

PROPOSED COMMITMENTS

8599 West 96th Street

November 10, 2003

1. Each home shall have two dusk to dawn coach lights with low wattage.
2. A 70 foot half right-of-way shall be dedicated along 96th Street at such time as requested by Boone County. Additional easements shall not be granted to third parties within the area to be dedicated as public right-of-way prior to the acceptance of the grant of right-of-way by Boone County.
3. Each lot shall be graded and seeded and/or sodded, with the front yard sodded, and shall be landscaped with at least two trees and ten shrubs. Said trees shall have a minimum caliper of two inches at planting. Said landscaping shall be completed within six months of the completion of the home or at the end of the first planting season, whichever is sooner, weather permitting.
4. Restrictive covenants shall be recorded and shall include language for a mandatory homeowners' association (HOA), with dues and an architectural control committee.
5. A mandatory HOA shall be established, and it shall be responsible for the maintenance of all common areas, ponds and project identification signs.
6. The architectural control committee shall approve all house designs for the development. ~~Said committee shall also approve fencing.~~
7. Sidewalks shall be installed on both sides of interior streets and along the site's frontage on 96th Street.
8. Only detached single family homes shall be permitted.
9. Each home shall have at least a two car attached garage.
10. ~~Carports, out buildings and privacy fences shall be prohibited.~~
11. Manufactured houses shall be prohibited.

263-2355

JEFF GREEN
LOT # 7 - 13 FENCE

12. Satellite dishes shall be the only antennae permitted and shall not be located on the front of the home; the size shall comply with Federal Communications Commission regulations.
13. Outside storage or extended period of parking of RV's, campers, trailers, boats, boat trailers, unlicensed or inoperable vehicles or trucks larger than a standard pickup truck shall be prohibited.
14. The wooded areas indicated on the preliminary plan shall be preserved to the greatest extent possible with consideration given to the requirements of grading and drainage, utility and street easements from DCAM, DPW, INDOT and other agencies. The tree preservation plan shall be developed using the findings of a typical 20' by 20' area survey, which indicates all trees larger than 6" in caliper, and one survey required for every 10 acres of wooded area. The final tree preservation plan shall indicate wooded areas to be saved by shading or some other means, shall indicate a proposed method of tree protection during construction and shall be submitted for Administrator's approval prior to Conditional Plat approval by the Metropolitan Development Commission. Tree preservation easements shall be where indicated on the conceptual site plan.
15. A residential street light, which is shielded to provide a downward lighting pattern, shall be installed at each intersection within the development.
16. Minimum living area shall be 1,800 square feet for one story homes and 2,200 square feet for two story homes. No more than 20% of the homes may be one story.
17. A copy of any request for Administrator's approval of a minor modification to the development statement or plans shall be sent to Pike Township Residents Association and Hawthornes at the Crossing HOA.
18. All perimeter lots shall have a minimum lot area of 15,000 square feet.
19. The home built on Lot 3 shall face south.
20. No vinyl siding shall be used; cement siding, and wood on a case by case basis, may be used.
21. No two like models may be constructed next to one another or across the street from one another.
22. All homes shall have twelve inch front eaves and six inch side eaves.

23. Brick shall be provided on the front elevation, parallel to the street, to at least the plate line of one story homes and to at least the plate line of the first floor of two story homes. On corner lots, each elevation facing a street shall have brick to at least the plate line as previously described.
24. Brick wrap to the plate line, as described in commitment number 23, shall be provided for houses built on Lots 1, 2, 3, 13, 14, 25, 26, 28 and 29.
25. Evergreen trees, 25 feet on center, shall be planted on the adjacent property, staggered where possible, along the entire east property line from Lot 1 through Lot 13 and along the south property line from Lot 13 to a point 100 feet west adjacent to Lot 14. No white pines shall be planted. Pike Township Residents Association and Hawthornes at The Crossing HOA shall be given a copy of the landscape plan prior to planting.

APPROVED THIS

Pike Twp.

APPROVED THIS

10th

DAY OF

November 2004

DAY OF

November 2004

PIKE TOWNSHIP ASSESSOR

LAKE IN THE WOODS

PIKE TOWNSHIP ASSESSOR

DRAFTSMAN

Ty M. Block

DRAFTSMAN

This Declaration (hereafter "Declaration") made as of the 14th day of October, 2004, by
HERITAGE Development of Indiana, LLC;

WITNESSETH: WHEREAS, the following facts are true:

WHEREAS, Declarant is the owner of the real estate located in Pike Twp., Marion County, Indiana, described in Exhibit "A" (hereafter "Real Estate"), upon which they have purchased 20.336 acres and developed One Section of 37 Lots on the ground.

WHEREAS, Declarant has purchased certain improvements and amenities which shall constitute Community Area;

WHEREAS, the term "Property" shall hereafter mean and refer to the Real Estate;

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in Lake in the Woods for the maintenance of the Property and the improvements thereon, and to this end desire to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each of which is for the benefit of the Lots and lands in the Property and the future owners thereof;

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in Lake in the Woods to create an agency to which may be delegated and assigned the powers of owning, maintaining and administering the Community Area, administering and enforcing the Restrictions, collecting and disbursing the Assessments and charges hereinafter created, and promoting the health, safety and welfare of the Owners of Lots.

WHEREAS, Declarant will incorporate under the laws of the State of Indiana a not-for-profit corporation known as The Lake in the Woods Homeowner's Association, Inc. for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that all of the Lots and lands in the Property, as they are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, are subject to the following Restrictions, all of which are declared to be in furtherance of a plan for the improvement and sale of the Property and each Lot situated therein, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property as a whole and of each of Residences, Lots and lands situated therein. The Restrictions shall run with the land and shall be binding upon Declarant, its respective successors and assigns, and upon the parties having or acquiring any interest in the Property or any part or parts thereof subject to such Restrictions. The Restrictions shall inure to the benefit of Declarant and its respective successors in title to the Property or any part or parts thereof.

