

#205073993	Receipt No. 34998
DCFD	3.00
MISL	166.00
MISL	5.00
MISL	11.00
Total	185.00

**AMENDED AND RESTATED DEDICATION, PROTECTIVE RESTRICTIONS,
COVENANTS, LIMITATIONS, EASEMENTS AND APPROVALS APPENDED
TO THE PLAT OF THE LAKES AT WILLOW CREEK, SECTION I, II, III,
SUBDIVISION IN PERRY TOWNSHIP, ALLEN COUNTY, INDIANA**

Chestnut Group, Inc., an Indiana corporation, and the owners of at least sixty percent (60%) of all Lots in the Subdivisions (as defined hereinafter) completely amend, restate and replace the prior recorded Protective Restrictions and Covenants of the Subdivisions. The Subdivisions are The Lakes at Willow Creek, Sections I, II, and III, Subdivisions in Perry Township, Allen County, Indiana, with Plats thereof recorded at Document Nos. 98 0090059,99 0082304 and 20 2102773, as amended at Document Nos. 20 3028128 and 20 3028129. This Amended and Restated Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals completely replaces and supersedes the prior recorded Protective Restrictions and Covenants. All Lots, Lot lines and easements remain the same as set forth in the original recorded Plats.

The Villa Lots are numbered from 1 through 21 inclusive, and the single-family lots are numbered from 22 to 139 inclusive, and all dimensions are shown in feet and decimals of a foot on existing recorded Plats. All streets and easements specifically shown or described on the original recorded Plats are hereby expressly re-dedicated to the public use for their usual and intended purposes.

PREFACE:

Recorded
11/09/2005 12:26:33
RECORDER
PATRICIA J. CRICK

In addition to the recordation of the original Plats and this document, there has been filed Articles of Incorporation for The Lakes at Willow Creek Community Association, Inc., with each Owner of a Lot in The Lakes at Willow Creek, Sections, I, II, III being a member of said Association, and be bound by its Articles of Incorporation and By-Laws. Similarly, there has been filed Articles of Incorporation for The Lakes at Willow Creek Villa Association, Inc., with each Owner of a Villa Lot being a member of that Association and bound by its Articles of Incorporation and By-Laws.

Section 1. DEFINITIONS. The following words and phrases shall have the meaning stated, unless the context clearly indicates that a different meaning is intended.

- 1.1 “Articles”.** The Articles of Incorporation adopted by the applicable Association and approved by the Indiana Secretary of State, and all amendments to those Articles.
- 1.2 “Association”.** The Lakes at Willow Creek Community Association, Inc., an Indiana not-for-profit corporation, and its successors and assigns.
- 1.3 “Villa Association”.** The Lakes at Willow Creek Villa Association, Inc., an Indiana not-for-profit corporation, and its successors and assigns.
- 1.4 “Board of Directors”.** The duly elected Board of Directors of the Association or the Villa Association, as applicable.

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ALLEN COUNTY AUDITORS NUMBER

- 1.5 **“By-Laws”**. The By-Laws adopted by The Lakes at Willow Creek Community Association Inc., and all amendments to those By-Laws, as to all Lots, and the By-Laws adopted by The Lakes at Willow Creek Villa Association, Inc., as to all Villa Lots.
- 1.6 **“Committee”**. The Architectural Control Committee established under Section 5 of the Covenants.
- 1.7 **“Common Area”**. All real property owned by the Association for the common use and enjoyment of Owners. Common Areas are so designed as Block A, B, C and D on the face of the existing recorded Plats.
- 1.8 **“Covenants”**. This document and the restrictions, limitations and covenants imposed under it.
- 1.9 **“Developer”**. Chestnut Group, Inc., successor-in -interest to Creekside Development, LLP, an Indiana Limited Liability Partnership.
- 1.10 **“Lot”**. Any of the Lots as platted, or any tract(s) of land which may consist of one or more Lots or part(s) of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by any applicable zoning ordinance. Provided, however, that no tract of land consisting of part of a Lot, or parts of more than one Lot, other than a Villa Lot, shall be considered a “Lot” under these Covenants unless the tract has a frontage of at least seventy (70) feet in width at the established front building line as shown on the Plat.
- 1.11 **“Villa Lot”**. The Villa Lots are the Lots numbered 1V through 21V, inclusive. With respect to any “Villa Lot,” any of the Villa Lots as platted, or any tracts(s) of land which may consist of one or more Villa Lots or part{s} of them upon which a residence is erected in accordance with the Covenants, or such further restrictions as may be imposed by an applicable zoning ordinance. Provided, however, that no tract of land consisting of part of a Villa Lot, or parts of more than one Villa Lot, shall be considered a “Lot” under these Covenants unless the tract has a frontage of at least thirty-eight (38) feet in width at the established front building line as shown on the Plat.
- 1.12 **“Owner”, and in the plural form “Owners”**. The record owner(s) (whether one or more persons or entities) of fee simple title to a Lot, including contract sellers, but excluding those having an interest in a Lot merely as security for performance of an obligation.
- 1.13 **“Plan Commission”**. The Allen County Plan Commission, or its successor agency.
- 1.14 **“Plat”**. The existing recorded secondary Plat of The Lakes at Willow Creek, Sections I, II, and III.
- 1.15 **“Subdivision”**. The platted Subdivision of The Lakes at Willow Creek, Sections I, II, and III.
- 1.16 **“Town Board”**. The Huntertown Town Board, or its, successors and/or assigns.

