

DECLARATION OF COVENANTS AND RESTRICTIONS

EAGLE CREEK WOODS, SECTION 11

This Declaration made this 6th day of September, 1984, by Ecken-Vermögens-Verwaltungs-GmbH, a corporation organized and existing under the laws of the German Federal Republic.

WITNESSETH:

WHEREAS, the following facts are true:

- A. Declarant is the sole owner of the fee simple title to the real estate located in Marion County, Indiana, more particularly described on sheet 1 of 2 of the record plat attached hereto and incorporated herein by this reference, upon which Declarant may construct residential facilities.
- B. Declarant desires to provide for the preservation and enhancement of the property values in Eagle Creek Woods, Section 11, and to this end desires to subject the property to the covenants, restrictions and easements set forth herein, each and all of which in and are for the benefit and complement of the lands in the property and the future owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the 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 established for the purpose of enhancing and protecting the value, desirability and attractiveness of the property as a whole. All of the restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the property or any part or parts thereof.

- 1. **Definitions.** The following terms, as used in the Declaration, unless the context clearly requires otherwise, shall mean the following:
 - a. "D.M.D." means the Department of Metropolitan Development of Marion County, Indiana, its successors or assigns of any or all of its rights under this Declaration.
 - b. "Declarant" means Ecken-Vermögens-Verwaltungs-GmbH, the owner of the property at the time of the recording of this Declaration, its successors and assigns to its interest, or any person designated by it in a recorded instrument as having its rights hereunder, other than persons purchasing the property or parts thereof by deed from Declarant (unless the conveyance indicated an intent that the grantee assume the rights and obligations of Declarant.)
 - c. "Eagle Highlands" means the name of the Declarant's development of which the property is a part thereof.
 - d. "Owner" means every person or persons or entity or entities who is the record owner of a fee or undivided fee interest in the property, their heirs, successors, legal representatives or assigns.
 - e. "Property" means the real estate described on sheet 1 of 2 of the recorded plat.
 - f. "Restrictions" means the covenants, conditions, easements and restrictions and all other provisions set forth in this Declaration, as the same may from time to time be amended.

2. **Declaration.** Declarant hereby expressly declares that the property be held, transferred, sold, conveyed and occupied subject to the Restrictions.

- 3. **Utility Easements.** There are strips of ground as shown on the plat and marked "U&D" easement which are hereby reserved for the purposes incidental to the development of the property, to be perpetual thereof, from the date of this instrument by the Declarant, its successors and assignees, full force and authority to lay, operate and maintain such drainage facilities, sanitary sewer and water lines, gas lines, electric lines, communication lines (which shall include cable TV), and such other further public service facilities as Declarant may deem necessary. Provided, however, Declarant shall restore the disturbed area as nearly as is possible to the condition in which it was found. No permanent structures shall be constructed within a utility easement.

- 4. **Setback Lines.** Front building setback lines are hereby established on this plat; no building shall be erected or maintained between the established setback lines and the property lines of the streets.

No residence or attached accessory building shall be erected closer to the side of any lot than 10 feet, with a total aggregate of 20 feet at the building line, whichever is the lesser, except fences, nor shall any residence or attached accessory building be erected closer than 25 feet to the rear yard line. In the event a building is erected on more than one single lot, this restriction shall apply to the side lines of the extreme boundary of the multiple lots.

- 5. **Use Restrictions and Size of Buildings.** All lots in this subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof, other than the home occupations permitted in the Dwelling Districts Zoning Ordinance of Marion County, Indiana. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single-family dwelling not to exceed two and one-half stories in height and permanently attached residential accessory buildings. Any attached garage, attached tool shed, attached storage building, or any other attached accessory building erected or used as an accessory to a residence shall be of a permanent type of construction and shall conform to the general architecture and appearance of such residence.

The ground floor area of the main structure, exclusive of one-story open porches and garages and other attached residential accessory buildings, shall not be less than 1800 square feet in the case of a one-story structure. Provided, however, the structure of more than one story shall have a ground floor area of 1800 square feet of finished and livable floor area.