Definitions - The following terms, as used in this Declaration, unless the context clearly

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requires otherwise, shall mean the following:

- a) "Architectural Review Board" means that entity established pursuant to Paragraph 14 of this Declaration for the purposes therein stated.
- b) "Articles" mean the Articles of Incorporation of the Corporation, as amended from time to time.
- c) "Assessments" means all sums lawfully assessed against the Members of the Corporation, as amended from time to time.
- d) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws.
- e) "Bylaws" means the Code of By-Laws of the Corporation, as amended from time to time.
- f) "Lake in the Woods" means the name by which the Property shall be known.
- g) "Common Area" (C. A. #1, 2, 3, & 4) means the area referred to on a Plat as a Common Area or Areas.
- h) "Community Area" means (i) the Detention Basin Control Structures (ii) the Drainage System, (iii) the Basin and Basin Access Easements, (iv) any utility service lines or facilities not maintained by a public utility company or governmental agency that serve more than one Lot, and (v) any area of land (1) shown on the Plat as a Common Area, (2) described as Common Area in any recorded instrument prepared by Declarant or its agents, or (3) conveyed to or acquired by the Corporation, together with all improvements thereto, that are intended to be devoted to the use or enjoyment of all, of the Owners of Lots.
- i) "Corporation" or "Association" means the Lake in the Woods Homeowners Association, Inc., an Indiana not-for-profit, its successors and assigns.
- j) "Declarant" means, Heritage Development of Indiana, LLC, its successors and assigns to its interest in the Property other than Owners purchasing Lots or Residences by deed from Declarant (unless the conveyance indicated on intent that the grantee assumes the rights and obligations of Declarant).
- k) "Drainage Board" means the Marion County Drainage Board, its successors or assigns.
- l) "Drainage System" means the open drainage ditches and swales, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities (excluding the Basins and the Basin Control Structures) located in the Property and designed for

the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Property, including but not limited to those shown or referred to on the Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Drainage Board.

- m) "Sign and Landscaping Easement" (S. L. E.) means a portion of the common Area as denoted on the Plat as an area to be landscaped with Entry Monuments and maintained by the Corporation.
- n) "Detention Basin" means the Basin as depicted on the Plat as Common Area #2. The Declarant shall maintain these drainage structures until turned over to the Association for continued maintenance.
- o) "Detention Maintenance Access Easement" (D. M. A. E.) means an area designated on the Plat and designated as a means of access, for purposes of maintenance, to a Basin or a Basin Control Structure.
- p) "Detention Control Structures" (D. C. S.) means the structure, outfalls, pipes and appurtenances associated therewith or integral thereto, all or part of which may be established as a legal drain subject to the jurisdiction of the Drainage Board.
- q) "Lot," means a platted lot as shown on the Plat.
- r) "Lot Development Plan" means (i) a site plan prepared by a licensed engineer or architect, (ii) foundation plan and proposed finished floor elevations, (iii) building plans, including elevation and floor plans, (iv) material plans and specifications, (v) landscaping plan, and (vi) all other data or information that the Architectural Review Board may request with respect to the improvement or alteration of a Lot (including but not limited to the landscaping thereof) or the construction or alteration of a Residence or other structure or improvement thereon.
- s) "Maintenance Costs" means all of the costs necessary to keep the facilities to which the term applies operational and in good condition, including but not limited to the cost of all upkeep, maintenance, repair, replacement of all or any portion of any such facility, payment of all insurance with respect thereto, all taxes imposed on the facility and on the underlying land, leasehold, easement or right-of-way, and any other expense related to the continuous maintenance, operation or improvement of the facility.
- t) "Member" means a Class A or Class B member of the Corporation and "Members" means Class A and Class B members of the Corporation.
- u) "Mortgagee" means the holder of a first mortgage on a Residence.
- v) "Owner" means a Person, including Declarant, who at the time has or is acquiring any interest in a Lot except a Person who has or is acquiring such an interest merely

as security for the performance of an obligation.

- w) "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof.
 - x) "Plat" means the final secondary plat of the Property recorded in the Office of the Recorder of Marion County, Indiana.
 - y) "Reserve for Replacements" means a fund established and maintained by the Corporation to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Area.
 - z) "Residence" means any structure intended for occupancy by a single family together with all appurtenances thereto, including private garage and outbuildings and recreational facilities usual and incidental to the use of a single family residential lot.
- aa) "Restrictions" means the covenants, conditions, easements, charges, liens, restrictions, rules and regulations and all other provisions set forth in this Declaration and the Register of Regulations, as the same may from time to time be amended.
 - bb) "Register of Regulations" means the document containing rules, regulations, policies, and procedures adopted by the Board of Directors or the Architectural Review Board, as the same may from time to time be amended.
 - cc) "Roadway" means all or any part of a street, land or road (including the right-of-way) designated to provide access to one or more Lots which has not be accepted for maintenance by a public authority.
 - dd) "Zoning Authority" with respect to any action means the Marion County Board of Zoning or, where it lacks the capacity to take action, or fails to take such action, the governmental body or bodies, administrative or judicial, in which authority is vested under applicable law to hear appeals, or review action, or the failure to act.
- ee) "Initial Capital Fund" means a one time assessment, with the closing of each home, to help defray initial expense or to fund long term replacement costs in common areas.

- 1) Declaration - Declarant expressly declares that the Property shall be held, transferred, and occupied subject to the Restrictions. As of the date of the execution of this Declaration, the Property consists solely of the Real Estate. The Owner of any Lot subject to these Restrictions, by (i) acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of any Lot, shall accept such deed and execute such contract subject to each Restriction and agreement herein contained. By acceptance of such deed or execution of such contract, each

Owner acknowledges the rights and powers of Declarant and of the Corporation with respect to these Restrictions, and also for itself, its heirs, personal representatives, successors and assigns, covenants, agrees and consents to and with Declarant, the Corporation, and the Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreement.

- 2) The Detention Basins - The Basins are located in a Easement owned by the Declarant. The Corporation shall be responsible for maintaining the Lake. One hundred percent (100%) of the Maintenance Costs of the Basins shall be assessed as a General Assessment against all Lots subject to assessment. The Basin has been designed to include best management practices (BMP(s) that must be maintained by the BMP(s) owner. Said BMP(s) is currently maintained by the developer; however, upon activation of the HOA, the Operations and Maintenance Manual for such BMP(s) shall become the responsibility of the said HOA subject to all fees and other City requirements. Except as otherwise provided herein, no individual using the Basin has the right to cross another Lot or trespass upon a Lot not within a Common Area, subject to the rights of the Declarant, the Corporation and their employees, agents, designees and assigns as set forth in the Declaration. Each Owner of a Lot, Declarant or any Builder, abutting the Basin shall indemnify and hold harmless Declarant, the Corporation and each other Owner against all loss or damage incurred as a result of injury to any Person or damage to any property, or as a result of any other cause or thing, arising from or related to use of, or access to, the Basin by any Person who gains access thereto from, over or across such Owner's Lot. Neither Declarant nor any Builder shall have no liability to any Person with respect to the Basin, the use thereof or access thereto, or with respect to any damage to any Lot resulting from the Basin or the proximity of a Lot thereto, including loss or damage from erosion.
- 3) The Detention Basin Control Structures - The Corporation shall be responsible for maintaining the Basin Control Structures to the extent not maintained by the Drainage Board, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots.
- 4) Drainage System - Declarant shall maintain the Drainage System in good condition satisfactory for the purpose for which it was constructed until the earlier of November 1, 2005 or the date the Drainage System is accepted by the Drainage Board. After the earlier of such dates, the Corporation shall maintain the Drainage system to the extent not maintained by the Drainage Board and the Maintenance Costs thereof shall be assessed against all Lots subject to assessment serviced by that part of the Drainage System with respect to which Maintenance Costs are incurred. Each Owner shall be individually liable for the cost of maintenance of any drainage system located entirely upon his Lot, which is devoted exclusively to drainage of his Lot and is not maintained by the Drainage Board.
- 5) Common Area Easements and Common Area - The Corporation shall maintain the Landscaping Easements and all improvements and plantings thereon, and the Maintenance Costs thereof shall be assessed as a General Assessment against all Lots subject to assessment. Grass, trees, shrubs, and other plantings located in a Landscaping Easement shall be kept neatly cut, cultivated or trimmed as reasonably required to maintain an attractive appearance.

