more than 16" exposed above top of chimney.
- D. All homes are to have a roof pitch of no less than 6/12 pitch, to be used on the front elevations of the home, and all roofs are to have dimensional shingles.

- E. All homes are to have a lamp post, to be located in the front yard 5 feet inside the front property line. Lamp posts are to be 5' to 6' in height and to be operated by a photo cell. Lamp posts are required to be maintained at all times and to be lit from dusk to dawn. No Lot is to have outdoor light with more than 200 watts. There shall be no high intensity lights directed toward the street or adjacent Lots.
- F. Each Lot owner is responsible for pouring a 4' wide concrete sidewalk across the entire frontage of their Lot. Corner Lots are to have concrete walks at their front and side yard and are required to connect to wheelchair ramp at intersections. The walks are to be located 2'6" in from the back of curb of the street leaving a 2'6" wide grass median. Sidewalks are to be poured 4" deep, have a broom finish, and have controls joints tooled every 4' (saw cut control joints not permitted). The sidewalks require a 1/4" slope in 1', sloping into street. The sidewalk upkeep and accessibility is to be the responsibility of the Lot Owner. All Lot owners are to have walks installed no later than one year after purchase of Lot or before occupying the home, whichever occurs first.
- G. Privacy fence design and material are to be approved in advance by the subdivision Review Committee. Except as hereinafter provided in (h), below fences shall not be located across any lake maintenance easements, storm drainage easements or utility easements. No fences shall be located closer to streets than the front and side setback lines. No chain link or wire fences are allowed unless enclosed by an approved fence. All approved fences are to be installed with the finished side of the fence to face adjoining Lots or adjoining streets.
- H. A Lot owner must obtain prior written approval of the Vanderburgh County Drainage Board before constructing any pipe, wall, building, pool, patio, planting, stored material, excavation, fill, or other construction, improvement, addition to, or alteration of any land within a drainage easement in the Subdivision.
- I. The Developer has built slopes at the rear of the Lots, to accommodate grade changes and drainage easements. These slopes have been installed for ease of maintenance by Lot owners. The utility companies have installed their utility lines and vaults in these areas. If at any time a Lot owner alters the grade at these locations, the utility companies and the Developer require not less than ten (10) days advance written notice. The alterations can require reinstallation of utility lines to reestablish proper depth of cover, or possibly require the need to raise the vaults, if fill has been added. Every Lot owner will be financially responsible for alterations which require repairs or reinstallation by utility companies. The Lot owner may be held financially responsible for any grade changes to drainage

easements which back storm water onto adjacent Lots. Any amounts expended by the Developer, the Subdivision Review Committee, or the Association, on a Lot owner's behalf pursuant to this subparagraph shall be payable upon demand and any amounts not paid upon demand shall become a lien on the Lot owner's Lot and shall accrue interest at eighteen percent (18%) per annum.

- J. All mail boxes shall be constructed of brick and shall be built during the construction of the dwelling on the Lot. All mailboxes shall not exceed a height of 5' and are to be placed and maintained inside the grass area between street and walks, and are to be located so as not to obstruct the view or create a safety hazard.

5. **CONCRETE BLOCKS.** No completed structure shall have concrete blocks exposed on the exterior of said structure. Brick, stone, or stucco veneer shall be used over exposed blocks.

6. **TIME OF CONSTRUCTION.** The construction of any building shall be completed within twelve (12) months from the date of commencement of such construction.

7. **CARE OF PROPERTY DURING CONSTRUCTION.** All Lots in the Subdivision are subject to the Indiana Department of Environmental Management's (I.D.E.M.) General Permit Rule #327 I.A.C. 15-5, which rule generally provides that erosion control practices be used during development and construction and must minimize soil erosion and sediment laden water from flowing from the building sites and requires that streets be kept free from transported soil from the building sites.

In compliance with this provision, a plan has been submitted to the Vanderburgh Soil and Water Conservation District, which plan and its terms shall be binding upon all owners of Lots within the Subdivision. Said plan requires the construction of appropriate driveways for ingress and egress during construction and the implementation of measures to minimize sediment laden water from being discharged into streets and drainage ways.

During construction, adjoining Lots shall not be used for any construction equipment vehicles, or material storage purpose. If a Lot owner's employees, contractors or agents are responsible for disturbing the vegetation on adjoining building sites, appropriate erosion control practices should be started immediately.