Section 2. PROPERTY RIGHTS.

2.1 “Owners’ Easement of Enjoyment”. Each Owner shall have the right and an easement of enjoyment in the Common Areas that are appurtenant to and pass with the title to every Lot, subject to the following rights which are granted to the Association.

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

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

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

2.1.4 To impose restrictions on the use of the Common Areas.

2.2 “Delegation of Use”. Any Owner may delegate, in accordance with the By-Laws, the Owner’s right to use and enjoy the Common Area and recreational facilities in it, to members of the Owner’s immediate family and tenants or contract purchasers who reside on the Owner’s Lot.

Section 3. THE LAKES AT WILLOW CREEK COMMUNITY ASSOCIATION

3.1 “Membership and Voting Rights”. Every Owner shall be a member of the Association, including Owners of Villa Lots. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

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

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

3.2.2 Class B. Class B membership consists of Developer. The Class B member shall be entitled to four (4) votes for each Lot owned. Class B membership shall cease upon the happening of either of the following events, whichever occurs first.

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

3.2.2.2 On December 31, 2005; as to Section I, December 31, 2006, as to Section II, and December 31, 2009, as to Section III.

Section 4. COVENANTS FOR MAINTENANCE ASSESSMENTS.

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, except developer, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, (1) an initial assessment; (2) annual assessments or charges; and (3) special assessments for capital improvements. Such assessments shall be established and collected as provided in these Covenants and the By-Laws. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, but always subject and subordinate to any existing recorded first mortgage. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents in the Subdivision, and for the improvement of facilities in the Subdivision. In addition, assessments shall be levied to provide for the proportionate burden of maintenance of the storm water detention ponds located on the Common Areas into which the Subdivision's surface waters drain and attendant water level control structures.

4.3 Maximum Annual Assessments. Until January 1 of the year immediately following the first conveyance by Developer of a Lot, the maximum annual assessment shall be One Hundred Dollars (\$120.00) per Lot.

4.4 Subsequent assessments may be made as follows:

4.4.1 From and after January 1 of the year immediately following such first conveyance of a Lot, the maximum annual assessment may be increased each year by the Board of Directors, by a percentage not more than eight percent (8%) above the annual assessment for the previous year, without a vote or written assent of more than fifty percent (50%) of each member of the Association.

4.5 Special Assessments For Capital Improvements. In addition to the annual assessments authorized in Section 4.3 and 4.4, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any new construction, or repair or replacement of an existing capital improvement, in the Common Areas, including fixtures and related personal property; provided that any such assessment shall require the vote or written assent of more than fifty percent (50%) of each member of the Association; and provided, further, that no such special assessment for any such purpose shall be made if the assessment in any way jeopardizes or affects the Association's ability to improve and maintain its Common Area, or pay its pro rata share of the cost of maintaining the storm water detention ponds and outfall appurtenances.

4.6 Notice and Quorum For Any Action Authorized Under Subsections 4.3 and 4.5. Any action authorized under Sections 4.4 and 4.5 shall be taken at a meeting of the Association called for that purpose. Written notice shall be sent to all members not less than thirty (30) days, nor more than (60) days, in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority of the members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by an officer of the Association within forty-five (45) days of the date of such meeting.

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

4.8 Date of Commencement of Annual Assessment/Dues Dates. The annual and special assessments allowed under sections 4.3, 4.4 and 4.5 shall commence as to all Lots then subject to an assessment, on the first day of the month following the conveyance of the first Lot. The first annual assessment shall be prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the date the annual assessment is due. Written notice of the annual assessment shall be given to every Owner. The due dates shall be

Established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether an assessment on a Lot has been paid. This due date for yearly Association dues shall be January 1st.

4.9 Effect of Nonpayment of Assessment/Remedies of the Association.

4.9.1 Any assessment not paid within thirty (30) days after its due date shall bear interest from the due date at the rate of ten percent (10%) per annum.

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

4.10 Subordination of Assessment Lien to First Mortgage Liens. The lien of the assessments made under the Covenants shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien against it. No sale or transfer shall relieve an Owner or Lot from liability for any assessment. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer, but the Owner at the time of assessment thereof shall remain personally liable therefor.

Section 5. THE LAKES AT WILLOW CREEK VILLA ASSOCIATION.

5.1 Membership and voting Rights. Every Owner of a Villa Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Villa Lot.

5.2 Classes. The Association shall have two (2) classes of voting membership:

5.2.1 Class A. Class A members shall all be Owners exclusive of the Developer or its immediate successor in interest. Owners shall be entitled to one (1) vote for each Villa Lot owned.