7) Roadways

- a) Maintenance - Declarant shall maintain each Roadway in good condition satisfactory for the purpose for which it was constructed until the Roadway has been accepted as a public roadway.
- b) Cul-de-sac Parking - There shall be no parking on the Cul-de-sacs shown on the Plat.
- c) Eyebrow - The City is not responsible for Maintenance and snow removal in the Crosshatched portion of the eyebrow as shown on the Recorded Plat.
- c) Private Drive - The Private Drive servicing Lots 35, 36 & 37 shall be the complete responsibility of the Lot owners of the three Lots. Mail boxes shall be located on the South side of the cul-de-sac within the right-of-way for Lots 35-37 & 37 with addresses as shown on the Plat.

8) Construction of Residences

- a) Land Use - Lots may be used only for single-family residential purposes and only one Residence not to exceed the maximum height permitted by and measured pursuant to the Zoning Ordinance of Marion County, Indiana without the written consent of the Declarant. No portion of any Lot may be sold or subdivided such that there will be thereby a greater number of Residences in Lake in the Woods than the number of Lots depicted on the Plat. Notwithstanding any provision in the applicable zoning ordinance to the contrary, no Lot may be used for any "Special Use" that is not clearly incidental and necessary to single-family dwellings. No home occupation shall be conducted or maintained on any Lot other than one which does not constitute a "special use" and which is incidental to a business, profession or occupation of the Owner or occupant of such Lot. No signs of any nature, kind or description shall be erected, placed, or permitted to remain on any Lot advertising a permitted home occupation.
- b) Size of Residence - Except as otherwise provided herein, no residence may be constructed on any Lot unless such Residence, exclusive of open porches, attached garages and basements, shall have total floor areas of at least 1800 square feet for a single family structure with no more than 7 permitted and 2200 square feet for a two story structure. All Residences shall have an attached garage capable of storing at least two (2) vehicles.
- c) Temporary Structures - No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a dwelling, temporary or permanent, nor may any structure of a temporary character be used as a dwelling.

- d) **Building Location, Set Back Minimums and Finished Floor Elevation** - No building may be erected between the building line shown on the Plat and the front Lot line but in any event no building shall be erected nearer than thirty feet to the right of way of the street in front of the Lot, with the exception of Lots 35-36 & 37 for the front set back if facing the Private Drive, (seen Plat for each Lot Building Line) and no structure or part thereof may be built or erected nearer than seven feet to any side Lot line or nearer than twenty feet to any rear Lot line. The side yards must aggregate nineteen feet at the building set back line. No accessory building may be erected in front of a main building or in the required front yard on the side of a corner lot unless the accessory building is attached to the main building by a common wall. A minimum finished floor elevation, shown on the development plan for Lake in the Woods, has been established for each Lot and no finished floor elevation with the exception of permitted basements shall be constructed lower than said minimum without the written consent of the Architectural Review Board. Demonstration of adequate storm water drainage in conformity with both on-Lot and overall project drainage plans shall be a prerequisite for alternative finished floor elevations. Before construction commences, the finished floor elevation shall be physically checked on the Lot and certified by a licensed professional engineer or a licensed land surveyor.
- e) **Driveways** - All driveways shall be paved with concrete or asphalt and maintained dust free.
- f) **Yard Lighting** - The builder on each Lot shall supply and install twin coach lights on the garage in operable condition on such Lot at a location, having a height and of a type, style and manufacture approved by the Declarant or Architectural Review Board prior to the installation thereof. Each such light fixture shall also have a bulb of a maximum wattage approved by the Architectural Review Board to insure uniform illumination on each Lot and shall be equipped with a photo electric cell or similar device to insure automatic illumination from dusk to dawn each day. The Lot Owner thereafter shall maintain the lights in proper working order.
- g) **Storage Tanks** - All above or below ground storage tanks, with the exception of gas storage tanks used solely in connection with gas grills for the purpose of grilling or cooking food, shall be and hereby are prohibited.
- h) **Construction and Landscaping** - All construction upon, landscaping of and other improvements to a Lot shall be completed strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Landscaping shall include a minimum of one 2 and 1/2 " deciduous trees planted near the street right-of-way, taking care to avoid easements and not to violate site distance requirements. At least ten evergreen shrubs shall be provided for each Lot in the front yard and adjacent to the foundation of the Residence. The front and side yards adjacent to street as on corner Lots, shall be sod, with sod or seed from the front of the residence to the rear lot line or tree line whichever is first.

- i) Masonry Requirement- the front of all homes shall have masonry at least to the plate line on single floor plans and on two story plans at least to the plate line of the first floor. A masonry wrap of the total structure to the first plate line shall be provided on Lots 1, 2, 3, 13, 14, 25, 26, 28, and 29. On corner lots the side of the Home facing a Public Street shall have a minimum of 25% of the first floor elevation of Masonry.

No Vinyl Siding of any type shall be permitted on any home in Lake in the Woods.

- j) The failure of the Owner of a Lot to apply for approval of, or receive approval from, the Architectural Review Board of a Lot Development Plan shall not relieve such Owner from his obligation to commence and complete construction of a Residence upon a Lot within the time periods specified herein. For the purposes of this sub-para. (j), the construction of a Residence will be deemed "completed" when the exterior of the Residence (including but not limited to the foundation, walls, roof, windows, entry doors, gutters, downspouts, exterior trim, paved driveway and landscaping) has been completed in conformity with the Lot Development Plan.