The provisions of rule 327 I.A.C. 15-5 and the plan for erosion control submitted to the Vanderburgh Soil and Water Conservation District shall become a part of these covenants and restrictions and shall be binding on all Lot owners as it pertains to their individual Lots, and said Lot owners shall hold the Developer harmless in connection

with any and all violations thereof. Furthermore, all Lot owners shall be responsible for compliance with this provision and the referenced administrative rules and erosion control plans within the boundaries of each Lot owner's real estate. The Developer shall not be responsible and shall have no liability for silt or debris flowing into the lakes, whether common or private, and the owners, together with their agents and builders, shall hold harmless, indemnify and defend the Developer from and against any and all costs and expenses in connection with any violation thereof, including, but not limited to, attorney's fees and court costs.

8. **BUILDING LINES.** No residence or other building structure in the Subdivision shall be constructed nearer to the front or side property line of a Lot than the building setback lines as shown on the recorded plat of the Subdivision and shall be constructed in a manner that also conforms to the Vanderburgh County side and rear Lot setback lines. Any residence constructed in the Subdivision shall be constructed so that the front elevation of the residence is facing the side of the Lot identified on the Subdivision plat as having a 25' setback line.

9. **EASEMENTS.** The strips of real estate of the width shown on the recorded plat and marked "easement" are hereby reserved for the use of any and all public utilities and for the installation of water, surface water drainage, sanitary and storm sewers, ducts, lines and wires, and other improvements, no planting or other materials shall be erected or permitted to remain within the easements which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot shall be maintained continuously by the owner of said Lot so as not to change the intended direction of flow of surface water within the easement.

10. **RIGHT OF WAY.** The strips of real estate of the width shown on the recorded plat and marked "right-of-way" are hereby reserved for future ingress and egress to abutting real estate. Until such time as the Street shown on the recorded plat and marked "Street 15" for ingress and egress to abutting real estate is a publicly dedicated roadway, said Street 15 shall be considered a "right-of-way." No structures or other improvements, planting or other material shall be erected or permitted to remain within the rights-of-way which may interfere with such ingress or egress. The rights-of-way shall be maintained equally by the Lot owners abutting any such right-of-way.

11. **FENCES, TREES AND SHRUBS.** No fence or wall shall be placed or permitted to remain on any Lot beyond either the front or side building setback lines identified on the Subdivision Plat, nor shall any fence or wall be placed or permitted to remain on any Lot in such a manner as would create a safety hazard or in such a manner as would detract from the appearance of the Subdivision. No trees or shrubs shall be planted and maintained in such a manner which would create a safety hazard or in such a manner as would detract from the appearance of the Subdivision.

12. **DRIVEWAYS.** All driveways shall be paved with either 4" thick concrete

or asphalt equivalent.

13. **WASTE DISPOSAL.** All Lot owners shall keep their Lots free of garbage, sewage, ashes, rubbish, bottles, cans, waste manner and other refuse. Trash, garbage or other waste or debris accumulated by the owner or occupant of any Lot within the Subdivision shall be kept in sanitary containers and shall be disposed of on a weekly basis. All containers or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, in a location which cannot be seen from the street at the front of the home, and shall be kept in such manner as to avoid an unsightly appearance within the Subdivision. No grass clippings or other debris should be placed on any vacant Lot. The Lot owner shall only use EPA approved products on his lawn and shrubs.

14. **APPEARANCE OF LOTS.** All Lots must be kept free of debris and other objectionable matter at all times. In the event any Lot is not properly maintained as required herein, Developer or the Association shall have the right to take all remedial measures to bring said Lot into conformity with the standards of the Subdivision. The offending Lot owner shall be required to reimburse the Developer and/or the Association for said maintenance costs within ten (10) days from the date said Lot owner is presented with a statement for the costs thereof. If not timely paid, said sum shall be payable, together with interest at the rate of eighteen percent (18%) per annum and attorney fees.

When Developer conveys common ground to the Association as per Paragraph 28, all of Developer's rights of enforcement under these covenants shall be passed to the Association.

The lake Lot owners are responsible for the maintenance of the lake and grounds around the lake which are within their respective Lot lines. Maintenance and upkeep includes the following items:

- (a) Keeping Lot mowed on a regular basis, and maintaining a stand of quality grass.
- (b) Maintaining erosion control on Lot.
- (c) Keeping lake bank free of weeds, moss and other undesirable growth or materials.

