



# **DAVID BRENTON'S TEAM**

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## **RE/MAX Select, REALTORS**

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The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

**The information is deemed reliable, but not guaranteed.**

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OFTHE VILLAGE OF ORCHARD PARK  
AND THE ORCHARD PARK ASSOCIATION, INC.,  
an Indiana Not For Profit Corporation

THIS DECLARATION made on the date hereinafter set forth by Mordoh Development Company, an Indiana Corporation with its principal offices located at 811 Antique Court, Indianapolis, Indiana 46260 (hereinafter "Declarant");

## W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real estate in Indianapolis, Perry Township, Marion County, Indiana, comprised of approximately nine (9) acres, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference thereto, and intends to develop thereon a residential community with permanent common areas for the benefit of the community. The said real estate and development is hereinafter referred to as "THE VILLAGE OF ORCHARD PARK" or the "PROPERTIES"; and

WHEREAS, the Declarant has developed the Properties by subdividing and platting twenty-seven (27) lots, each of which is intended to accommodate one (1) one or two family residential structure and common areas utilized for drainage retention, and the entrance to the development, all of which common areas shall be owned and maintained by a homeowners association (the "Association") to which all owners of any lot or tract within the Properties must belong and pay lien-supported maintenance assessments; and

WHEREAS the Declarant intends the Association, in addition to the maintenance of the common areas, shall provide certain other maintenance, repair and control over the Properties for which annual assessments will be required of all owners. The Declarant has conveyed the common areas to the Association for the common use and enjoyment of the owners (subject to the terms of this Declaration), which common areas are more particularly described in the "Common Area Legal

Description" attached hereto as Exhibit "B", made a part hereof and referred to herein as the "Common Area").

NOW, THEREFORE, Declarant hereby declares that all of the real estate described in Exhibit "A" (subject to the easements granted herein) shall hereafter be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors, assigns and personal representatives, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

##### DEFINITIONS

1.1. "Association" shall mean and refer to The Orchard Park Association, Inc., a corporation incorporated pursuant to the Indiana Not For Profit Corporation Act of 1971, as amended, and its successors and assigns.

1.2. "Owner" and "Owners" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any lot, or portion thereof, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.3. "Properties" shall mean and refer to the certain real estate described in Exhibit "A" (subject to the easements granted herein) and such additions as may hereafter be brought within the jurisdiction of the Association.

1.4 "Lot" or "Lots" shall mean and refer to any plat of land shown upon any recorded subdivision plat of the Properties, with the exception of the Common Areas and dedicated public rights of way. The Declarant has twenty-seven (27) Lots on the Properties, as more particularly illustrated on the Plat of The Village of Orchard Park, a copy of which is

attached hereto as Exhibit "C" and made a part hereof. Each two-family residential dwelling shall be so situated upon the Lot as to provide direct driveway access to the public street which the Lot fronts and the minimum separation between the dwellings in the Properties required by the zoning approval. Otherwise, the Declarant reserves the right to locate each two-family dwelling upon each Lot as the Declarant deems most beneficial to the Lot and the Properties.

1.5. "Common Areas" shall mean and refer to all the real estate (including any improvements thereon) owned by the Association for the common use and benefit of the Owners as herein defined.

1.6. "Declarant" shall mean and refer to Mordoh Development Company, its principals, successors and assigns.

## ARTICLE II

### PROPERTY RIGHTS

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

(a) The right of the Association to charge and assess reasonable assessments and fees for the maintenance of the Common Areas and the Properties as herein provided;

(b) The right of the Association to suspend the voting rights and the right to use of the Common Area by an Owner for any period during which any assessment, or portion thereof against the Owner's Lot, remains unpaid;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, executed by

two-thirds (2/3) of each class of members of the Association has been recorded.

2.2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, the Owner's right of use and enjoyment to the Common Area and facilities, if any, to the members of his family, his tenants, or contract purchasers who reside on any Lot in the Properties:

2.3. Title to Common Areas. The Declarant shall convey the Common Areas to the Association, in fee simple absolute at the discretion of the Declarant. Such conveyance to be subject to taxes, current but unpaid at the time of conveyance, and to restrictions, conditions, limitations, and easements of record.

#### ARTICLE III

##### MEMBERSHIP AND VOTING RIGHTS

3.1. Every Owner of a Lot, or portion thereof, which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot, or portion thereof, which is subject to assessment.

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

(a) Class A. Class A member shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot, or portion of a Lot, owned. When more than one (1) person holds an interest in any Lot, or portion thereof, all such persons shall be members. The vote for such Lot or portion of a Lot shall be exercised as they determine but, in no event, shall more than one (1) vote be cast with respect to any Lot, except in those cases where a Lot has been divided to accommodate conveyance to separate Owners of each half of the dwelling situated on such Lot. A person, group of persons or entity who holds an interest in a Lot, or portion thereof, solely as security for performance of an obligation, shall not

be considered an Owner for purposes of membership in Class A.

(b) Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot, or portion of a Lot, owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event, to-wit:

- (1) all lots conveyed to initial owners.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot, or portion thereof, owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments and charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, reasonable attorney's fees, and any other obligation which may be charged to an Owner pursuant to this Declaration shall be a charge on the Land and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment, or charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties and for the improvement, maintenance, repairs and replacement of the Common Area and for the improvement and maintenance of

the homes situated upon the Properties, where, in the discretion of the Board of Directors of the Association, such improvement or maintenance should be done by the Association.

4.3. Maximum Annual Assessment. The maximum annual assessment shall be Fifty Dollars (\$50.00) per Lot, which shall be due and payable annually:

(a) From and after January 1, 1993, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1993, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, as such voting rights are provided in Article III of this Declaration.

(c) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum.

(d) The Class B Member shall be exempt from paying said annual assessments on vacant lots.

4.4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent to two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, as such voting rights are provided in Article III of this Declaration.

4.5. Notice and Quorum for Any Action Authorized Under Sections 3 or 4. Written notice of any meeting called for the