- k) Mailboxes - All mailboxes installed upon Lots shall be uniform and shall be of a type, color and manufacture approved by the Architectural Review Board. Such mailboxes shall be installed upon posts approved as to type, size and location by the Architectural Review Board. The 6"x6" Standard Painted Cedar Post with paper holder as supplied by Caporale Posts, Inc is approved provided it is painted to the Specifications as provided by the Declarant to Caporale.

- l) Septic Systems - No septic tank, absorption field or any other on-site sewage disposal system, other than a lateral main connected to a sanitary sewage collection system, shall be installed or maintained on any Lot.

- m) Water Systems - Each Owner shall connect to such water line maintained by the public water utility to provide water for domestic use on the Lot and shall pay all connection, availability or other charges lawfully established with respect to connections thereto. Notwithstanding the foregoing, an Owner may establish, maintain and use irrigation water well on his Lot.

- n) Drainage - In the event storm water drainage from any Lot or Lots flows across another Lot, provision shall be made by the Owner of the other Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course, although no specific drainage easement for such flow of water is provided on the Plat. To the extent not maintained by the Drainage Board, "Drainage Easements" reserved as drainage swales shall be maintained by the Owner of the Lot upon which such easements are

located such that water from any adjacent Lot shall have adequate drainage. The elevation of a Lot shall not be changed so as to affect materially the surface elevation or grade of any drainage swale. Perimeter foundation drains and sump pump drains, shall be connected into a subsurface drainage tile if provided or drainage swale if no tile was provided. Lots 35-36 & 37 may drain into the Basins if provisions to eliminate erosion, at the discharge point, are provided. Downspouts and drains shall be designed to disperse runoff for overland flow to street or swale collection systems. Each Owner shall maintain the subsurface drains and tiles located on his Lot and shall be liable for the cost of all repairs thereto or replacements thereof.

- a) Vacant Lots - It shall be the duty and obligation of the Owner (including Declarant) of a vacant Lot to maintain such Lot and mow the lawn thereon. Declarant and the Corporation shall have the right, but not the obligation, to mow the lawn and maintain vacant Lots owned by others.
- b) Out buildings and sheds - These shall be prohibited except that Declarant may allow them on a case-by-case basis if a case of extreme hardship is made known.

9) Maintenance of Lots

- a) Vehicle Parking - No camper, motor home, commercial truck, trailer, boat or disabled or unlicensed vehicle may be parked or stored overnight or longer on any Lot in open public view. No carports shall be installed on any Lot. No mechanical work shall be performed in the driveway of any Lot.
- b) Signs - Except for such signs as Declarant may in its absolute discretion display in connection with the identification or development of Lake in the Woods and the sale of Lots therein and such signs as may be located in any Common Area or Community Area, no sign of any kind shall be displayed to the public view on any Lot except that two (2) signs of not more than four (4) square feet may be displayed at any time for the purpose of advertising the property for sale, or may be displayed by a builder to advertise the property during construction and sale. All houses shall have uniform permanent house numbers visible from the street.
- c) Fencing - No fence, wall, hedge or shrub planting higher than eighteen (18) inches shall be permitted between the front property line and the front building set-back line except where such planting is part of Residence landscaping and the prime root thereof is within four (4) feet of the Residence. Corner Lots shall be deemed to have two (2) front yards. Trees shall not be deemed "shrubs" unless planted in such a manner as to constitute a "hedge". No Chain Link Fence shall be erected on any Lot. No fence shall be erected or maintained on or within any Landscaping Easement or Sign Easement except such as may be installed by Declarant and subsequently replaced by the Corporation in such manner as to preserve the uniformity of such fence. No fencing shall be erected on the street side of any perimeter landscaping and/or mounding. No fence may be erected on a Lot without

the prior approval of the Architectural Review Board, which may establish further restrictions with respect to fences, including limitations on (or prohibition of) the installation of fences in the rear yard of a Lot abutting a Basin and design standards for fences. All fences shall be kept in good repair. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines, or in the case of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. All fencing along the perimeter of the Plat shall be of the same style, color and materials.

- d) Vegetation - An Owner shall not permit the growth of weeds and volunteer trees and bushes on his Lot, and shall keep his Lot reasonably clear from such unsightly growth at all times. If an Owner fails to comply with this restriction, the Architectural Review Board may (but shall not be obligated to) cause the weeds to be cut and the Lot cleared of such growth at the expense of the Owner thereof and the Association shall have a lien against the cleared Lot for the expense thereof.
- e) Nuisances - No noxious or offensive 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. Barking dogs shall constitute a nuisance.
- f) Garbage and Refuse Disposal - No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage or other waste shall be kept in sanitary containers out of public view. All equipment for storage or disposal of such materials shall be kept clean and sanitary.
- g) Pets, Livestock and Poultry - No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The owners of such permitted pets shall confine them to their respective Lots such that they will not be a nuisance. Barking Dogs shall constitute a nuisance. Owners of dogs shall so control or confine them so as to avoid barking, which will annoy or disturb adjoining Owners. No exterior dog runs are permitted.
- h) Outside Burning - No trash, leaves, or other materials shall be burned upon a Lot if smoke therefrom would blow upon any other Lot and, then, only in acceptable incinerators and in compliance with all applicable legal requirements.
- i) Antennas and Receivers - No antenna, satellite dish, or other device for the transmission or reception of radio, television, or satellite signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors and above ground, whether attached to a building or otherwise, except for one satellite dish of

no more than two feet (2') in diameter on each residential Lot and be subject to the written approval of the Architectural Review Board, provided, however, that any such device may be installed and maintained on any Lot without the necessity of such written approval if: (a) it is not visible from neighboring Lots, streets or common area; or (b) the Owner, prior to installation, has received the written consent of the Owners of all Lots who would have views of the device from their Lots; or (c) the device is virtually indistinguishable from structures, devices or improvements, such as heat pumps, air conditioning units, barbecue grills, patio furniture, and garden equipment, which are not prohibited by these covenants or by-laws, or (d) it is a satellite dish two (2) feet or less in diameter and not affixed to the roof of a residence.