15. **TEMPORARY STRUCTURES.** Except for a detached accessory building approved pursuant to paragraph 2 of these Restrictions, no structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Lot in this Subdivision or any part thereof at any time as a residence or otherwise, either temporary or permanently. No structure shall be moved onto any Lot; all structures shall be newly erected thereon. All yard barns, sheds or similar out buildings MUST be approved in advance by the Developer, as long as it owns any lots in the Subdivision, and the Association. If any yard barn, shed or similar structure is placed on any Lot without first obtaining the required approvals, the Lot owner will be required to remove the structure at the sole cost of the owner.

16. **DRAINAGE OF WATER; VANDERBURGH COUNTY DRAINAGE BOARD REQUIREMENTS.** Water from down spouts, foundation tile or other surface water drainage systems shall not be drained or guided into the sanitary sewer. The down spout drains can be drained into the street or drainage swales. Water must be discharged at a level above the street to prevent erosion under the street. The existing natural and manmade drainage courses shall not be altered without the approval of the Developer or his appointee. All Lot owners and/or their homebuilder or general contractor are responsible for achieving proper grading and slopes of their respective Lots, so as to achieve a positive drainage flow away from foundations and homes and into the drainage easements or streets. A drainage swale will be required between Lots, the construction of which shall be the responsibility of Lot owner and his or her homebuilder or general contractor. Such swale shall be constructed correctly before the landscaping of the yard is completed, and maintained correctly thereafter by Lot owner of record.

In accordance with the requirements of the Vanderburgh County Drainage Board, any Lot owners and/or their homebuilder or general contractor are hereby informed that:

(a) the standard grading plan sheets prepared by Sitecon may be obtained from the Vanderburgh County Recorder's Office;

(b) such Lot owner, home builder and/or general contractor are hereby directed to achieve positive storm water drainage away from all building foundations in accordance with the standard grading plan referred to in (a) above; the homebuilder or general contractor shall be determined by whose name appears on the building permit;

(c) it shall be the responsibility of the Lot owner of record to maintain a positive drainage away from all building foundations in accordance with the standard grading plan referred to in (a) above; the homebuilder or general contractor shall be determined by whose name appears on the building permits;

(d) the adverse drainage conditions caused by any alterations of the Lot grades and/or drainage system after the initial Lot grading and/or drainage system is accomplished in conformance with the standard grading plan and the approved final drainage plan are totally the responsibility of the Lot owner of record to correct at his or her cost; and

(e) the maintenance and repair of the storm water drainage system that is designed and constructed outside the rights-of-way of the County accepted streets is solely the responsibility of the Lot owner of the record for the individual property on which the system or part thereof exists, except as provided in the County Drainage Ordinance, and these covenants and restrictions.

While the foregoing drainage requirements are the initial responsibility of the Lot owners

and their homebuilders or general contractors, see Paragraph 28 of these Restrictions, which provisions make it the ultimate responsibility of the Association to maintain and repair such drainage facilities and common areas. The Association shall also be responsible for easements within or attached to this Subdivision and outside of the County-accepted roads and rights-of-way.

17. **VEHICLES; PARKING AND USE.** Except as hereinafter provided, only non-commercial vehicles, automobiles and private/personal vans shall be parked or located on any Lot. All commercial, service and delivery vehicles owned, used or leased by the owners (or owner's lessee of Lots or residences in this Subdivision) that are parked in this Subdivision must be parked in an enclosed garage. No camper, motor home, recreational vehicle, truck, motorcycle, trailer, two (2) or four (4) wheeled vehicles or other similar vehicles or boats or other items used for water activity shall be parked or located on any Lot unless parked or located within an enclosed garage, and they also shall not be parked or left overnight on a street in the Subdivision.

18. **FUEL TANKS.** No oil, gas or other fuel tanks or unsightly objects shall be allowed on any Lot in the Subdivision or placed in the basement or garages of any dwelling unless approved by the Developer and in compliance with all governmental laws.

19. **SIGNS.** No signs shall be permitted in the Subdivision, excepting that any owner of any Lot who desires to sell said Lot shall be permitted to place a "FOR SALE" sign on said Lot. Model home or display signs shall also be permitted in connection with original construction on any Lot.

20. **ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes, and provided further that no household may have more than a total of four (4) household pets at one time. Pets shall be controlled by their owners throughout the Subdivision, including, without limitation, all yards and streets, in such a manner as to not become an annoyance or nuisance to neighbors. All pet facilities maintained and/or located on any Lot must be approved by the Subdivision Review Committee, in advance, in writing.

21. **NUISANCE.** No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

22. **FIREARMS.** There shall be no hunting with firearms or otherwise upon any of the real estate included within the Subdivision or the discharge of any firearms thereon.