5.2.2 Class B. The Class B member(s) shall be Chestnut Group, Inc., successor-in-interest to Creekside Development L.L.P., and shall be entitled to three votes for each Lot owned. The Class B membership shall cease and be

Converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- 5.2.2.1 when title to all Villa Lots in Section I has been conveyed, or
- 5.2.2.2 on December 31, 2005.

- 5.3 **Membership Transfer.** Membership in the Villa Association will transfer from the Developer or its successor in interest to the Owner upon delivery of a Deed, or other evidence of conveyance satisfactory to the Developer to Owner's Villa Lot.
- 5.4 **Continuing Membership.** The Owner of any Villa Lot shall continue to be a member of the Villa Association so long as the Owner is the Owner of a Villa Lot for the purposes herein mentioned. Membership shall automatically pass with the transfer of title to a Villa Lot.
- 5.5 **Transfer of Membership Rights and Privileges in the Association.** Each Owner of each Villa Lot shall be a member of the Villa Association, and have the right to the Owner's vote and privileges. Membership, where expressly assigned pursuant to a written lease, shall pass with the lease, unless the Owner withdraws his consent in writing to the Association. The Owner may withdraw the membership assignment to any lessee in the Owner's sole discretion after thirty (30) days notice in writing to the Association.
- 5.6 **Creation of the Lien and Personal Obligation of Assessments.** Every Owner of any Villa Lot, excepting Creekside Development, L.L.P., by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Villa Association: (1) annual assessments, and (2) special assessments for capital improvements. Such assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Villa Lot against which each such assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Villa Lot at the time when the assessment fell due. The personal obligation for delinquent assessment shall pass to Owner's successors in title.
- 5.7 **Purpose of Assessments.** The assessments levied by the Villa Association shall be used exclusively to fund the Villa Association's obligation set forth herein.
- 5.8 **Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Villa Lot to an Owner, the maximum annual assessment shall be one Thousand Two Hundred Dollars (\$1,200.00) per Lot.

5.8.1 From and after January 1 of the year immediately following the conveyance of any Villa Lot to an Owner, the maximum annual assessment may not be increased each year by more than eight percent (8%) above the maximum annual assessment for the prior year, without the vote or written assent of more than fifty percent (50%) of each class of members of the Villa Association.

5.9 **Special Assessment for Capital Improvements.** In addition to the annual assessment authorized above, the Villa Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon any Common Area or Villa Lot, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of more than fifty percent (50%) of each class of members of the Villa Association.

5.10 **Notice and Quorum for any Action Authorized under Section 5.8.1 and 5.9.**

Any action authorized under Sections 5.8.1 and 5.9 shall be taken at a meeting called for that purpose. Written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but if such vote is less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing, providing the same is obtained by the appropriate officers of the Villa Association not later than forty-five (45) days after the date of such meeting.

5.11 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Villa Lots on which a single-family residence is constructed and may be collected on a quarterly or yearly basis. The Board of Directors of the Association shall have the authority to assess Annual Assessments against Villa Lots which are no longer owned by the Developer in an amount not to exceed twenty-five percent (25%) of the then Annual Assessment in order to defray the costs of the Villa Association for the maintenance of the Villa Lot, including mowing, sidewalks, snow removal, and other expenses of the Villa Association.

5.12 **Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to all Villa Lots on the first day of the month following the conveyance of a Villa Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Villa Association shall fix the amount of the annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Villa Association setting forth whether the assessments on a specified Villa Lot have been paid.

- 5.13 Tax Recoupment Assessments.** In addition to all other assessments provided for in the Article, the Villa Association may levy in any assessment year, an assessment (“Tax Recoupment Assessment”) applicable to that year only, for the purpose of defraying in whole or in part, any cost or expense incurred by the Villa Association in the form of a tax, and/or penalty and/or interest on a tax imposed upon, assumed by or arising out of or in any way related to the acceptance of title to, the ownership of and/or operation or maintenance of any plant or equipment (including utility lines, lift stations, and other property) for the transmission, delivery of furnishing of water, or for the collection, transmission and disposal of liquid and solid waste, sewage, and/or the ownership of any real estate or easements or other rights with respect to real estate owned and/or possessed in connection with such plant or equipment.
- 5.14 Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten (10%) per annum. The Villa Association may bring an action at law against any Owner personally obligated to pay the same and/or foreclose the against the Villa Lot. No Villa Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Villa Lot.
- 5.15 Subordination of the Lien to Mortgage.** The Lien of the assessments on any Villa Lot shall be subordinate to the lien of any prior first mortgage. Sale or transfer of any Villa Lot shall not affect the assessment lien, however, the sale or transfer of a Vila a lot pursuant to an mortgage foreclosure or any proceedings in lieu thereof, shall extinguish the lien for such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Villa Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Villa Association may recover all of its attorney fees, costs and expenses in collecting on such assessment and foreclose any such lien.
- 5.16 Landscaping and General Maintenance.** Each Villa Lot Owner, shall at the Owner’s sole expense, maintain the roof and exterior portion of their dwelling in good condition and repair, including painting, staining, repair and replacement of wood or vinal siding as necessary. The Villa Association will be responsible for the removal of snow from driveways and sidewalks, and shall maintain the lawn and landscaping on each Villa Lot. The Villa Association will maintain the lawn sprinkling system situated on the Villa Lots, and will provide trash containers to