- j) Exterior Lights - No exterior lights shall be erected or maintained between the building line and rear lot line so as to shine or reflect directly upon another Lot.
 - k) Electric Bug Killers - Electric Bug Killers, "zappers", and other similar devices shall not be installed at a location or locations which will result in the operation thereof becoming a nuisance or annoyance to other Owners, and shall be operated only when outside activities require the use thereof and not continuously.
 - l) Tennis Courts - No tennis court shall be installed or maintained on any Lot.
 - m) Swimming Pools - No swimming pool or equipment or building related thereto shall be constructed without the prior approval of the Architectural Review Board. No above ground pools shall be permitted. No swimming pool shall be located on a Lot abutting within 35 feet from the water's edge of a Lake at normal pool elevation as established on the engineering design plans for the Lake filed with the zoning authority. If a variance permitting installation of a mechanical pool cover in lieu of fencing has been or may be obtained from the Zoning Authority, then the Architectural Review Board may require, as a condition to the location of a swimming pool on a Lot, that the Owner install a mechanical pool cover. If the Board imposes such requirement, then a mechanical pool cover of a type and manufacture approved by the Architectural Review Board shall be installed by the Owner in compliance with all applicable legal requirements established by the Zoning Authority as a condition to such variance, and all requirements established by the Architectural Review Board.
- 10) Lake in the Woods Homeowners Association, Inc
- a) Membership - Each Owner shall automatically be a Member and shall enjoy the privileges and be bound by the obligations contained in the Articles and By-Laws. If a Person holding a mortgage on a lot realize upon his security and become an Owner, he shall then be subject to all the requirements and limitations imposed by this Declaration on other Owners, including those provisions with respect to the payment of Assessments.

- b) Powers - The Corporation shall have such powers as are set forth in this Declaration and in the Articles and By-Laws, together with all other powers that belong to it by law.
- c) Classes of Membership and Voting Rights - The Association shall have the following two (2) classes of voting membership:
- i) Class A - Class A members shall be all Owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as the members holding an interest in such Lot determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.
 - ii) Class B - The Class B member shall be the Declarant. The Declarant shall be entitled to three (3) votes for each Lot owned. For purposes of this calculation, it shall be assumed that Declarant owns all Lots, which number shall be reduced as Lots are conveyed by the Declarant to an Owner. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) when seventy five percent (75%) of all Lots have been deeded to individual Owners other than Declarant; or, (b) December 31, 2005.
- d) Reserve for Replacements - The Board of Directors shall establish and maintain the Reserve for Replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the Community Areas. This may be funded in the form of a special assessment over and above the General Assessment. In determining the amount, the Board shall take into consideration the expected useful life of the Community Area and long term maintenance of the Basins, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of Declarant or such consultants as the Board may employ. The Reserve for Replacements shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.
- e) Limitations on Action by the Corporation - Unless the Class B Member and (i) at least two-thirds of the Mortgagees (based on one vote for each first mortgage owned) or (ii) two-thirds (2/3) of the Class A Members (other than Declarant) have given their prior written approval, the Corporation, the Board of Directors and the Owners may not: (i) except as authorized by Paragraph 13(a), by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Community Area (but the granting of easements for public utilities or other public purposes consistent with the intended use of the Community Area shall not be deemed a transfer for the purposes of this clause); (ii) fail to maintain fire and extended

coverage on insurable Community Area on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement cost); (iii) use hazard insurance proceeds for losses to any Community Area for other than the repair, replacement or reconstruction of the Community Area; (iv) change the method of determining the obligations, assessments, dues or other charges that may be levied against the Owner of a Residence; (v) by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Residences, or the maintenance and up-keep of the Community Area; or (vi) fail to maintain the Reserve for Replacements in the amount required by this Declaration.

- d) Mergers - Upon a merger or consolidation of another corporation with the Corporation, its properties, rights and obligations may, as provided in its articles of incorporation, by operation of law be transferred to another surviving or consolidated corporation or, alternatively, the properties, rights and obligations of another corporation may by operation of law be added to the properties, rights and obligations of the Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme. No other merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Property except as hereinafter provided.
- g) Termination of Class B Membership - Wherever in this Declaration the consent, approval or vote of the Class B Member is required, such requirement shall cease at such time as the Class B Membership terminates, but no such termination shall affect the rights and powers of Declarant set forth in Paragraphs 16(b), 16(f), 17, or 20(b).
- h) Board of Directors - During the Development Period, the Declarant shall appoint all directors, shall fill all vacancies in the Board of Directors, and shall have the right to remove any Director at any time, with or without cause. After the Development Period, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be members of the Association.

11) Assessments

- a) Creation of the Lien and Personal Obligation of Assessments - Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, except for any builder constructing residences in Lake in the Woods, for the duration of Builder's ownership(not to exceed 2 years) of Lots in Lake in the Woods, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Corporation the following: (1) General Assessments. (2) Special Assessments, such Assessments to be established and collected as hereinafter

provided. All Assessments, together with interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each Assessment is made until paid in full. Each Assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. Any builder constructing Residences in Lake in the Woods shall be excluded from paying any assessments on Lots it owns in Lake in the Woods, for the duration of builder's ownership of those Lots for a period not to exceed 2 years.

b) General Assessment

i) Purpose of Assessment - The General Assessment levied by the Corporation shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners of Lots and for the improvement, maintenance and operation of the Community Area and all sign easements and landscape easements. The General Assessment shall also be levied for the payment of real estate taxes allocable to the Community Areas, which real estate taxes shall be paid by the Corporation from the date hereof, notwithstanding that the Declarant may retain title to all or part of the Community Area. It shall further be the obligation of the Corporation to (i) maintain and pay all costs of maintenance of all public lighting installed and existing in any right-of-way (ii) pay the costs of all electricity and energy usage attributable to public lighting installed and existing in any right-of-way and (iii) maintain and pay the costs of maintenance of any sidewalks which abut a right-of-way but are not within the right-of-way, and the General Assessment shall also be levied by the Corporation to comply and pay for with the foregoing maintenance requirements and obligations.

ii) Basis for Assessment

(1) Lots Generally - Each Lot owned by a person other than Declarant shall be assessed at a uniform rate without regard to whether a Residence has been constructed upon the Lot.

(2) Lots Owned by Declarant - No Lot owned by Declarant shall be assessed by the Corporation except such Lots as have been improved by the construction thereon of Residences which shall be subject to assessment as provided in Clause (1) above.

(3) Change in Basis - The basis for assessment may be changed with the assent of the Class B Member and of two-thirds (2/3) of the Class A Members (excluding Declarant).

iii) Method of Assessment - By a vote of a majority of the Directors, the Board of Directors shall, on the basis specified in subparagraph (ii), fix the General Assessment for each assessment year of the Corporation at an amount sufficient to meet the obligations imposed by this Declaration upon the Corporation. The

Board of Directors shall establish the date(s) the General Assessment shall become due, and the manner in which it shall be paid.