23. **FRACTIONAL LOTS.** No residence may be erected or placed on less than a full residential Lot, except where less than one full residential Lot is utilized in connection with an

adjacent or abutting full residential Lot for the construction and maintenance upon the combined single parcel of real estate of a single family dwelling in all other respects complying with the terms and provisions of these covenants.

24. **ACCEPTANCE OF DEED.** The acceptance of a deed of conveyance to any Lot or a part thereof in this Subdivision by any person shall be construed to be acceptance and an affirmation by said person of each and all of the covenants, conditions, reservations and restrictions aforesaid, whether or not the same be set out or specified in such conveyance.

25. **INJUNCTIVE RELIEF.** Each and all of the covenants, reservations, conditions and restrictions contained herein shall inure to the benefit of all owners of Lots in the Subdivision jointly and severally, and may be enforced by them or by any of them and/or the Association, as the case may be, in any court of competent jurisdiction by injunction or other appropriate remedy. The party adjudged to have violated any of said restrictions shall be liable to the aggrieved party for reasonable attorney fees incurred in the enforcement thereof, which shall be fixed by the court hearing said matter. The owner of any Lot in the Subdivision and/or the Association shall have the right to enforce said covenants, conditions, and restrictions without proof of pecuniary damage to any Lot owner's property in the Subdivision or otherwise.

Notwithstanding the foregoing, neither the Developer, the Association, the Subdivision Review Committee, nor any Lot owner shall have any affirmative obligation to seek enforcement of the Covenants, Conditions and Restrictions contained herein and the failure of any party to strictly enforce these Covenants, Conditions and Restrictions shall not constitute a waiver of such party's or any other party's rights in the event of any subsequent violation of these Covenants, Conditions and Restrictions.

26. **PASSAGEWAY.** No Lot owner shall permit or authorize anyone to use a portion of any Lot as passageway or means of ingress or egress to or from any contiguous property, nor shall any utility easements be granted without the approval of the Developer, however, this restriction shall not apply to any Lots owned by the Developer.

27. **CHANGING OF LOT DIMENSIONS.** It is expressly understood and agreed that the Subdivision Developer, Elpers Development, Inc., shall have the right to change, alter, adjust or readjust the dimensions of any Lots, situated in the Subdivision and owned by the Developer.

28. **ASSOCIATION.** Developer has caused to be incorporated under the provisions of Indiana Code 23-17-1-1 **et seq.**, a non-profit corporation known as Havenwood Meadows Subdivision Homeowners' Association, Inc. (Association). The Association has entered into a lease with Developer covering the recreation facilities and common areas which have been, or may be, constructed in Havenwood Meadows Subdivision by Developer and presently owned by Developer (including drainage facilities), which lease shall impose the obligation upon the Association to maintain said recreational facilities and common areas subject to such other terms and conditions as set forth in said lease. After all sections have been duly platted, including all of the areas above designated, and a minimum of eighty percent (80%) of the Lots that are

platted in the total development of Havenwood Meadows Subdivision have been sold and conveyed by Developer, or at such earlier time as Developer may designate, Developer will convey the common areas and facilities to the Association, free and clear of any liens or encumbrances. The Association hereby agrees to accept such conveyance and to assume, at such time, the supervision, repair, maintenance and replacement of any common areas or recreational facilities contained within Havenwood Meadows Subdivision.

All owners of Lots, which include the Developer and any purchaser of any Lot, consent to be automatic members of the Association, which membership shall continue so long as their Lot ownership continues, subject to the conditions and provisions of the Indiana Non-Profit Corporation Act, to-wit: Indiana Code 23-17-1-1, et seq. No Lot owner can elect not to be a member of the Association unless his or her or their Lot ownership is discontinued. Further, no Lot owner or member can exempt himself, herself, or themselves from their pro-rata share of the expenses which are reasonably necessary to maintain the common areas, recreational facilities and drainage facilities which may now or hereafter be constructed within Havenwood Meadows Subdivision for the use and benefit of the homeowners thereof.

The Developer and each member of the Association shall each have one vote for each Lot in Havenwood Meadows Subdivision owned by the Developer and each member (e.g. if the Developer or a member owned one (1) Lot in Phase One (1) and three (3) Lots in Sec. 2-A, the Developer or that member would have 4 votes.)