each Villa Lot Owner and will pay for weekly trash removal. The frequency and manner of performance of such maintenance shall be determined solely by the Board of Directors of the Villa Association. The Villa Association shall not be responsible for the repair or maintenance of decks and/or screened-in porches, any concrete on a Villa Lot, or yard lights and other exterior lights, including replacement of bulbs, nor for window washing and glass replacement. The Board of Directors of the Villa Association may, at its option by appropriate resolution, transfer to each Villa Lot Owner the Maintenance responsibility for that portion of the lawn and/or landscaping on each Villa Lot which was not initially installed or planted by the Developer or his successor in interest. In such event, the Villa Association shall keep and make available to each Villa Lot Owner, a drawing or other suitable record of such original landscaping which the Villa Association is to maintain.

5.17 Other Maintenance. Except to the extent of the Villa Association's responsibility for maintenance and repair as provided above, each Villa Lot Owner shall at the Owner's sole cost and expense, maintain and repair the Villa Lot and the improvements situated thereon, keeping the same in good condition and repair, including those items specifically excluded from the Villa Association's responsibilities or not expressly included among such responsibilities, as set forth above. In the event any Villa Lot Owner shall fail to maintain and repair the Villa Lot and the improvements thereon as required hereunder, the Villa Association, in addition to all other remedies available to it hereunder or by law and without waiving any of said alternative remedies, shall have the right, through its agents and employees to enter upon said Villa Lot and to repair, maintain and restore the Villa Lot and the exterior of the dwelling units and any other improvements erected thereon; and each Villa Lot Owner (by acceptance of a Deed for a Villa Lot) hereby covenants and agrees to repay the Villa Association the cost thereof immediately upon demand. Such costs incurred and demanded by the Villa Association, together with interest, costs and attorney's fees, shall have the same status as both a continuing lien on the Villa Lot, and improvements and the personal obligation of the Villa Lot Owner as an assessment made under Section 5.6 hereof, and the failure of any Villa Lot Owner to pay the same bill shall carry with it the same consequences as a failure to pay such an assessment when due.

5.18 Maintenance Easements. The Villa Association and the Owner of any Villa Lot whose dwelling is constructed up to or within five (5) feet of an interior Villa Lot line shall have an access easement over a portion of the adjacent Villa Lot which shall be five (5) feet in width measured from said Villa Lot line, for the entire length of said Lot line separating the two Villa Lots, for the purposes of maintaining, replacing, and repairing the exterior of the dwelling so located. This access easement shall extend to the agents, employees, and independent contractors of either the Villa Association, the Owner, or both. Any damage to an adjacent Villa

Lot or landscaping on an adjacent Villa Lot shall be repaired at the expense of the Owner, or their respective agents, employees or independent contractors utilizing this easement.

5.19 Utility Easement. Easements are hereby expressly reserved and dedicated with dimension, boundaries, and locations as designated on the original recorded Plat for Section I for the installation and maintenance of public utilities (including, but not limited to water, gas, telephone, electric, cable TV, storm sewer and drainage facilities, and any other utilities of a public or quasi-public nature).

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

Section 6. ARCHITECTURAL CONTROL COMMITTEE.

6.1 The Architectural Control Committee (the "Committee") shall be composed of three (3) members initially designated by the Developer. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor.

6.1.1 The Committee shall have the exclusive authority and responsibility to review plans for construction of all primary residences and landscaping materials in the Subdivision. The Committee may delegate to the Board of Directors (or to such other entity designated in the Articles or By-Laws) the authority and responsibility to review plans for construction of fences and other structures (excluding primary dwellings) in the Subdivision. Such delegation shall be made in writing, signed by a majority of the Committee members, and delivered or mailed to the Association's registered office.

6.1.2 After primary residences are constructed on all Lots in the Subdivisions, the Board of Directors (or other entity designated by its Articles or By-Laws) shall succeed to the Committee's responsibilities under this Section 6 to review all construction, modifications and additions of structures in the Subdivision.

6.1.3 In the event the Committee (or Board of Directors or other entity acting under Section 6.1), fails to approve or disapprove the design and location of a proposed structure within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and approval under this Section 6 will be deemed to have been automatically given.

6.2 No building, fence, wall, in ground swimming pool, or any other structure of any kind or nature whatsoever shall be erected, constructed, placed or commenced, nor shall any landscaping be erected or maintained upon a lot, nor shall any exterior addition, change, or alteration be made to a structure until the plans and specifications showing the structure's nature, kind, shape, height, materials and location are submitted to and approved by the committee in writing as to the structure's harmony of external design, protection of sight lines and location in relation to surrounding structures and topography in the subdivision. Until such time that all Lots in the Subdivisions are built upon, the Committee shall have the right to reject a proposed home or structure based solely upon its judgement that the design of the home may not conform to the scheme, architectural design and harmony of homes already constructed.