- iv) Allocation of Assessment - Except as otherwise expressly provided herein, the cost of maintaining, operating, restoring or replacing the Community Area shall be allocated equally among owners of all Lots and shall be uniformly assessed.
- c) Special Assessment - The Corporation may levy in any fiscal year a Special Assessment applicable to that year and not more than the next four (4) succeeding fiscal years for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon or constituting a part of the Community Area, including fixtures and personal property relating thereto, provided that any such Assessment shall have the assent of the Class B Member and of a majority of the votes of the Class A members whose Lots are subject to assessment with respect to the capital improvement who are voting in person or by proxy at a meeting of such members duly called for this purpose.
- d) Date of Commencement of Assessments - The General Assessment shall commence with respect to assessable Lots on the first day of the month following conveyance of the first Lot to an Owner who is not Declarant provided that, in the case of Lots conveyed to builders, the General Assessment shall commence as of the earlier of (1) the first day of the month following conveyance of the Lot by Builder to Builder's customer who will occupy the residence, or (2) two years following the Lot is initially conveyed to Builder. The initial Assessment on any assessable Lot shall be adjusted according to the number of whole months remaining in the assessment year.
- e) EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE CORPORATION - Any Assessment not paid within thirty (30) days after the due date may upon resolution of the Board of Directors bear interest from the due date at a percentage rate no greater than the current statutory maximum annual interest rate, to be set by the Board of Directors for each assessment year. The Corporation shall be entitled to institute in any court of competent jurisdiction any lawful action to collect the delinquent Assessment plus any expenses or costs, including attorneys' fees, incurred by the Corporation in collecting such Assessment. If the Corporation has provided for collection of any Assessment in installments, upon default in the payment of any one or more installments, the Corporation may accelerate payment and declare the entire balance of said Assessment due and payable in full. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Community Area or abandonment of his Lot.
- f) Subordination of the Lien to Mortgages - The lien of the Assessments provided for herein against a Lot shall be subordinate to the lien of any recorded first mortgage covering such Lot and to any valid tax or special assessment lien on such Lot in favor of any governmental taxing or assessing authority. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to

mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

- g) Certificates - The Corporation shall, upon demand by an Owner, at any time, furnish a certificate in writing signed by an officer of the Corporation that the Assessments on a Lot have been paid or that certain Assessments remain unpaid, as the case may be.
- h) Exempt Property - The following property subject to this Declaration shall be exempt from the Assessments, charge and lien created herein: (1) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use and (2) the Community Area.
- i) Annual Budget - By a majority vote of the Directors, the Board of Directors shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration will be met.

12) Architectural Control

- a) The Architectural Review Board - Until the end of the Development Period, the Declarant shall appoint an Architectural Review Board consisting of three (3) persons. After the expiration of the Development Period, the Board of Directors shall appoint the Architectural Review Board.
- b) Purposes - The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such manner as to preserve values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.
- c) Change in Conditions - Except as otherwise expressly provided in this Declaration, no improvements, alterations, change of colors, excavations, changes in grade, planting or other work that in any way alters any Lot or the exterior of the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval by the Architectural Review Board of a Lot Development Plan therefor. Prior to the commencement by an Owner other than Declarant of (i) construction, erection or alteration of any Residence, building, fence, wall, swimming pool, tennis court, patio, pier, dock, recreational equipment, or other structure on a Lot or (ii) any plantings on a Lot, a Lot Development Plan with respect thereto shall be submitted to the Architectural Review Board, and no building, fence, wall, Residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done, or any plantings made, by any Person

other than Declarant without the prior written approval by the Architectural Review Board of a Lot Development Plan relating to such construction, erection, alteration or plantings. Such approval shall be in addition to, and not in lieu of, all approvals, consents, permits and/or variances required by law from governmental authorities having jurisdiction over Lake in the Woods, and no Owner shall undertake any construction activity within Lake in the Woods unless legal requirements have been satisfied. Each Owner shall complete all improvements to a Lot strictly in accordance with the Lot Development Plan approved by the Architectural Review Board. Notwithstanding the foregoing, Declarant shall have the sole right to pre-approve standard floor plans and elevations to be offered and sold in Lake in the Woods by Builders and, once such pre-approvals are obtained, Builders shall not be required to submit individual Lot Development Plans or otherwise obtain individual approvals from Declarant or The Architectural Control Board in order to offer, build and sell in Lake in the Woods floor plans and elevations that have been so pre-approved. As used in this subparagraph (c), "plantings" does not include flowers, bushes, shrubs or other plants having a height of less than 18 inches.

- d) Procedures - In the event the Architectural Review Board fails to approve, modify or disapprove in writing a Lot Development Plan within thirty (30) days after such plan has been duly filed with the Architectural Review Board in accordance with procedures established by Declarant or, if Declarant is no longer a Class B member, the Board of Directors' approval will be deemed granted. If Declarant is no longer a Class B member, a decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving.
- e) Guidelines and Standards - The Architectural Review Board shall have the power to establish such architectural and landscaping design guidelines and standards as it may deem appropriate to achieve the purpose set forth in subparagraph (b) to the extent that such design guidelines and standards are not in conflict with the specific provisions of this Declaration. If Declarant is no longer a Class B member, any such guideline or standard may be appealed to the Board of Directors which may terminate or modify such guideline or standard by a two-thirds (2/3)-vote of the Directors then serving.

13) Community Area

- a) Ownership - The Community Area shall remain private, and neither Declarant's execution or recording of any instrument portraying the Community Area, nor the doing of any other act by Declarant is, or is intended to be, or shall be construed as, a dedication to the public of such Community Area. Declarant or the Corporation may, however, dedicate or transfer all or part of the Community Area to any public agency, authority or utility for use as roads, utilities, parks or other public purposes.
- b) Density of Use or Adequacy - Declarant expressly disclaims any warranties or representations regarding the density of use of the Community Area or any facilities

located thereon or the adequacy thereof for the purpose intended.

- c) Obligations of the Corporation - The Corporation, subject to the rights of Declarant and the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Community Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the Community Area in good, clean, attractive and sanitary condition, order and repair.
- d) Easements of Enjoyment - No Person shall have any right or easement of enjoyment in or to the Community Area except to the extent granted by, and subject to the terms and provisions of, this Declaration or resolution adopted by the Board of Directors. Such rights and easements as are thus granted shall be appurtenant to and shall pass with the title to every Lot for whose benefit they are granted. The Owners of lots abutting the Basins may use the Basins, but such use shall be limited and such uses shall be authorized by resolution adopted by the Board of Directors. Each Owner shall have the right to use such parts of the Community Area as are reasonably required to afford access to and from such Owner's Lot.
- e) Extent of Easements - The easements of enjoyment created hereby shall be subject to the following:
 - i) The right of the Corporation to establish reasonable rules for the use of the Community Area;
 - ii) The right of the Corporation to mortgage any or all of the Community Area and the facilities constructed thereon for the purposes of improvements to, or repair of, the Community Area or facilities constructed thereon, pursuant to approval of the Class B member and (i) two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagees (based on one vote for each first mortgage owned), voting in person or by proxy at a regular meeting of the Corporation or a meeting duly called for this purpose; and
 - iii) The right of the Corporation after the development period to dedicate or transfer all or any part of the Community Area to any public agency, authority or utility, but no such dedication or transfer shall be effective unless an instrument signed by the Class B member and (i) the appropriate officers of the Corporation acting pursuant to authority granted by two-thirds (2/3) of the votes of the Class A members (excluding Declarant) or (ii) two-thirds (2/3) of the Mortgagors (based on one vote for each first mortgage owned), agreeing to such dedication or transfer, has been recorded.
- f) Additional Rights of Use - The members of the family and the guests of every Person who has a right of enjoyment to the Community Area and facilities may use the Community Area and facilities subject to such general regulations consistent with the provisions of this Declaration as may be established from time to time by the Corporation and included within the Register of Regulations.