All members and owners shall be subject to the terms and provisions of the Articles of Incorporation and By-laws of the Association and the rules, regulations, restrictions, obligations and assessments provided for therein, including the payment of assessments and charges. Initially, the assessments and charges shall be Fifty Dollars (\$50.00) per year for each Lot which shall not commence until January 1, 2003. Whenever Developer sells a Lot, the purchaser will make one (1) payment pro-rating the remaining monthly charges to the end of the calendar year. Until such time as the common areas and the recreational facilities have been conveyed to the Association, the Association will not charge for any special assessments. In addition, in the event the monthly assessments are increased, such shall not be increased more frequently than annually and any such increase shall not be more than Ten Percent (10%) above the amount that was being charged to the owners at the time of the increase. To the extent that charges and assessments collected by the Association on an annual basis are insufficient in amount to maintain the common areas, recreational facilities and drainage facilities and until such are conveyed to the Association, Developer shall be responsible for and shall pay for all expenses and costs required to fulfill the obligations of the Association and shall not be entitled to reimbursement for such expenses. However, Developer shall not be obligated to pay any dues, charges or assessments for unsold and unimproved Lots.

The Association shall ultimately be responsible to pay for the maintenance and care of all common areas. This maintenance shall include but not be limited to grass cutting, upkeep of landscaping, and signage at entrance. In addition, the Association shall be responsible for the payment of common area insurance and taxes.

Streets shall be maintained by Developer until such time as such are accepted for maintenance by appropriate governmental authority.

Any charges and assessments of the Association against any Lot or Lots shall be a lien against such Lot or Lots enforceable by the Association by foreclosure in the same manner as mechanic's liens are recoverable in the State of Indiana, if not timely paid, together with interest thereon at the rate of Eighteen Percent (18%) per annum and reasonable attorney fees on foreclosure; provided, however, that such lien or liens shall be secondary and inferior to the lien of any bona fide mortgage of record at any time against such Lot or Lots.

In addition to the foregoing obligations, except as provided to the contrary herein or in the recorded plat of the Subdivision, the Association shall ultimately be financially responsible for the maintenance and repair of the entire storm water drainage system, its parts, and easements within or attached to Havenwood Meadows Subdivision and outside of county accepted road rights-of-way including:

- (aa) Mowing grass, controlling weeds and maintaining the designated cover of the waterways, storage basins, and easements in accordance with applicable ordinances.
- (bb) Keeping all parts of the storm water drainage system operating at all times as designed and as constructed; and free of all trash, debris, and obstructions to the flow of water.
- (cc) Keeping the channels, embankments, shorelines, and bottoms of waterways and basins free of all erosion and sedimentation.
- (dd) Maintaining and repairing the storm water drainage system in accordance with the conditions described on the approved street and/or drainage plans on file in the County Surveyor's Office, and/or the County Engineer's Office; and in compliance with the County Drainage Ordinance.
- (ee) Preventing all persons or parties from causing any unauthorized alterations, obstructions, or detrimental actions from occurring to any part of the storm water drainage system and easements within or attached to this Subdivision.
- (ff) NOTICE: Any pipe, wall, building, pool, patio, planting, stored material, excavation, fill, or other construction, improvement, addition to, or alteration of the land within a drainage easement in this subdivision requires the prior written approval of the County Drainage Board.

Notwithstanding the provisions of paragraphs 28(a)-(f), above, the individual Lot owners shall bear responsibility, financially and otherwise, for maintaining in working order the portion(s) of the storm water drainage system which exists on said Lot owner's property, including the duties described in paragraphs 28(a)-(e), above."

29. **LAKES.** The Developer, in its sole discretion, may develop one or more lakes within Havenwood Meadows Subdivision which are intended for either: the common use and benefit of all owners of Lots within Havenwood Meadows Subdivision (hereinafter “common lakes”); or the sole, exclusive, private use and benefit of the owners of Lots which adjoin or lie under portions of such lakes (hereinafter “private lakes”).

A. **Common Lakes.** Common areas of all common lakes are to be maintained by the Association. Lot owners with Lots that adjoin such lakes shall be responsible for mowing the grass to the water line for their Lot. Docks will be permitted to be installed by owners of Lots adjoining such lakes. Docks shall not be extended into the water further than eight (8) feet from the normal high water line. Notwithstanding the foregoing, no docks may be constructed without prior written consent of the Subdivision Review Committee, or the Association, as the case may be. There shall be no usage of any motorized watercraft that can expel any oil or gas products, including but not limited to “Personal Watercraft” as defined by applicable Indiana law (i.e. “waverunners/jet skis” or their equivalent). No more than one (1) non-motorized watercraft belonging to any lake Lot owner or his or her guests shall be permitted upon any common lake at any time. All Association members, Lot owners, and their respective families and guests shall be entitled to the use of the common lakes constructed in Havenwood Meadows Subdivision; provided however Lot owners must accompany their guests at all times when using such lakes. Access to the common lakes will be over common areas associated with such common lakes only and no access to a common lake shall be permitted within twenty (20) feet of any plotted adjoining Lots. Access during development will be over necessary temporary easements. Piping water from any common lake within Havenwood Meadows Subdivision by any Lot owner other than the Developer, to any Lot within Havenwood Meadows Subdivision is prohibited