6.2.1 Fences. All fences must have prior written approval from the Committee before installation commences.

Materials: Must be solid wood, vinyl or metal.

Color: Wood or vinyl fences must be white, tan or brown in color, and metal fences must be black in color.

Height: Height of any fence must not exceed 4 ½ feet from the ground.

Style: Any fence must be spilt rail or picket type. A picket type fence must have scallop or gothic style slats.

Horizontal rails must be on the inside of the fence so as no to visible to other residents. No wire, metal or chain link fencing shall be permitted at any time.

6.2.2 Privacy Fences. With prior written approval from the Committee, solid wood, vinyl fencing, or black metal fences shall be permissible if it is immediately adjacent to the attached patio or deck and does not exceed six (6) in height and a total of thirty (30) linear feet in total length. Horizontal rails must be on the inside of the fence so as not to be visible to other residents. No wire, metal or chain link fencing shall be permitted at any time. Privacy fences may be approved on designed Lots along the perimeter of the Subdivisions as indicated on the attached plot map so long as plans are approved by the Committee in advance.

Section 7. GENERAL PROVISIONS.

7.1 Use. Lots may not be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family residence not to exceed two and one-half stories in height. Each residence shall include not less than a two-car garage, nor more than a four-car garage, which shall be built as part of the residence and attached to the residence.

7.2 Dwelling Size. No residence shall be built on a Lot having a ground floor area upon the foundation, exclusive of one-story open, screened or unheated porches, breezeways or garages, of less square footage than that noted by the following schedule:

SINGLE FAMILY SECTION:

1650 square feet for Section I, 1750 square feet for Sections II and III for a one-story residence.

950 square feet for Section I, 1050 square feet for Sections II and III first floor, with 1800 square feet for Section I, 1900 square feet for Sections II and III, total for a 1 ½ story, Cape Cod or Tri-Level type.

900 square feet for Section I, 1000 square feet for Sections II and III first floor, with 2000 square feet for Section I, 2100 square feet for Section II and III, total for a two-story.

VILLA SECTION:

1750 square feet for a one-story residence.

2000 square feet for a one and one-half story, Cape Cod, or Tri-level type residence

All garages shall have a minimum floor area of 528 square feet, except that 484 square feet for garages is permitted for Villa Lots.

7.3 Building Lines. No structure shall be located on a Lot nearer to the front Lot line, or nearer to the side street line than the minimum building setback lines shown on the Plat. No building shall be located nearer than a distance of seven (7) feet to an interior Lot line, except that five (5) feet is permitted for each Villa Lot, nor nearer than twenty-five (25) feet to the rear Lot line, except that twenty (20) feet is permitted for each Villa Lot. Lots that adjoin a Common Area along their rear line, specifically Lots #27 through #37, 57-59, 61-80, 93-101, 104-114, 125-128, 137-139 and Villa Lots #1V through #13V shall have a 15-foot rear lot building line.

7.4 Minimum Lot Size. Except for Villa Lots, no residence shall be erected or placed on a Lot having a width of less than sixty-five (65) feet in Sections I and II, and seventy-six (76) feet in Section III at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than eight thousand (8,000) square feet. No residence shall be erected or placed on a Villa Lot having width of less than thirty-eight (38) feet at the minimum building setback line, nor shall any residence be erected or placed on any Lot having an area of less than seven thousand (7,000) square feet.

7.5 Building Materials and Workmanship. All structures on a Lot shall be constructed in a substantial, good and workmanlike manner and of new materials. No roof siding, asbestos siding or siding containing asphalt or tar as one of its principal ingredients shall be used in the exterior construction of any structure on a Lot, and no roll roofing of any description or character shall be used on the roof of any residence or attached garage. Foundations of all structures shall be poured concrete, including all basement or crawl space walls that are below first floor or ground floor level. All walls comprising the front exterior of each residence shall conform to the following guidelines:

SINGLE FAMILY SECTION:

7.5.1 All natural materials may be used in any approved configuration;

7.5.2 Man-made siding material may be used in combination with masonry or wood siding, to define or enhance an architectural feature or detail. Brick or natural stone may be used in any approved configuration. All elevation details and materials shall be approved by the Committee;

7.5.3 The use of T-1-11, exterior plywood, and similar materials will not be allowed on the front elevation;

7.5.4 Vinyl or aluminum soffits may be used under overhangs and eaves;

7.5.5 Fascia on overhangs and gables may be covered with .060 gauge or better aluminum or with natural wood;

7.5.6 Notwithstanding any restriction noted herein, no cultured stone or other man-made material intended to give a natural stone appearance will be allowed.