- g) **Damage or Destruction by Owner** - In the event the Community Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or member of his family, such Owner authorizes the Corporation to repair said damaged area: the Corporation shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Corporation in the discretion of the Corporation. The amount necessary for such repairs shall become a Special Assessment upon the Lot of said Owner.
- h) **Conveyance of Title** - Declarant may retain the legal title to the Community Area or any portion thereof until such time as it has completed improvements thereon, but notwithstanding any provision herein, the Declarant hereby covenants that it shall convey the Basins and Basin Control Structures (and on or before the expiration of the Development Period, any of the remaining Community Area,) to the Corporation free and clear of all liens and financial encumbrances. Owners shall have all the rights and obligations imposed by this Declaration with respect to such Community Area prior to conveyance, except that the Corporation shall not be liable for payment of taxes and insurance for such Community Area until title is conveyed.

14) Easements

- a) **Plat Easements** - In addition to such easements as are created elsewhere in this Declaration and as may be created by Declarant pursuant to written instruments recorded in the Office of the Recorder of Marion County, Indiana, Lots are subject to drainage easements, sewer easements, utility easements, sign easements, entry way easements, landscaping easements, lake maintenance access easements and non-access easements, either separately or in any combination thereof, as shown on the Plat, which are reserved for the use of Owners, public utilities companies and governmental agencies as follows:
 - i) **Drainage Easements** - (DE) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of Lake in the Woods and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of each Owner not to divert, prevent, alter or obstruct the drainage across his own Lot. Under no circumstance shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict, in any manner, the water flow. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage, by Declarant, and by the Corporation, but neither Declarant nor the Corporation shall have any duty to undertake any such construction or reconstruction. In the event the Declarant or the Corporation undertakes any such construction or reconstruction, its obligations to restore the affected real estate after any such construction or reconstruction shall be limited to regrading and re-seeding. Under no

circumstances shall the Declarant or Corporation be liable for any damage or destruction to any fences, structures, or other improvements, which are damaged, destroyed or remodeled by Declarant, or their respective agents or employees as a result of such construction or reconstruction. Said easements are for the mutual use and benefit of the Owners.

- ii) Sewer Easements (SE) - Created for the use of the local government agency having jurisdiction over or storm and sanitary waste disposal system including the drainage system, which may be designed to serve Lake in the Woods for the purpose of installation and maintenance of sewers that are a part of said system.
- iii) Utility Easements (UE) - Created for the use of Declarant, the Corporation and all public utility companies, not including transportation companies, for the installation and maintenance of mains, ducts, poles, lines and wires, as well as for all uses specified in the case of sewer easements.
- iv) Entry Way Easements (EWE) - Created in the area of the Entry Ways for the use of Declarant and the Corporation for the installation, operation and maintenance of the Entry Ways.
- v) Landscaping Easements (LE) - Created for the use by Declarant and the Corporation for the planting and maintenance of trees, shrubs and other plantings.
- vi) Detention Maintenance Access Easements (DMAE) - Created for the use of Declarant, the Corporation and the Marion County Drainage Board for the purpose of gaining access to the Basins, the Basin Control Structures and the Drainage System in the course of maintenance, repair or replacement of any thereof.
- vii) Non-Access Easements - Depicted on the Plat and created to preclude access from certain Lots to abutting rights-of-way across the land subject to such easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Corporation. No fences shall be erected or maintained in the area of such easements.
- viii) Sign Easements - There are strips of ground shown on the Plat and reserved for mounding easements, landscape easements, and sign easements. Declarant hereby reserves unto itself during the Development Period and thereafter unto the Corporation, such easements for the purposes of providing signs which either (i) advertise the Property, and the availability of Lots the identity of participating builders, or events, or (ii) identify the Property. Declarant reserves unto itself during the Development Period and thereafter unto the Corporation, the exclusive and sole right to erect signs and install landscaping, mounding,

and screening within these strips of ground shown on the Plat as landscaping, mounding, and sign easements. No planting shall be done, and no hedges, walls, or other improvements shall be erected or maintained in the area of such easements except by the Declarant during the Development Period and, thereafter, by the Corporation. No fences shall be erected or maintained in the area of such easements, except as may be installed by the Declarant.

- b) General Easement - There is hereby created a blanket easement over, across, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of underground utility and service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement it shall be expressly permissible for Declarant, the Corporation or the providing utility or service company or any of their respective agents, employees or designees to install and maintain facilities and equipment on the Property and to excavate for such purposes if Declarant or such company restores the disturbed area. All such restoration shall be limited to re-seeding and re-grading only and Declarant or such company shall be under no obligation to repair or replace any improvements or landscaping. No sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or relocated in the Property except as proposed and approved by Declarant prior to the conveyance of the first Lot in the Property to an Owner or by the Corporation thereafter. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by recordable document, Declarant or the Corporation shall have the right to grant such easement on the Property without conflicting with the terms thereof. This blanket easement shall in no way affect any other recorded easements on the Property, shall be limited to improvements as originally constructed, and shall not cover any portion of a Lot upon which a Residence (but, for purpose of this Section 14(b), only, including driveway or walks and mailboxes associated with the normal construction of a Residence) which has been constructed.
- c) Public Health and Safety Easements - An easement is hereby created for the benefit of, and granted to, all police, fire protection, ambulance, delivery vehicles, and all similar Persons to enter upon the Community Area in the performance of their duties.
- d) Drainage Board Easement - An easement has been created for the benefit of, and granted to, the Drainage Board to enter the Property and all Lots therein to the extent necessary to exercise its rights with respect to all or any part of the Drainage System or Basin Control Structures which are included within any drain..
- c) Crossing Underground Easements - Easements utilized for underground service may be crossed by driveways, walkways and Basin Access Easements provided prior arrangements are made with the utility company furnishing service. Such easements as are actually utilized for underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossings,

thereafter, or an estoppel of that Person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the Restrictions. In any action by Declarant, the Corporation or an Owner to enforce this Declaration, such party shall be entitled to recover all costs of enforcement, including attorneys' fees, if it substantially prevails in such action.