B. **Private Lakes.** Private lakes shall be designated as such on the applicable plat or plats. Private lakes shall be for the sole, private use and benefit of the owners of Lots which adjoin or lie under portions of such private lakes, and their respective families and guests. Such private lakes are not part of the common areas of Havenwood Meadows Subdivision and shall not be governed by the Association.

Ownership of a Lot adjoining a private lake within Havenwood Meadows Subdivision (hereinafter “Private Lake Lot”) automatically includes ownership of an undivided interest in the right to use such private lake as a tenant in common with all other owners of such adjoining Private Lake Lots. Except as otherwise provided, no owner of any Private Lake Lot shall have the right to partition this tenancy in common or otherwise appropriate to himself any rights in such private lake not enjoyed by all owners of such adjoining Private Lake Lots.

Each owner of a Private Lake Lot, and their respective families and guests, shall have a non-exclusive right, subject to these Restrictions, to reasonably use and enjoy the entire surface, lake bed and water of such adjoining private lake in common with all

other owners of such adjoining Private Lake Lots, for recreational purposes only, including, without limitation, boating, fishing and swimming; these private lake use rights do not include use of the shoreline or docks owned by other Private Lake Lot owners. Lot owners must accompany their guests when they use such private lake or lakes. A Private Lake Lot owner's access to a particular private lake shall be through that owner's Private Lake Lot. No access to any private lake through or over any portion of any Private Lake Lot may be sold, leased, rented or otherwise transferred to any other person by the owner of a Private Lake Lot, separate from the sale of the entire Private Lake Lot. Access during development will be over necessary temporary easements.

A committee formed by the owners of the Private Lake Lots adjoining a given private lake shall be responsible for the maintenance and upkeep of that private lake. In the absence of such a committee, the owners of all Lots that adjoin a private lake within Havenwood Meadows Subdivision shall be equally responsible for: the maintenance, care, repair and general upkeep of any such private lake; all real estate taxes and assessments assessed against such private lake; and the public liability insurance for such private lake. The cost of such real estate taxes, public liability insurance and maintenance, care, repair and general upkeep of any private lake shall be the responsibility of and shall be equally shared and promptly paid by the owners of all Lots that adjoin such private lake. The amount and type of such maintenance, care, repair and general upkeep and public liability insurance shall be determined by the committee or, in the absence of such a committee, agreed upon by a majority of the Lot owners responsible therefore and the cost thereof shall be divided equally and promptly paid by the responsible Lot owners.

The owner of each Private Lake Lot shall be required to mow the grass to the water line for that owner's respective Lot and maintain, at that owner's expense, a clean and uncluttered waterfront and shore line. In providing such maintenance, the original shore line shall not be changed by the removal of said dirt, gravel or other material of which the shore line is formed. No Private Lake Lot shall be increased in size by filling in the water it adjoins.

Owners of Private Lake Lots may construct and maintain a dock, diving board, swimming raft or platform only within their own property lines as shown on the recorded plat of Havenwood Meadows Subdivision; which shall not extend into the water more than eight (8) feet from the normal high water line; and only in such a manner that such structure will not become hazardous to others using such private lake. Notwithstanding the foregoing, prior to construction of any boat docks, diving boards, swimming rafts or platforms, the owner of the Private Lake Lot must obtain the written consent of the committee formed by the owners of the Private Lake Lots or, in the absence of such a committee, a majority of the Private Lake Lot owners who own Lots adjoining said Private Lake. There shall be no usage of any motorized watercraft that can expel any oil or gas products, upon such private lakes, including, but not limited to, "Personal Watercraft" as defined by applicable Indiana law (i.e. "waverunners/jet skis" or their equivalent). No more than one (1) non-motorized watercraft belonging to any lake Lot owner or his or her guest shall be permitted upon any common lake at any time. No more than one (1) boat belonging to any Lot owner or his or her guests shall be

permitted upon such private lake at any time. Piping water from any private lake within Havenwood Meadows Subdivision by any Lot owner, other than the Developer, to any Lot within Havenwood Meadows Subdivision Phase Two-A is prohibited. Use of the lake shall also be subject to and governed by any additional rules and regulations that may be promulgated by the Developer, in its discretion. After Eighty Percent (80%) of the Private Lake Lots adjoining a particular private lake have been sold and conveyed by the Developer, the rules and regulations governing the usage of that particular private lake shall be determined by a majority of the owners of the Private Lake Lots that adjoin such private lake, or a committee formed by such Lot owners.