VILLA LOTS:

- 7.5.7** All natural materials may be used in any approved configuration;
- 7.5.8** Man-made siding material may be used in combination with masonry per the direction of the villa builders;
- 7.5.9** Vinyl or aluminum soffits may be used under overhangs and eaves;
- 7.5.10** Fascia on overhangs and gables may be covered with .060 gauge or better aluminum or with natural wood.
- 7.6** **Driveways.** All driveways on Lots from the street to the garage shall be poured concrete and not less than 16 feet in width where it meets the street and the garage. No driveway access shall be allowed from any Lots onto the Cedar Canyons Road right-of-way.
- 7.7** **Yard Lighting.** It shall be the responsibility of the Lot Owner to install a decorative yard light not to exceed 6 feet in total height in front of the residence. The yard light shall be hard wired to the house panel and shall operate on a photo cell and be illuminated during all non-daylight hours.
- 7.8** **Utility Easements.** Easements for the installation and maintenance of utilities and drainage facilities and swales are reserved as shown on the existing recorded Plats. No Owner of a Lot shall erect or grant to any person, firm or corporation, the right, license or privilege to erect or use, or permit the use of, overhead wires, poles or overhead facilities of any kind for electrical, telephone or television service (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Subdivision). Nothing in these Covenants shall be construed to prohibit street lighting or ornamental yard lighting serviced by underground wires or cables. Electrical service facilities installed for any residence on a Lot connecting it to the electrical distribution system of any electric public utility shall be provided by the Owner of the Lot who constructs the residence, and shall carry not less than three (3) wires and have a capacity of not less than two hundred (200) amperes. Any public utility charged with the maintenance of underground installations shall have access to all easements in which said installations are located for operations, maintenance and replacement of service connections.
- 7.9** **Surface Drainage Easements.** Surface drainage easements and Common Area used for drainage purposes as shown on the Plat are intended for either periodic or occasional use as conductors for the flow of surface water run off to a suitable outlet, and the surface of Real Estate shall be constructed and maintained so as

to achieve this intention. Such easement shall be maintained in an unobstructed condition, and the Allen County Surveyor (or proper public authority having jurisdiction over storm drainage) shall have the right to determine if any obstruction exists, and to repair and maintain, or require such repair and maintenance, as shall be reasonably necessary to keep the conductors unobstructed. It shall be incumbent upon builder and home buyer to inspect rear and side swales for positive drainage conditions prior to closing on the Lot. The Developer shall be relieved of responsibility for repair of swales after the onset of home construction.

- 7.10 Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done there which may be or become an annoyance or nuisance to residents in the Subdivision. No auto repair shall be undertaken outside the garage.
- 7.11 Temporary Structures.** No structure of a temporary character, trailer, boat trailer, camper or camping trailer, basement, tent, shack, garage, barn or other outbuilding shall be constructed, erected, located or used on any Lot for any purpose (including use as a residence), either temporarily or permanently; provided, however, that basements may be constructed in connection with the construction and use of a single-family residence building.
- 7.12 Outside Storage.** No boat, boat trailer, recreational vehicle, motor home, truck, camper or any other wheeled vehicle shall be permitted to be parked on the street, or in the driveway, or ungaraged on a Lot for the lesser of ninety-six (96) hours, or for a period of which in the aggregate is in excess of eight (8) days per calendar year. Trash bins shall be stored inside the garage and kept from view from the street except on pickup evenings and days.
- 7.13 Free-Standing Poles.** No clothesline or clothes poles, or any other free-standing, semi-permanent or permanent poles, rigs, or devices, regardless of purpose, shall be constructed, erected, located or used on a Lot, except that a pole supported bird feeder or bird house, no larger than two (2) cubic feet in size and approved by the committee, may be constructed in the rear yard of a Lot only and except that a single pole support for a flag or basketball goal is allowed.
- 7.14 Signs.** No signs of any kind shall be displayed to the public view on a Lot except one professional sign of not more than three square feet, advertising a Lot for sale or rent. Signs used by used a builder to advertise a Lot during the initial construction and sales periods, shall be submitted to the Committee for approval.
- 7.15 Antennas.** No radio or television antenna with more than twenty-four (24) square feet of grid area, or that attains a height in excess of four (4) feet above the highest point of the roof of a residence, shall be attached to a residence on a Lot. No

free-standing radio or television antenna shall be permitted on a Lot. No solar panels (attached, detached or free-standing) are permitted on a Lot. A satellite disk/dish for television reception shall not exceed 31' in diameter and shall be located to the side or rear of the home, or at such other location as approved by the Committee, and shall not exceed a height of six (6) feet. No more than two (2) disk/dishes shall be on any Lot.

- 7.16 Oil Drilling.** No oil drilling, oil development operations oil refining, quarrying or mining operations of any kind shall be permitted on or in a Lot. No derrick or other structure designed for boring for oil or natural gas shall be erected, maintained or permitted on a Lot.
- 7.17 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on a Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose and the number of pets does not constitute a nuisance as determined by County and/or Town ordinances.
- 7.18 Dumping.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers. No incinerators shall be kept or allowed on a Lot. During the initial construction of the residences, the builder shall have a dumpster or sanitary container located upon the Lot from the onset of framing until the home is substantially complete. Builder and Lot Owners shall be responsible for trash and scrap control on a daily basis. No burning of trash and scraps will be allowed.
- 7.19 Individual Utilities.** No individual sewage disposal system shall be installed, maintained or used on a Lot in the Subdivisions. An individual water supply system (water well) may be installed to provide water to an exterior irrigation system only.
- 7.20 Street Utility Easements.** In addition to the utility easements designated in the existing recorded Plats, easements in the streets, as shown on the Plats, are reserved and granted to all public utility companies, the Owners of the Lots and their respective successors and assigns, to install, lay, erect, construct, renew, operate, repair, replace, maintain and remove every type of gas main, water main and sewer main (sanitary and storm) with all necessary appurtenances, subject nevertheless, to all reasonable requirements of any governmental body having jurisdiction over Subdivisions as to maintenance and repair of said streets.
- 7.21 Storm Water Runoff.** No rain and storm water run off or such things as roof water, street pavement and surface water caused by natural precipitation, shall at any time be discharged or permitted to flow into the sanitary sewage system serving