- 6. **Garage and Storage Area.** No garage shall be erected which is not permanently attached to the main building, and no unenclosed storage area shall be erected. No enclosed storage area shall be erected which is not permanently attached to the main building. All residences are required to have a garage which will accommodate two (2) automobiles.
- 7. **Accessory and Temporary Buildings.** No trailers, shacks, outhouses, detached storage sheds or tool sheds of any kind shall be erected or situated on any lot herein, except that used by the builder during the construction of a residential building on the property.
- 8. **Temporary Structures.** No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence.
- 9. **Nuisances.** No farm animals, fowls, or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in this subdivision. No noxious, unlawful, or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
- 10. **Fences.** No fence shall be erected on or along any lot line, nor on any lot, the purposes or result of which will be to obstruct reasonable vision, light, or air; all fences shall be kept in good repair and erected so as to enclose the property and decorate the same without hindrance or obstruction to any other property. No fence shall be erected between the front property lines and the building setback line other than a fence of a decorative nature not exceeding three (3) feet six (6) inches in height. 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 twenty-five (25) feet from the intersection of said street lines, or in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection 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.
- 11. **Driveways.** All driveways shall be paved simultaneously with construction of the dwelling and the type of construction and materials must be first approved by the Building Committee.
- 12. **Vehicle Parking.** No camper, motor home, truck, trailer, boat, or recreational vehicle of any kind, may be stored on any lot in open public view.
- 13. **Signs.** No sign of any kind shall be displayed to the public view on any lot except that one sign of not more than six square feet may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.
- 14. **Vegetation.** Lot owner shall not permit the growth of weeds and volunteer trees and bushes, and shall keep their lots reasonably clear from unsightly growth at all times. Failure to comply shall warrant the Metropolitan Development, the Homeowners Association, or the Department of Metropolitan Development to cut weeds and clear the lot of such growth at the expense of the lot owner, and such lot owner shall have a lien against said real estate for the same thereafter.
- 15. **Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in open public view.
- 16. **Storage Tanks.** Any gas or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house such that they are completely concealed from public view.
- 17. **Tree Preservation.** No trees may be removed from any lot without the approval of the Building Committee, and such requests shall be made to the Building Committee in writing. In the event the Building Committee does not indicate in writing its approval or disapproval of requests for tree removal within a period of thirty (30) days after submission, the Building Committee is deemed to have approved such request.
- 18. **Water Supply and Sewage Systems.** No private or semi-private water supply and/or sewage disposal system may be located upon any lot in this subdivision which is not in compliance with regulations or procedures as provided by the Indiana State Board of Health, or other civil authority having jurisdiction. No septic tank, absorption field, or other method of sewage disposal shall be located or constructed on any lot.
- 19. **Plans, Specifications and Locations of Buildings.** No building, structure, antennae, fence, wall, barbecue, patio, swimming pool, etc., shall be erected, placed, or altered on any lot in this subdivision until the building plans, specifications, and plot plans showing the location of such buildings have been approved as to the conformity and harmony of external design with existing structures herein and as to the building with respect to topography and finished elevation, by the undersigned owner of the herein described real estate, or by its duly authorized representative. If the owner or its duly authorized representative fails to act upon any plans submitted to it for its approval within a period of thirty (30) days from the submission date of the plans, the property owner may then proceed with the building according to the plans submitted, neither the undersigned owner nor the designated representative shall be entitled to any compensation for services performed pursuant to this covenant and are hereby designated as "The Building Committee".

20. **Homeowners Association.** After the land developer has sold the lots within the subdivision, a Homeowners Association of the lot owners shall be formed which shall exercise all of the powers and duties of the Building Committee designated in paragraph 19, above, which shall include review of remodeling, exterior alterations or additions to any residential structure, make provisions for enforcement of maintenance of any common areas, such as the landscaped entrance and other provisions of these restrictions. The land developer, prior to the sale of the last lot in the subdivision, shall appoint an Interim Board of Managers consisting of the owners of three improved lots who shall serve for a term expiring at the end of the calendar year of appointment. At a meeting date established by the Interim Board of Managers during the first week in December, the Interim Board shall give a written notice at least fifteen (15) days in advance to each lot owner of a meeting to elect the Board of Managers for the ensuing year and formally adopt Articles of Association. After the Association is formed the owner of any area designated common area shall convey same to the Association.

21. **Lot Access.** All lots shall be accessed from the interior streets of this subdivision. No access is permitted from Reed Road.

22. **Enforcement.** Any Owner or Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, or covenants, imposed by this Declaration, but Declarant shall not be liable for damages of any kind to any person for failure either to abide by, enforce or carry out any of the Restrictions or to delay or failure by any person to enforce any of the Restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as 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 the event that the Declarant shall deem it necessary to enforce any Restriction, the Owner shall pay reasonable attorneys' fees and court costs of Declarant shall prevail in said litigation.

The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance 58-A0-3, as amended, or any conditions attached to approval of this plat by the Plat Committee.

23. **Duration.** The foregoing covenants and restrictions and any amendments thereto are for the mutual benefit and protection of all present and future Owners of the property or any part thereof and shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2014, at which time the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by majority vote of those persons who are then the Owners of the property.

24. **Severability.** Everyone 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 shall lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other of the Restrictions.

25. The developer, his successors and assigns forever reserve the right to amend any of the above contained restrictions so long as the Declarant owns fee simple title to not less than six (6) of the lots encumbered by the restrictions herein. Any such amendment shall be effective upon the execution of same by developer herein and the filing of same among the public records of Marion County, Indiana.

26. **Dedicated Streets.** The streets are hereby dedicated to the public.

IN WITNESS WHEREOF, witness the signature of Declarant this 5th day of September, 1984.

By: Deborah L. Strick
 (Deborah L. Strick)
 Pursuant to a Power of Attorney Recorded
 April 1, 1981, and instrument number
 02-15426 in the office of the Recorder of
 Marion County, Indiana

County of Marion
 State of Indiana

Before me, the undersigned, a Notary Public in and for Marion County, State of Indiana, personally appeared the above and acknowledged the execution of the foregoing instrument as a voluntary act and deed for the use and purpose therein expressed.

Witness my signature this 5th day of September, 1984.

My Commission Expires: 12-30-85

Deborah L. Strick
 Notary Public
 Deborah L. Strick

County of Residence: Morgan County