Use of any private lake within Havenwood Meadows Subdivision shall be at the risk and liability of the owners, other than the Developer, of the Lots which adjoin such private lake. The owners of such Private Lake Lots shall, to the fullest extent permitted by law, indemnify, defend and hold harmless each and every other owner of a Private Lake Lot and the Developer from any and all liabilities, obligations, indebtedness, costs, expenses, attorney fees or judgment arising out of, resulting from, related to or connected with any use, whether authorized or unauthorized, of any private lake which adjoins their Private Lake Lots.

Each Private Lake Lot owner shall secure and maintain public liability insurance and property damage insurance of combined single, limits in a minimum amount of \$1,000,000.00.

30. **DRAINAGE OF WATER FROM ADJOINING REAL ESTATE.** All owners of Lots in Havenwood Meadows Subdivision, including, without limitation, its future expansions, are hereby notified that due to the topography of portions of the real estate which lie adjacent to or nearby Havenwood Meadows Subdivision and any future expansions which may be included within Havenwood Meadows Subdivision, it may be necessary to drain surface water, including storm water, from such real estate located outside Havenwood Meadows Subdivision across common areas of Havenwood Meadows Subdivision and into common or private lakes of Havenwood Meadows Subdivision, including but not limited to future expansions and/or Phase One, Sec. 2-A and/or Sec. 2-B or Sec. 3 of Havenwood Meadows Subdivision. All such Lot owners agree that such drainage shall be permitted.

31. **INVALIDATION OF RESTRICTIONS OR CONDITION.** Invalidation of any of the foregoing covenants, conditions or restrictions by judgment or order of a court shall in no way affect any of the other covenants, conditions or restrictions, all of which shall remain in full force and effect.

32. **ENFORCEMENT OF THESE COVENANTS.** Each of these covenants shall inure to the benefit of and be enforceable by any one (1) or more of the following:

- (a) Any Lot owner in the Subdivision;
- (b) The Developer;

- (c) The Subdivision Review Committee; and
- (d) The Association.

Enforcement may be by injunction or for damages or other appropriate remedy. The party adjudged to have violated any of these covenants shall be liable to the aggrieved party for any reasonable attorney fees incurred in the enforcement of these covenants, which amount shall be fixed by the court hearing said matter. Those entitled to enforce these covenants will have the right to enforce these covenants without proof of pecuniary damages.

33. **BINDING EFFECT OR RESTRICTIONS.** These restrictions and protective covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these restrictions and covenants are recorded. Upon the expiration of said twenty-five (25) year period, these restrictions and protective covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the Lots in the Subdivision have been recorded agreeing to change, modify or eliminate said covenants and restrictions in whole or in part.

34. **SPECIAL CONDITIONS FOR LOTS IN THE FLOODWAY.** With respect to Lots 66, 67, 68, 69,70, 71, 72, 129,130, 131, 144, 145, and 146 in the Subdivision, the “general conditions” and “special conditions” itemized in Application # 22783 issued by the State of Indiana Department of Natural Resources shall be applicable, including, but not limited to, each of the following covenants, conditions or restrictions:

- (1) do not work in the waterway from April 1 through June 30 without the prior written approval of the Division of Fish and Wildlife;
- (2) do not cut any trees suitable for Indiana bat roosting (greater than 14 inches in diameter, living or dead, with loose hanging bark) from April 15 through September 15;
- (3) use appropriately designed measures for controlling erosions and sediment must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized’
- (4) seed and apply mulch on all disturbed areas not protected by other methods;
- (5) no chemical herbicides or insecticides should be applied in any areas where native grass/forbs seed mixes have been planted; chemical herbicides may be applied around replanted native trees to minimize weed competition if necessary;
- (6) do not leave felled trees, brush, or other debris in the floodway;*

- (7) backfill all utility line trenches within the scope of this project to existing ground elevations
- (8) upon completion of the project, remove all construction debris from the floodway;*
- (9) do not construct or place any residences or abodes (including manufactured homes as defined under 44CFR 59.1) in the floodway;*

The "floodway" is defined as that shown on Plate 3 of the Little Pigeon Creek Special Flood Hazard Information Report prepared by the U.S. Army Corps of Engineers.