the Subdivisions, which shall be a separate sewer system from the storm water and surface water runoff sewer system. No sanitary sewage shall at any time be discharged or permitted to flow into the Subdivisions' storm and surface water detention pond and facilities.

- 7.22 Completion of Infrastructures.** Before any residence on a Lot shall be used and occupied as such, the Developer, or any subsequent Owner of the Lot, shall install all infrastructure improvements serving the Lot as shown on the approved plans and specifications for the Subdivision filed with the Plan Commission and other governmental agencies having jurisdiction over the Subdivision. The covenant shall run with the land and be enforceable by the Plan Commission or by any aggrieved Owner.
- 7.23 Certificate of Occupancy.** Before a Lot may be used or occupied, such user or occupier shall first obtain from the Allen County Zoning Administrator the improvement location permit and certificate of occupancy required by the Allen County Zoning Ordinance.
- 7.24 Enforcement.** The Association, Developer and any Lot Owner (individually or collectively) shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or subsequently imposed by the provisions of these Covenants. Failure by the Association, Developer or a Lot Owner to enforce any provisions in the covenants shall in no event be deemed a waiver of the right to do so later.
- 7.25 Invalidation.** Invalidation of any one of these Covenants by judgment or court order shall not affect any other provisions, and such provisions shall remain in full force and effect.
- 7.26 Duration of Covenants.** These Covenants shall run with the land and be effective for a period of thirty (30) years from the date they were recorded after which time the covenants shall automatically be renewed annually for successive periods of ten years.
- 7.27 Amendments.** Any provision of these Covenants may be amended, but such amendment is subject to the following requirements and limitations:
- 7.27.1** Any provision of these Covenants that only affects Villa Lots or the Villa Association, including, by way of illustration and not limitation, Section 5 hereof may be amended by an amendatory document signed by the Owners of at least sixty percent (60%) of the Villa Lots.

7.27.2 Except as otherwise provided in Section 7.27.1 hereinabove, until the earlier December 31, 2009, or when primary residences are constructed on all Lots in the Subdivisions and certificates of occupancy are issued by the Plan Commission for such residences, in order to amend a provision of these Covenants, an amendatory document must be signed by Developer and by the Owners of at least sixty percent (60%) of the Lots in the Subdivisions.

7.27.3 After primary residences are constructed on all Lots in the Subdivisions and certificates of occupancy are issued for those residences, or after December 31, 2009, Developer's signature shall no longer be required in order to amend provisions of these Covenants.

7.28 **Subdivision.** No Lot or combination of Lots may be further subdivided until approval for such Subdivision has been obtained from the Town Board; except however, that without approval of the Plan Commission or the Town Board, the Developer and its successors in title shall have the absolute right to increase the size of any Lot by adding to such Lot (thus decreasing the size of an adjoining Lot) so long as the effect of such addition does not result in the creation of a "Lot" which violates the limitation imposed under Sections 1.10 and 7.4.

7.29 **Sidewalks.** Plans and specifications for the Subdivision approved by and on file with the Town Board require the installation of concrete sidewalks within the street right-of-way in front of the lots, as shown in the approved plans. Installation of such sidewalks shall be the obligation of the Owners of those Lots (exclusive of Developer). The sidewalk to be located in front of a Lot shall be completed in accordance with such plans and specifications prior to the issuance of a certificate of occupancy for such Lot. A violation of this Covenant is enforceable by the Plan Commission or its successor agency, by specific performance or other appropriate legal or equitable remedy. Should a certificate of occupancy be issued to Developer for a Lot on which a sidewalk must be constructed, Developer shall be considered as an Owner subject to enforcement of this Covenant with respect to that Lot.

7.30 **Landscape Requirements.** Landscaping and lawn installation shall be completed as soon as weather permits, but no later than twelve (12) months following occupancy of the home. A landscaping plan shall be submitted to the Committee for approval. Because landscaping contributes so heavily to the appearance and perceived quality of a neighborhood, the design and installation of lawn and exterior beautification materials shall be commensurate with the scheme, design and overall expenditure of the home.

7.31 Backflow Protection. All plumbing for gravity sanitary sewer connections exiting a basement or a slab foundation at an elevation below the “Mean Sea Level” Elevation of 822.0, shall have a backwater valve installed on the main sewer tap.