17) Approvals by Declarant - As long as there is a Class B Member, the following actions shall require the prior approval of Declarant: (a) the dedication or transfer of the Community Area; (b) the merger or consolidation of the Property with other real estate; (c) mortgaging of the Community Area; (d) amendment of this Declaration; and (e) changes in the basis for assessment or the amount, use and time of payment of any proposed Initial Capital Assessment.

18) Amendments

- a) Generally - This Declaration may be amended at any time by an instrument signed by both (i) the appropriate officers of the Corporation acting pursuant to the authority granted by not less than two-thirds (2/3) of the votes of the Class A members cast at a meeting duly called for the purpose of amending this Declaration and, (ii) the Declarant, so long as the Declarant still owns at least one (1) Lot.
- b) Effective Date - Any amendment shall become effective upon its recordation in the office of the Recorder of Marion County, Indiana.

19) Interpretation - The underlined titles preceding the various paragraphs and subparagraphs of this Declaration are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

20) TERMINATION - These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2022 and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

21) Severability - Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity,

enforceability or "running" quality of any other one of the Restrictions.

- 22) Non-Liability of Declarant - Declarant shall not have any liability to an Owner or to any other Person with respect to drainage on, over or under a Lot. Such drainage shall be the responsibility of the Owner of the Lot upon which a Residence is constructed, and an Owner, by an acceptance of a deed to a Lot, shall be deemed to agree to indemnify and hold Declarant free and harmless from and against any and all liability arising from, related to, or in connection with drainage on, over and under the Lot described in such deed. Declarant shall have no duties, obligations or liabilities hereunder except such as are expressly assumed by Declarant, and no duty of, or warranty by, Declarant shall be implied by or inferred from any term or provision of this Declaration.
- 23) Applicable Law - The laws of the State of Indiana shall govern this Declaration.
- 24) Access Rights - Declarant hereby declares, creates and reserves an access license over and across all the Real Estate (subject to the limitations hereinafter provided in this Paragraph (24)) for the use of Declarant and its representatives, agents, contractors, designees and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this Paragraph (24) shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

IN TESTIMONY WHEREOF, witness the signature of Declarant as of the date set forth above.

"Declarant"

By:

Dean P. McFarland, Vice President
Heritage Development of Indiana, LLC

"Current Lot Owners"

Cliff White, Division President
Beazer Homes, Inc.

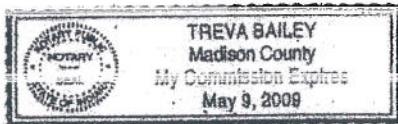


STATE OF INDIANA)
COUNTY OF Marion)
) SS:

Before me, a Notary Public, in and for said County and State, personally appeared Dean P. McFarland Vice President of Heritage Development of Indiana, LLC, Cliff White, Division President, Beazer Homes, Inc. and acknowledged the execution of the foregoing Declaration of Covenants and Restrictions.

Witness my hand and Notarial Seal this 14 day of October, 2004.

My Commission Expires:



Treva Bailey, Notary Public
Resident of Madison County, Indiana

This document was prepared by Dean P. McFarland

EXHIBIT A

part of the West Half of the Northwest Quarter of Section 16, Township 17 North, Range 2 East, Pike Township, Marion County, Indiana, more particularly described as follows:

...ncing at the Northwest Quarter of said Half Quarter Section; thence North 88 degrees 57 minutes 07 seconds East along the North line of said Quarter Section a distance of 7.59 feet to the POINT OF BEGINNING of this description; thence continuing North 88 degrees 57 minutes 07 seconds East along said North line 224.68 feet; thence South 00 degrees 01 minutes 47 seconds East 1,014.29 feet; thence South 88 degrees 57 minutes 07 seconds West parallel to the North line of said Quarter Section a distance of 46.85 feet; thence North 00 degrees 33 minutes 39 seconds East parallel to the West line of said Quarter Section a distance of 825.30 feet; thence South 88 degrees 11 minutes 16 seconds West 229.26 feet; thence North 78 degrees 22 minutes 37 seconds West 374.34 feet to the West line of said Quarter Section; thence North 00 degrees 35 minutes 39 seconds West along said West line 441.75 feet; thence North 88 degrees 57 minutes 07 seconds East parallel to the North line of said Quarter Section a distance of 132.39 feet; thence North 00 degrees 35 minutes 39 seconds West parallel to the West line of said Quarter Section a distance of 300.09 feet; thence North 88 degrees 57 minutes 07 seconds East parallel to the North line of said Quarter Section a distance of 0.06 feet; thence North 00 degrees 35 minutes 49 seconds West parallel to the West line of said Quarter Section a distance of 317.18 feet; thence North 88 degrees 57 minutes 07 seconds East parallel to the North line of said Quarter Section a distance of 255.48 feet; thence North 01 degrees 02 minutes 53 seconds West 193.55 feet; thence North 01 degrees 02 minutes 53 seconds West 103.92 feet to the point of curvature of a curve concave easterly, the radius point of said curve being North 88 degrees 57 minutes 07 seconds East 175.00 feet from said point; thence northerly along said curve 94.57 feet to the point of tangency of said curve, said point being North 60 degrees 05 minutes 09 seconds West 175.00 feet from the radius point of said curve; thence North 60 degrees 05 minutes 09 seconds West 125.00 feet from said point; thence northerly along said curve 67.55 feet to the point of tangency of said curve, said point being North 88 degrees 57 minutes 07 seconds East 100 feet from the radius point of said curve; thence North 01 degrees 02 minutes 53 seconds West 46.37 feet; thence North 46 degrees 02 minutes 53 seconds West 35.36 feet; thence North 88 degrees 57 minutes 07 seconds West parallel to the North line of said Quarter Section a distance of 80.01 feet; thence North 01 degrees 02 minutes 53 seconds West 70.00 feet to the place of beginning, containing 20.336 acres, more or less.

I further certify that the building(s) on the above-described real estates are located on and within the boundaries of said premises and that the buildings located on the adjoining property do not encroach upon said real estate, except as indicated.

I further certify that the subject property is not located in a Special Flood Hazard Zone A as said tract plots by scale on Community Panel No. 180159 0015 E of the Flood Insurance Rate Maps dated January 5, 2001.