IN WITNESS WHEREOF, the aforementioned members of the Board of Directors of Elpers Development, Inc. have caused these restrictions to be duly executed this _____ day of August, 2004.

Elpers Development, Inc.

By:

Paul A. Elpers, Director

By:

Gerald B. Elpers, Director

By:

Kenneth J. Elpers, Director

By:

Carl A. Elpers, Director

STATE OF INDIANA)
) SS:
 COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above-named Paul A. Elpers, a member of the Board of Directors of Elpers Development, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument as his free and voluntary act and deed for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this ____ day of August, 2004.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above-named Gerald B. Elpers, a member of the Board of Directors of Elpers Development, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument as his free and voluntary act and deed for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this ____ day of August, 2004.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above-named Kenneth J. Elpers, a member of the Board of Directors of Elpers Development, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument as his free and voluntary act and deed for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this ____ day of August, 2004.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above-named Carl A. Elpers, a member of the Board of Directors of Elpers Development, Inc., an Indiana corporation, and acknowledged the execution of the above and foregoing instrument as his free and voluntary act and deed for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this ____ day of August, 2004.

Notary Public

Printed Signature

My Commission Expires:

My County of Residence:

This Instrument prepared by: Bradley J. Salmon of the law firm Terrell, Baugh, Salmon & Born, LLP, 700 S. Green River Road, Suite 2000, Evansville, IN 47715, Telephone: (812) 479-8721, Facsimile: (812) 474-6059

EXHIBIT "A"

HAVENWOOD MEADOWS SUBDIVISION SEC. 2-A

Commencing at the Northeast corner of the East Half of the Northeast Quarter of said Section 20; thence along the East line thereof, South 01 degrees 34 minutes 55 seconds West 840.34 feet to the POINT OF BEGINNING; thence continue South 01 degrees 34 minutes 55 seconds West 1002.43 feet; thence North 88 degrees 25 minutes 05 seconds West 291.49 feet; thence North 89 degrees 36 minutes 56 seconds West 50.63 feet; thence South 82 degrees 23 minutes 52 seconds West 120.00 feet; thence North 01 degrees 07 minutes 18 seconds East 299.74 feet; thence North 43 degrees 00 minutes 50 seconds East 126.72 feet; thence North 56 degrees 27 minutes 00 seconds West 42.89 feet; thence North 33 degrees 33 minutes 00 seconds East 194.67 feet; thence North 77 degrees 16 minutes 52 seconds West 215.87 feet; thence North 85 degrees 03 minutes 22 seconds West 243.12 feet; thence South 77 degrees 22 minutes 10 seconds West 50.05 feet; thence South 63 degrees 02 minutes 38 seconds West 236.02 feet; thence South 37 degrees 57 minutes 37 seconds West 50.25 feet; thence Northwesterly 125.08 feet along an arc to the right having a radius of 225.00 feet and subtended by a long chord having a bearing of North 31 degrees 05 minutes 29 seconds West and a length of 123.48 feet; thence North 15 degrees 09 minutes 56 seconds West 104.91 feet; thence South 74 degrees 50 minutes 04 seconds West 184.53 feet to the West line of said East half; thence along said West line, North 01 degrees 27 minutes 57 seconds East 643.91 feet to the Southwest corner of the Havenwood Meadows Section One, as per plat thereof, recorded in Plat Book R, Page 58 in the office of the Recorder of Vanderburgh County, Indiana; thence along the Southern boundary of said Havenwood Meadows Section One for the following 11 courses, South 64 degrees 03 minutes 39 seconds East 119.20 feet; thence North 86 degrees 33 minutes 04 seconds East 153.65 feet; thence South 41 degrees 47 minutes 59 seconds East 138.08 feet; thence South 48 degrees 12 minutes 01 seconds West 14.75 feet; thence South 41 degrees 47 minutes 59 seconds East 201.09 feet; thence South 69 degrees 00 minutes 01 seconds East 152.67 feet; thence South 85 degrees 03 minutes 22 seconds East 343.46 feet; thence South 55 degrees 20 minutes 49 seconds East 62.48 feet; thence North 71 degrees 03 minutes 05 seconds East 165.65 feet; thence Northwesterly 19.96 feet along an arc to the left having a radius of 225.00 feet and subtended by a long chord having a bearing of North 21 degrees 29 minutes 24 seconds West and a length of 19.95 feet; thence North 65 degrees 58 minutes 07 seconds East 174.23 feet to the Point of Beginning, containing 18.252 acres, more or less.