7.32 Flood Protection Grades. In order to minimize potential damage to residences from surface water, the minimum flood protection grades are established in the existing recorded Plats, and are incorporated herein by reference as though fully restated herein. Such minimum flood protection grades are as follows:

<u>SECTION I</u>	
Single Family Lots #25 and 26	Protection Grade = 827.6
Single Family Lot #27	Protection Grade = 822.7
Single Family Lot #28	Protection Grade = 822.5
Single Family Lot #29	Protection Grade = 822.4
Single Family Lot #30	Protection Grade = 822.3
Single Family Lot #31	Protection Grade = 822.1
Single Family Lots #32,33,34,35,36 and 37	Protection Grade = 822.00
Villa Lots #9,10 and 11	Protection Grade = 823.00
Villa Lot #12	Protection Grade = 822.9
Villa Lot #13	Protection Grade = 822.8
Villa Lots #14 and 15	Protection grade = 827.6
<u>SECTION II</u>	
Single Family Lots #57-67	Protection Grade = 822.0
Single Family Lots #68-80	Protection Grade = 826.5
<u>SECTION III</u>	
Single Family Lots #93-102	Protection Grade = 826.5
Single Family Lot #104	Protection Grade = 821.3
Single Family Lot #105	Protection Grade = 820.9
Single Family Lot #106	Protection Grade = 820.5
Single Family Lot #107	Protection Grade = 820.1
Single Family Lot #108	Protection Grade = 819.7
Single Family Lot #109	Protection Grade = 819.3
Single Family Lot #110	Protection Grade = 818.9
Single Family Lot #111	Protection Grade = 818.6
Single Family Lot #112	Protection Grade = 818.3
Single Family Lot #113	Protection Grade = 818.0
Single Family Lot #114	Protection Grade = 817.4
Single Family Lots #125-128	Protection Grade = 822.6
Single Family Lots #136-139	Protection Grade = 822.6

All residences on such Lots shall be constructed so that the minimum elevation of the 1st floor or any opening below the first floor, equals or exceeds the applicable minimum flood protection grade.

7.33 Watercraft. Non-motorized boats of seven (7) feet or less are permitted on Association owned storm water detention ponds located on Common Areas only if the Owner of the boat assumes all liability for injuries and/or death and executes such an assumption of liability as may be required by the Association in its sole discretion.

7.33.1 The only authorized watercraft to be used on the storm water detention ponds is a non-motorized paddle boat.

7.33.2 All other watercraft for use on the storm water detention ponds is expressly prohibited.

7.34 Decorations. All holiday decorations must be taken down within forty-five (45) days following the holiday.

7.35 Snowmobiles and Off Road Vehicles. Snowmobiles and any other motorized vehicles are not permitted at any time on the Common Areas, ponds or sidewalks.

Section 8. ATTORNEY FEES AND RELATED EXPENSES. In the event the Association, the Villa Association, Developer, an Owner, or the Plan Commission is successful in any proceeding, whether at law or in equity, brought to enforce any restriction, covenant, limitation, easement, condition, reservation, lien, or charge now or subsequently imposed by the provisions of these Covenants, the successful party shall be entitled to recover from the party against whom the proceeding was brought, the attorney fees and related costs and expenses incurred in such proceeding.

Creekside Development, L.L.P., the Developer of The Lakes at Willow Creek, Sections I and II, have been dissolved by the Indiana Secretary of State, and is, therefore, no longer an entity that exists as a Developer. Chestnut Group, Inc. is the Developer of The Lakes at Willow Creek, Section III. Chestnut Group, Inc., for itself and as the successor-in-interest to Creekside Develop, LLP, and the Owners of at least sixty percent (60%) of all of the Lots in each Section of The Lakes at Willow Creek have consented to this Amended and Restated Dedication, Protective Restrictions, Covenants, Limitations, Easements and Approvals Appended To the Plat of the Lakes at Willow Creek, Sections I, II, III, Subdivisions in Perry Township, Allen County, Indiana.

CHESTNUT GROUP, INC.,
an Indiana corporation

By: _____
ROGER DELAGRANGE, Its President

BETTY STEWART, Owner of Villa
Lot 21, individually, and on behalf of
all of those Lot Owners whose consent is
attached hereto and incorporated herein
by reference.

STATE OF INDIANA)
) **SS:**
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared **CHESTNUT GROUP, INC.**, by Roger Delagrange, its President, and acknowledged the execution of the foregoing to be his voluntary act and deed this 28th day of October, 2005.

My Commission Expires:
July 18, 2008
Resident of:
Allen County

VINCENT J. HEINY, Notary Public

STATE OF INDIANA)
) **SS:**
COUNTY OF ALLEN)

Subscribed and sworn to before me, the undersigned, a Notary Public in and for said County and State, personally appeared **BETTY STEWART**, individually, and as agent on behalf of all of those Lot Owners whose consents are attached hereto and incorporated herein by reference, and acknowledged the execution of the foregoing to be her voluntary act and deed this 28th day of October, 2005

My Commission Expires:
July 18, 2008
Resident of:
Allen County

VINCENT J. HEINY, Notary Public

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